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**The evolution of international human rights norms:
From sexual orientation to gender identity**

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Abstract

Today, violence and discrimination towards LGBT persons still exists, but their right to non-discrimination is no longer questioned, and the abbreviations LGBT (lesbian, gay, bisexual, and transgender persons) and SOGI (sexual orientation and gender identity) are taken for granted. But this has not always been the case. The United Nations Office of the High Commissioner for Human Rights (OHCHR) endorsed the protection of LGBT persons, with the explicit addition of transgender persons under international human rights norms via the first international public information campaign on these issues in 2013, *Free and Equal*. However, the office recognised that sexual orientation is non-discriminable far in advance through the backing of the lawsuit, *Toonen v. Australia*, in 1994. Thus, between 1994 and 2013, the OHCHR's perception of international human rights norms have evolved to protect transgender persons, as well as non-heterosexual persons. This thesis inquires: which theory best explains this evolution? Answering this will further our understanding of the factors enabling norm change, as opposed to norm creation, and the role of international norms in international relations.

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The evolution of international human rights norms: From sexual orientation to gender identity

It has taken almost twenty years for international human rights norms endorsed by the United Nations Office of the High Commissioner for Human Rights (OHCHR)¹ to evolve from protecting persons based on their sexual orientation, to protecting persons based on their gender identity as well. Today, gender identity issues are confronted together with sexual orientation issues, but the OHCHR's shift in attitude and discourse shows that these have not always been treated as a single minority issue. Support for the 1994 verdict of *Toonen v. Australia* expressed the OHCHR's condemnation of sexual orientation-based discrimination far in advance of gender identity-based discrimination. The OHCHR's 2013 *Free and Equal* campaign, almost twenty years later, was the first international effort to explicitly advocate for non-discrimination based on gender identity, in addition to sexual orientation. Clearly international human rights norms have evolved, but theories treating norms as unmodifiable once they have been established struggle to explain change in pre-existing international norms (Krook and True 2012, 108). Thus, how can the evolution of international human rights norms to protect transgender persons together with lesbian, gay, and bisexual persons be explained?

There are various abbreviations referencing the queer community that comprises of individuals with "any sexual orientation or gender identity not corresponding to heterosexual norms" (Oxford Dictionaries 2017). LGBT, LGBTI, LGBTIQ+ (lesbian, gay, bisexual, transgender, intersex, questioning, and so forth), and SOGI (sexual orientation² and gender

¹ The abbreviation OHCHR, as used by the United Nations (UN), will be employed.

² "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender" (ICJ 2007, 6).

identity³) are the most prominent. Heterosexual norms or heteronormativity refers to the societal practices underpinning the idea that “only two genders [exist], that gender reflects biological sex, and that only sexual attraction between these “opposite” genders is natural” (Schilt and Westbrook 2009, 441). Consequently, societies have discriminated against individuals attracted to persons of the same-sex, but also against gender diverse persons outside the heteronormative male/female classifications. Gender diverse persons do not identify with their sex assigned at birth and heteronormative connotations, such as male masculinity (e.g. never crying), or female femininity (e.g. removing body hair). Transgender is another term for persons who do not identify with their gender assigned at birth, and often refers to someone who identifies with the opposite gender, for example, someone assigned female at birth who identifies as male. Persons may also identify on a spectrum between male and female, or with neither classification. Ultimately, non-discrimination based on gender identity means non-discrimination regardless of how someone chooses to identify.

Free and Equal, launched 26 July 2013 by the OHCHR, was the first international campaign for lesbian, gay, bisexual, and transgender equality, advocating with “videos, factsheets and infographic materials, [c]elebrities, social and traditional media” (OHCHR 2015, 2). Today, the ‘LGB’ would not be considered without the ‘T’, or the ‘SO’ without the ‘GI’: the norm has been ‘normalised’. Accordingly, scholars tend to treat LGBT or SOGI as a single minority issue when researching the development of these rights. In reality, they are not the same, and they have not developed simultaneously. Sexual orientation refers to the gender of persons someone is attracted to, whereas gender identity refers to the gender people themselves identify with. Non-discrimination on the grounds of sexual orientation was acknowledged by the OHCHR far in advance of gender identity.

³ “Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms” (ICJ 2007, 6).

Soon after the OHCHR's creation in 1994, the office "held that laws used to criminalize private, adult, consensual same-sex sexual relations violate rights to privacy and to non-discrimination" (OHCHR 2011b, 6). This was a consequence of the legal case presented to the United Nations (UN) Human Rights Committee in 1994 by Nicholas Toonen in objection to Australia's criminalisation of sexual contact between two consenting males in private (OHCHR 2005, 133). *Toonen v. Australia* resolved that such criminalisation breached an individual's privacy rights, a human right outlined in the International Covenant on Civil and Political Rights (ICCPR). In addition, 'sex' in Article II of the Universal Declaration of Human Rights (UDHR) stating "without distinction of any kind, such as... sex" (UNGA 1948, 2), evolved to encompass sexual orientation (OHCHR 2005, 139; Tahmindjis 2005, 13). Thanks to the UN's reputation as "one of the most influential international human rights bodies in the world" (Gerber and Gory 2014, 405), the resolution reverberated worldwide and other countries revoked their homophobic laws too. This was an historic moment for lesbians, gays, and bisexuals, but there was no mention of transgender persons (Waites 2009, 147). Almost twenty years later, *Free and Equal* was launched; finally, an historic moment for gender identity. Transgender and intersex persons were explicitly stated in the equality fight, and the OHCHR went beyond mere acknowledgement of these rights, actively endorsing LGBT equality (Karsay 2014, 18).

From no mention to all-out advocacy, the expansion of international human rights norms endorsed by the OHCHR to protect transgender persons remains a puzzle because gender identity is rarely treated independently from sexual orientation. Given the change occurred between *Toonen v. Australia* and the launch of *Free and Equal*, explanative factors must be attributable to developments at the UN between 1994 and 2013. Using this timeframe, the research question, how can the evolution of international human rights norms to protect transgender persons together with lesbian, gay, and bisexual persons be explained, will be

answered. Evolution ostensible from the OHCHR's attitude shift: from affirming non-discrimination based on sexual orientation apparent from *Toonen v. Australia*, to publicly advocating for transgender equality together with lesbian, gay, and bisexual equality, through *Free and Equal*. Understanding how this campaign, and the addition of transgender persons' protection under international human rights norms emerged, can inform future advocacy work. More importantly, knowing which theory best explains this evolution indicates further theoretical applicability to the development and role of other norms in international relations.

Theoretical framework

Realist and rational choice perspectives of international relations may present plausible explanations for the evolution of international human rights norms to protect transgender persons. However, the protection of lesbian, gay, bisexual, or transgender persons does not materially advance the nation-state, a factor central to both realist and rational choice arguments (Finnemore and Sikkink 1998, 893-4). Instead, constructivist theories credit societal factors for the existence of norms; norms being shared knowledge and shared expectations that are not materially gainable (Wendt 1995, 73). Constructivist theories give agency to individuals, going beyond state interest when explaining international norm development, as seen from Finnemore and Sikkink's (2001, 400) norm entrepreneurs, and Krook and True's (2012, 110) policy entrepreneurs.

Finnemore and Sikkink's (1998, 896) life cycle of norms is a popular example of constructivist theory explaining the diffusion of international norms. Finnemore and Sikkink (1998, 896-7) argue individual norm entrepreneurs use platforms, such as non-governmental organisations (NGOs), to persuade others of norm adoption, conscientiously framing the new norm being advocated. Effective framing can lead to a tipping point, detectable when approximately a third of relevant actors adopt the new norm through treaty recognition; they

argue norm cascades automatically follow this tipping point. Cascades annul the need for entrepreneurs and framing because the norm has been accepted by enough actors that others copy without question, and copying without question leads to norm internalisation (taken-for-grantedness; Finnemore and Sikkink 1998, 901). However, Finnemore and Sikkink (1998, 895) stumble over the necessity of treaties when recognising international norms. Moreover, there is a lack of flexibility over norm definition once the internalisation process has commenced, arguing norm entrepreneurs can only frame new norms, not modify those pre-existing (Finnemore and Sikkink 1998, 895).

Despite these shortcomings, Baisley (2016, 137) adopts Finnemore and Sikkink's theory of life cycles when discussing international human rights pertaining to sexual orientation and gender identity. Baisley (2016, 134) concludes that the cascade phase is yet to be reached for LGBT equality, particularly given the lack of reference in international law, but this struggles to explain *Free and Equal*. Although a campaign and not an international treaty, the support received by *Free and Equal* shows that the expansion of international human rights norms to protect LGBT persons has already occurred. Furthermore, Baisley treats sexual orientation and gender identity as a single minority issue, but the OHCHR did not recognise lesbians', gays', and bisexuals' right to non-discrimination at the same time as transgender persons'. If both are new norms, adopted thanks to effective framing with pre-existing international human rights norms, sexual orientation and gender identity must be treated independently. Finnemore and Sikkink's (1998, 901) three stage process (norm emergence, norm cascade, and internalisation) would need identifying, first for sexual orientation, and then for gender identity. This is because Finnemore and Sikkink's (1998, 896) life cycle of norms assumes neither sexual orientation norms (recognised 1994 by *Toonen v. Australia*), nor human rights norms (recognised 1948 by the UDHR) could have been modified after their recognition to encompass transgender persons. This is a reoccurring problem with other constructivist

approaches (e.g. world polity model, the boomerang effect, and the spiral model) that treat the development of international norms as a “one-way process” (Krook and True 2012, 108) of emergence, communication, and internalisation.

Theories explaining change, regardless of whether the norm has been established, are more applicable to the evolution of international human rights norms. The right to non-discrimination dates back to the 1948 UDHR, and is not new; however, the norm’s application to transgender persons is. Jepperson’s (2012, 145) institutionalism treats norms as reproductive processes that become institutionalised (taken for granted). Eventually, active input in the process is no longer necessary, and instead action is needed to boycott the process.⁴ International human rights have reached this stage, hence the need for actors to justify non-compliance, not compliance (Simmons 2010, 278). Nonetheless, Jepperson’s (2012, 153) institutional development can still explain the evolution of international human rights norms to protect transgender persons. Jepperson (2012, 153) argues exogenous environmental shocks, such as norm violation, enable norm continuation or expansion. However, attention to institutional processes intentionally side-lines the role of actors and actions (Jepperson 2012, 158), ignoring those responsible for launching *Free and Equal*. Sandholtz (2008, 105) also argues norm development occurs regardless of internalisation because norms are always incomplete. This incompleteness leads to state action, intentionally or unintentionally, challenging norms deemed to be the rules of international relations. Consequently, these challenges raise debate, and debate often leads to norm revision (Sandholtz 2008, 104). The importance of debate is valuable, but Sandholtz concentrates on state action and ignores other potential activists in norm development. On the other hand, Krook and True (2012, 103) can

⁴ Internalisation (Finnemore and Sikkink 1998, 904), institutionalisation, and ‘taken for grantedness’ (Jepperson 2012, 145) all refer to the status of an international norm once norm compliance no longer requires thought or incentive. Instead, non-compliance to the internalised/institutionalised/taken for granted norm requires deliberate effort and justification to avoid behaving in the way considered normal.

account for a range of actors (policy entrepreneurs), as well as post-internalisation norm modification, when explaining the evolution of international human rights norms.

Krook and True's (2012, 108) theory treating norms as processes, and not static 'things', appears most applicable when explaining the evolution of international human rights to protect transgender persons. Two factors set this theory apart: the emphasis on discourse, and the emphasis on the ability of policy entrepreneurs to reshape international norms, not just frame new ones (Krook and True 2012, 110). Krook and True's (2012, 105) discursive approach means international norms can be recognised without the prerequisite of being written in an international treaty, and therefore international law. This is important because norms are the "shared understandings, expectations, or knowledge" (Wendt 1995, 73) that shape the social structure of international relations, whether documented or not (Saiz 2004, 59; Heinze 2000/2001, 299). Arguably, non-discrimination on the grounds of sexual orientation is acknowledged in Article I of the UDHR: "[all] human beings are born free and equal in dignity and rights" (UNGA 1948, 2). Regardless of whether this, and Article II's reference to non-discrimination on the grounds of 'sex' includes sexual orientation, the backing of *Toonen v. Australia* by a reputable human rights body (the OHCHR) confirms the norm's existence. Likewise, the launch of the OHCHR's *Free and Equal* campaign, using language and education to advocate for transgender equality together with lesbian, gay and bisexual equality, is evidence of the evolved norm's existence. Evidence because of the OHCHR's respected status as an influential international human rights body (Gerber and Gory 2014, 405), and from *Free and Equal's* backing by multiple actors (other UN bodies, nation-states, celebrities, and others). This diverse support shows the ideas promoted to be shared understandings, despite the absence of gender identity in international treaties.

Nonetheless, both norms written in international law and those prevailing from intersubjective understandings are often intentionally vague and/or ambiguous. Vague in that

the boundaries of what the norm refers to are not clear; ambiguous in that the norm can be interpreted differently by different actors; and intentionally because ambiguity better enables norm diffusion. For example, imprecision encourages norm adoption because the norm can be shaped to meet the expectations of more actors (Krook and True 2012, 109; Sandholtz 2008, 105). This is where the role of policy entrepreneurs becomes pivotal. These entrepreneurs are responsible for translating international norms into practice through policy-making, deliberately framing problems necessitating solutions, to achieve greater universal resonance. Varying interpretations of international norms by policy entrepreneurs, in conjunction with norm ambiguities, can cause “shifts and modifications in... content over time” (Krook and True 2012, 109). Unlike static interpretations, these modifications can occur even if the norm has been established. Thus, Krook and True’s (2012, 103) theory is advantageous because of its ability to explain the creation of new norms, as well as the expansion, deepening, misunderstanding, or reversal of those already recognised.

Hypotheses

Using Krook and True’s (2012, 103) norms as processes, hypotheses can be deduced. Krook and True (2012, 109) subdivide factors affecting norm change into internal and external components (‘internal and external dynamism’). Although, there is overlap between the two due to norm vagueness and ambiguity (Krook and True 2012, 105). Internal refers to definitional conflicts that generate discourse on an issue, predominantly in the form of debate over norm content or what constitutes a violation of the norm, often arising from suspected violations. For example, past challenges to the content of international human rights norms have accounted for their expansion to encompass women’s rights decades after the UDHR’s recognition (Krook and True 2012, 110). For this study, definitional conflict over what constitutes a human right, or what gender identity refers to, is expected to facilitate the

expansion of pre-existing international human rights norms to protect transgender persons.⁵ Debate on sexual orientation is also anticipated to enable the addition of transgender persons together with lesbians, gays, and bisexuals when making human rights references. The raising of human rights violations based on gender identity and sexual orientation is also predicted for norm evolution, and the eventual launch of *Free and Equal*. Such negativity from violations, and expectations of the UN human rights system to protect individuals from discrimination (recognised in the UDHR), increases demand for the UN to respond. However, definitional conflicts and human rights violations rely on policy entrepreneurs raising and shaping the discussion (Krook and True 2012, 110).

Policy entrepreneurs shaping discourse on international norms can be “different kinds of agents” (Krook and True 2012, 113), implying policy entrepreneurs to be almost anyone. However, entrepreneurial capacity is associated with power (Krook and True 2012, 108): policy entrepreneurs are the actors at the time with influence over “what can and cannot be said” (Krook and True 2012, 108). The OHCHR and the broader UN human rights system are respected for their endorsement of international human rights norms, thus actors with the power to determine what can be said are likely to be influential UN personnel (Gerber and Gory 2014, 405). Krook and True’s testing of gender mainstreaming specifies the efforts of UN “human rights commissioners, [a] transnational advocacy network, [including] gender experts in the UN Inter-agency Taskforce, a member state group, and women’s NGOs” (Krook and True 2012, 121-2). Moreover, Krook and True (2012, 118-9) explicitly mention the Secretary-General’s role in UN policy development and implementation when analysing women in decision-making. For this study, one presumes an active role of UN personnel and transnational activists in transgender discussions at the OHCHR, and the UN in general (Krook and True 2012, 122). More specifically, a policy entrepreneurial role is expected of Ban Ki-moon,

⁵ See pages 18-19 for examples of definitional conflicts.

Secretary-General 2007-2016, and Navi Pillay, High Commissioner for Human Rights 2008-2014. Both had influence granted from their hierarchical placement among UN personnel prior to, and during *Free and Equal's* launch (Clapham 1994, 564-565; Baisley 2016, 137; Karsay 2014, 14). Paying such attention to technocrats has been criticised, but in this case, transnational activists for transgender issues struggled with “lack of financial resources, insufficient people, [and] lack of information” (Karsay 2014, 23), whereas Ban and Pillay were “seen as true leaders on SOGI issues” (Karsay 2014, 9). Nonetheless, LGBT-focused NGOs granted consultative status at the UN, and the extent they pressed for transgender rights compared to lesbian, gay, and bisexual rights, will be assessed (Baisley 2016, 144).

The external component refers to the other norms emerging, thriving, or shifting during the evolution of the norm under investigation, and whether there is space for this evolution (Krook and True 2012, 111). The better policy entrepreneurs can frame the evolving norm as compatible with pervading international values, the more conducive the external norm environment, and the greater norm acceptance among global and domestic audiences (Krook and True 2012, 110). Thus, one expects the prominent international values between 1994 and 2013 to become increasingly conducive to transgender issues. Conduciveness, combined with progressive framing by policy entrepreneurs, is expected for the norm's success through *Free and Equal's* launch.

Method

Krook and True's (2012, 112) strategy to assess the evolution of gender equality can be employed. “[L]anguage in policy documents and discussions surrounding... [transgender issues] prior to the [launch of *Free and Equal*]” (Krook and True 2012, 112), operationalised by “official statements and policies” (Krook and True 2012, 112), will reveal the addition of gender identity to international human rights norms. The OHCHR's shift from condemning

sexual orientation-based discrimination, to actively promoting transgender equality together with lesbian, gay, and bisexual equality, took almost twenty years (1994-2013). This specific timeframe makes a temporal case study ideal. A qualitative, small-N, case-orientated research design enables the tracing of complex and interconnected factors. This will help answer: how can the evolution of international human rights norms to protect transgender persons together with lesbian, gay, and bisexual persons be explained? Process tracing will be used to test for causal inferences, in this case, the main hypotheses derived from Krook and True's (2012, 103) theory: the expectation of discourse and debate, committed policy entrepreneurs, and a conducive external norm environment. To find evidence of these causal factors will explain the addition of transgender persons' protection under the universal right to equality and non-discrimination (Bennett 2011, 2135). This deduction technique (what is expected according to Krook and True's (2012, 103) theory) will be complimented by induction techniques, relying on historical evidence and the suggestion of alternative explanations (Bennett 2011, 2135). Thus, historical and counterfactual evidence, as well as the consideration of additional theories, will be invoked where necessary to support or refute the main hypotheses. A wide range of qualitative data will be drawn from former academic scholarship on the UN, sexual orientation, and gender identity issues, as well as official UN documents, speeches, and relevant activities of international advocacy groups (e.g. achievement of consultative status).

The intersubjective and often undocumented nature of norms makes them difficult to measure (Finnemore and Sikkink 1998, 892). However, analysing discourse, language, and action is one way to recognise norms. Therefore, the existence of transgender persons' protection under international human rights norms will be identified via the language and action of the OHCHR, and of the broader UN human rights system. This could be the use of transgender language together with human rights language, the reporting of gender identity-based discrimination and actions to counter such discrimination, as well as other actors calling

for UN action in response to the violation of transgender persons' human rights. Human rights refer to those outlined in the UDHR inherent to all. Although interrelated, interdependent, and indivisible, for analytical purposes, Article I, stating "[a]ll human beings are born free and equal in dignity and rights" (UNGA 1948, 1) is most imperative for this discussion of sexual orientation and gender identity: the universal right to equality and non-discrimination (OHCHR.ORG 2017d).

Firstly, norm imprecision and contestation is expected to generate discussion on norm content, often leading to norm change (Krook and True 2012, 108-9). This will be operationalised by direct conflict between actors over norm definition (written or spoken), as well as undefined reference to the norm because definitional evasion is most likely a deliberate effort to minimise points of contention. Evidence of norm violation, and crisis situations in particular, also present modification opportunities because they demand a response, similar to institutionalism's critical junctures (Krook and True 2012, 109-10; Capoccia and Kelemen 2007, 343). Norm violation is observable from actors reporting violence and discrimination to the UN on the grounds of gender identity (referring to the gender people themselves identify with), and sexual orientation (referring to the gender of persons someone is attracted to). Nonetheless, these openings for norm modification require policy entrepreneurs to frame transgender issues as problems demanding solutions. Policy entrepreneurs can be operationalised as actors (states, UN personnel, other individuals, and organisations) endorsing references to transgender persons together with sexual orientation and human rights. Endorsement evident from speeches, joint statements, resolutions, and other UN sources. The external normative environment refers to the prominent international values at the time, conducive to, or inhibiting norm evolution (Krook and True 2012, 111). Prevailing international values are identifiable if frequently referenced by a UN body, transnational activists, or multiple nation-states.

To summarise, important developments at the UN between 1994 and 2013 will be used to map references to gender identity, sexual orientation, and human rights. Once phases of norm development have been identified, Krook and True's (2012, 108-9) explanative factors will be tested. Firstly, discourse and debate on norm content and norm violations will be considered, followed by the identification of policy entrepreneurs raising these debates and/or concerns of violations. Finally, conduciveness of the external normative environment will add greater context. Following this empirical analysis, findings and conclusions will be presented. Ultimately, Krook and True's (2012, 104) norms as processes will be tested against the evolution of international human rights norms: from sexual orientation to gender identity.

The evolution of international human rights norms: From sexual orientation to gender identity

Using UN sources, key developments in attitudes and discourse regarding sexual orientation and gender identity between 1994 and 2013 have been analysed. Sources include speeches of Ban Ki-moon and Navi Pillay, additional speeches and reports of the OHCHR, as well as conference summaries, joint statements and resolutions of the UN Human Rights Council (Commission of Human Rights pre-2006). The backing of *Toonen v. Australia* in 1994 shows the OHCHR's recognition of lesbian, gay, and bisexuals' protection under international human rights norms, but the decade following the lawsuit's outcome scarcely sees mention of sexual orientation by this office, let alone gender identity. Nonetheless, UN recognition that sexual orientation is non-discriminable endures through some special procedures,⁶ and occasional activities of the Human Rights Council. Thus, researching beyond the OHCHR is crucial so that developments of the broader UN human rights system are not ignored.

⁶ Special procedures (special rapporteurs) are independent human rights experts appointed to complete national or thematic reviews on suspected human rights violations upon request, supported by the OHCHR (OHCHR.ORG 2017c).

Accordingly, a chronology mapping the development of transgender language has been produced. References to human rights, LGBT(I), sexual orientation (including lesbian(s), gay(s), bisexual(s), homosexuality, sexuality, homophobic, and homophobia), and gender identity (including transgender(ism), transsexual(s), transphobic, transphobia, and intersex) in important developments at the UN have been compared between 1994 and 2013.⁷ From this, three discernible periods appear to explain the evolution of international human rights norms to encompass transgender language. The first, 1994-2005 sees no enduring mention of transgender issues, whereas 2006-2010 witnesses infrequent and somewhat contested references to transgender equality, first initiated by states, and then by UN offices. From 2011 onwards, sexual orientation is no longer mentioned without reference to gender identity, thus seemingly becoming the norm. For each phase, evidence of norm modification will be presented and then assessed using the hypotheses deduced from Krook and True's (2012, 103) norms as processes.

1994 – 2005: Absence of transgender language

Between 1994 and 2005 there are allusions to transgender persons' non-discrimination rights at the UN, but this language does not endure. Not only did the period up to 2003 contain no references to transgender persons, there was also little mention of sexual orientation, except for a few lawsuits taken to the UN (*Joslin v. New Zealand* in 2001 and *Young v. Australia* in 2003), and references by a few UN special procedures (e.g. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Nonetheless, the Commission on Human Rights resolutions on extrajudicial killings⁸ show an absence of transgender

⁷ See Appendix I for table documenting these references (intersex is documented independently from gender identity).

⁸ The Third Committee (the Committee for Social, Humanitarian and Cultural Affairs Committee (SOCHUM)) is responsible for resolutions on extrajudicial killings. This is a subsidiary committee of the UN General Assembly, and not the principle organ (UN.ORG 2017).

language compared to sexual orientation. For example, reports of violence and discrimination by special rapporteurs prompted the UN's first resolution asserting persons should not be subject to "extrajudicial killings and acts of murder... because of... sexual orientation" (UNGA 2000, 11) in 2000. However, the addition of gender identity to this annually produced resolution was not contemplated until five years later (2005), and even then, the finessed resolution excluded any reference to gender identity (O'Flaherty and Fisher 2008, 231-2). In addition to lawsuits and special procedures, from 2003 more actors pursued non-discrimination on the grounds of sexual orientation, but still without reference to gender identity. State involvement began with Brazil's 2003 draft resolution, *Human rights and sexual orientation*, requesting "the High Commissioner for Human Rights to pay due attention to violations of human rights on the grounds of sexual orientation" (UNHRC 2003, Annex III). Ultimately the resolution was dropped, but any allusion to gender identity was dismissed beforehand anyway (UNHRC 2003, Annex I). Similarly, New Zealand's 2005 joint statement only referenced sexual orientation (UNHRC 2005). Unquestionably there was an absence of transgender language across the UN, suggesting transgender equality was neither associated with lesbian, gay, and bisexual equality, nor international human rights norms pre-2005. Nonetheless, debate surrounding sexual orientation is a good place to start.

Contestation over sexual orientation as grounds for non-discrimination would fit Krook and True's (2012, 109) expectations because dialogue presents opportunity for norm modification. Accordingly, debate on sexual orientation at the UN created openings for the addition of transgender persons' protection together with non-heterosexual persons already protected under international human rights norms. One example of direct contestation is Pakistan's 2004 letter (representing the *Organization of the Islamic Conference*), confronting the addition of sexual orientation to resolutions on extrajudicial killings, and Brazil's draft resolution. The letter explicitly stated, "sexual orientation is not a human rights issue"

(O’Flaherty and Fisher 2008, 228). Such confrontation was poignant, causing the initial postponement and eventual desertion of Brazil’s 2003 joint statement (Symons and Altman 2015, 76-78). Likewise, New Zealand’s statement was purposely not voted upon for fear of confrontation, showing the sexual orientation debate was still alive in 2005, just before transgender references began to endure (Sanders 2008, 4).

Raising norm violations also facilitates norm modification by creating dialogue on what constitutes a violation (Krook and True 2012, 110). Human rights violations on the grounds of homosexuality were most frequently exposed by special procedures, but also states’ joint statements. For example, New Zealand’s 2005 statement stressed “mounting evidence of serious human rights violations against individuals on the basis of their sexual orientation” (UNHRC 2005). Bringing attention to these violations presented opportunities for action (Krook and True 2012, 110), similar to institutionalism’s critical junctures. A concept in which “structural... influences on political action are significantly relaxed” (Capoccia and Kelemen 2007, 343), temporarily increasing the options available to actors, and increasing the impact of actors’ chosen paths. Thus, human rights violations documented by joint statements and special procedures increased the UN’s chances to condemn human rights violations on the grounds of sexual orientation, but also raised speculation of human rights violations on the grounds of gender identity too.

Given the lack of transgender language, policy entrepreneurs for transgender equality could not exist pre-2005. To push the expansion of international human rights norms to encompass transgender equality through UN policy statements and resolutions, awareness of transgender issues was needed. Once discourse existed, transgender persons’ discrimination could be framed as a problem demanding a solution (Krook and True 2012, 110-111). However, activism of special procedures and states between 1994 and 2005 raised sexual orientation-based human rights violations (referring to the gender of persons someone is

attracted to), as seen from the resolutions on extrajudicial killings, Brazil's draft resolution, and New Zealand's joint statement. Nonetheless, this activism suggests these actors may raise human rights violations on the grounds of gender identity in the future (referring to the gender people themselves identify with).

On the other hand, two NGOs with consultative status existed pre-2006. Consultative status enables access to “UN premises, international meetings, submi[ssion of] written statements, oral interventions and hosting [of] parallel panel discussions” (O’Flaherty and Fisher 2008, 229). These were the *American International Wages Due Lesbians* and the *Australian Coalition of Activist Lesbians* (ABGLT et al. 2009, 2). However, as their names demonstrate these groups concentrated sexual orientation-based discrimination, not gender identity. Furthermore, gender was treated in the sense of cisgendered⁹ men (men assigned male at birth who identify as men) and cisgendered women (women assigned female at birth who identify as women), and not trans persons. Therefore, these NGOs could advocate for homosexual cisgendered men and homosexual cisgendered women, but not homosexual transgender persons. During the 1990s, gender references in the pursuit of men and women’s equality were defined in the same way, visible from the 1995 *Fourth World Conference on Women: Action for Equality, Development and Peace* (Saiz 2004, 58; Swiebel 2009, 25). This supports Krook and True’s (2012, 111) assumption that the norm in process should fit the external normative environment if it is to gain momentum. The treatment of gender in the heteronormative cisgendered sense¹⁰ and the international focus on “inequalities between women and men” (Charlesworth 2005, 1) implies the external norm environment was not yet conducive to transgender language. Even “lesbian-specific issues [at the *Fourth World Conference on Women*] were dropped... [to] progress on other women’s rights issues” (Baisley

⁹ Cisgender refers to individuals who identify with their gender assigned at birth.

¹⁰ Assumes the existence of only two genders that reflect biological sex (Schilt and Westbrook 2009, 441).

2016, 148). Thus, the focus on women's rights barely left space for non-discrimination on the grounds of sexual orientation, let alone gender identity, particularly given the lack of transgender discourse to frame between 1994 and 2005. 2006 onwards sees a proliferation of transgender language in comparison.

2006 – 2010: Emergence of transgender language

From 2006 onwards, there is a steady and growing reference to transgender terminology in human rights and sexual orientation discourse at the UN. First initiated by states and special procedures, the OHCHR soon follows, although the office initially treats transgender language cautiously. Previous deliberation of gender identity at the UN (1994-2005) was ultimately censored, but Norway's 2006 joint statement contained the first enduring reference to gender identity (O'Flaherty and Fisher 2008, 230). 54 states backed this call for action in response to the "extensive evidence of human rights violations based on sexual orientation and gender identity, including deprivation of the rights to life, freedom from violence and torture" (UNHRC 2006). Similarly, Argentina presented the *Joint statement on human rights, sexual orientation and gender identity* in 2008, securing even more support (UNGA 2008). The 66 signatories to Argentina's joint statement corresponds to more than a third of the UN's 193 member states. If applying Finnemore and Sikkink's (1998, 901) theory to discourse and not just treaties, one expects a tipping point to have been reached, especially once the US signed in 2009 because of the country's substantial normative influence. But continued reference to sexual orientation and international human rights norms without the automatic attachment of gender identity contradicts Finnemore and Sikkink's (1998, 901) expectations of a norm cascade and internalisation once a third of actors support the norm.

Nonetheless, there was an increase in frequency and diversity of activity advancing gender identity issues together with sexual orientation issues between 2006 and 2010. Diversity

is apparent from speeches, publications, and international forums, in addition to joint statements and special procedures. Examples of novel activities include the Outgames and the associated *Declaration of Montreal*, “realizing LGBT human rights demands multi-layered change in all parts of the world” (Declaration of Montreal 2006, 1). Likewise, the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* confronted “human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity” (ICJ 2007, 6). This 35-page document was the first international publication to define sexual orientation and gender identity, and directly apply human rights’ universality, and the non-discrimination clause to LGBT persons (Sanders 2008, 5-6). It was through the 2006 Outgames’ key note address that the UN High Commissioner for Human Rights first spoke publicly about gender identity together with human rights and sexual orientation. This suggests a policy entrepreneurial role of Louise Arbour who fulfilled the role of High Commissioner at the time (Swiebel 2010, 235). Arbour acknowledged the need “to remain attentive and responsive to the plight of LGBT persons whose daily life is negatively affected” (Arbour 2006), but refrained from making any accusations. Moreover, Arbour’s refusal to initiate the *Yogyakarta Principles* from the OHCHR shows gender identity was still treated cautiously (Sanders 2008, 4), thus Arbour cannot be considered a committed policy entrepreneur.

Reluctance to produce the *Yogyakarta Principles* accentuates the OHCHR’s attitude shift between 2006 and 2013 because the *Free and Equal* campaign, produced by the OHCHR, did the same as the *Yogyakarta Principles*, through the provision of definitions, and more, through the active promotion of LGBTI equality. Arbour’s caution contrasts with Navi Pillay’s direct confrontation of transgender discrimination, together with lesbian, gay, and bisexual discrimination. Within five months of her appointment as High Commissioner for Human Rights, Pillay declared “[n]o human being should be subject to discrimination, violence,

criminal sanctions, or abuse, simply because of their perceived sexual orientation or gender identity” (Pillay 2008). Overt compared to Arbour’s “remain attentive” and “negatively affected” (Arbour 2006). Thereafter, the OHCHR took a leading role in sexual orientation and gender identity issues, reaffirming Pillay’s policy entrepreneurial role. However, the assessment of UN documents shows that until 2011, the OHCHR occasionally made sexual orientation and human rights references without reference to gender identity, as seen by the absence of transgender language in the *Strategic Management Plan 2010-2011* (OHCHR 2011a).¹¹ This shows that the automatic attachment of transgender rights to lesbian, gay, and bisexual rights was still in the process of being normalised; this is also apparent from definitional issues.

There are minimal attempts to define gender identity and sexual orientation during this phase, with the *Yogyakarta Principles* becoming the most substantive dictionary on these issues. Despite many of the 29 signatories being UN personnel, the *Yogyakarta Principles* were not officially adopted by any UN bodies (Human Rights Watch 2007). Thus, one cannot assume OHCHR references to transgender issues post-2007 refer precisely to the *Yogyakarta* definitions. Yet, in-depth analysis of addresses made by Pillay as High Commissioner, citing ‘gender identity’, ‘transgender persons’, and ‘transphobia’, reveals no accompanying definitions for these terms (O’Flaherty and Fisher 2008, 231). Nonetheless, lack of definition fits Krook and True’s (2012, 109) expectations; points of contention are deliberately minimised, and norm adoption is encouraged thanks to increased norm flexibility from definitional imprecision (Sandholtz 2008, 105).

Furthermore, direct contestation is evident from Russia’s counter to Argentina’s 2008 joint statement. Argentina “reaffirm[ed] the principle of non-discrimination... regardless of sexual orientation or gender identity” (UNGA 2008), while Russia campaigned for universal

¹¹ See Appendix I for table documenting these references.

traditional values (Symons and Altman 2015, 78). Russia promoted traditional families with husband, wife, and children, in turn discriminating against same-sex parents, and trans persons outside the heteronormative male/female classifications. Such contradiction to the recognised human rights principle of non-discrimination would have reinforced the need for LGBT policy entrepreneurs, and reinvigorated their commitment to achieve greater universal resonance. Moreover, serious human rights violations based on gender identity and sexual orientation were raised, creating more scope for UN action. Examples of violations include the corrective rape of lesbians prominent in South Africa, and non-consensual surgeries on trans and intersex persons (Deyi et al. 2016). On the other hand, debate declines towards the end of this phase, coinciding with the expectation that norm contestation will eventually cease if norm modification successfully occurs (Krook and True 2012, 104). This is apparent from the Holy See's attitude change.¹² Initially disapproving of female contraceptive rights at the *Fourth World Conference on Women* in 1995, let alone transgender rights, the Holy See's 2009 statement upheld the universal applicability of human rights. Therefore, the Holy See no longer denied LGBT persons' protection under international human rights norms (Centre for Reproductive Rights 2000, 6; Holy See 2009; Baisley 2016, 154). Ultimately, the spread of transgender language, whether positive or negative, implies more actors were engaged in the discussion.

The combination of states and UN personnel acting as policy entrepreneurs supports Krook and True's expectation of "different kinds of agents" (Krook and True 2012, 113). From 2006, states introduced transgender language together with the sexual orientation debate at the UN, beginning with Norway's joint statement (Swiebel 2010, 239). State activity leading to the re-assessment of international norms fits with Sandholtz's (2008, 104) expectations,

¹² Holy See is the abbreviation for *The Permanent Observer Mission of the Holy See to the United Nations*. This is the Catholic Church's representation at the UN (Holy See 2017).

particularly as the role of UN personnel in the debate does not proliferate until Navi Pillay's appointment as High Commissioner of Human Rights in 2008. However, as noted, Pillay's addresses on sexual orientation and gender identity rescinded the cautious tone adopted by the OHCHR under High Commissioner Arbour (Sanders 2008, 4). Pillay appears a committed policy entrepreneur thanks to her willingness to confront these issues, in conjunction with her influential position granted as High Commissioner (head of the OHCHR). This is where Sandholtz (2008, 104) falters because the efforts of an individual like Pillay could not be explained, nor those of Ban Ki-moon. UN Secretary-General Ban Ki-moon (another highly influential UN position) joined Pillay with the LGBT publicity in 2010, producing the policy *Ending violence and criminal sanctions based on sexual orientation and gender identity*. Although referenced six times less than sexual orientation, the inclusion of transgender language in UN policy for the first time shows attitudes were shifting (Ki-moon 2010). At the beginning of this phase (2006), reference to transgender persons was momentous simply because it was not dismissed. Now that transgender discourse endured, policy entrepreneurs could frame problems demanding solutions (Krook and True 2012, 110-111). Hence, the opportunity for Ban Ki-moon's entrepreneurial role with the 2010 policy, framing the criminalisation of homosexual and transsexual activities across the world.

In addition to the two organisations previously granted consultative status by the United Nations Economic and Social Council (ECOSOC), eight LGBT-focused NGOs received consultative status between 2006 and 2009. This implies a growing role for NGOs in the pursuit of transgender equality, especially as four of these organisations (2008 onwards) explicitly state transgender (LGBT) in their titles for the first time (ABGLT et al. 2009, 1). However, limited resources meant prioritising local advocacy efforts, and reliance on representation at the UN through larger organisations that were not LGBT-specific, reducing the chances of transgender concerns being heard (Karsay 2014, 25).

The external norm environment appears more conducive to transgender equality's emergence between 2006 and 2010. In contrast to the 1990s concentrating on women's equality, the *Commission on the Status of Women* (CSW) was just one of the women's organisations welcoming sexual orientation and transgender issues on the international agenda (Karsay 2014, 13). Moreover, UN personnel sought to resonate sexual orientation and gender identity issues with the biggest audience possible. Instead of just framing human rights policies, sexual orientation and gender identity were also linked to refugee policies, HIV/AIDS policies, and policy regarding the treatment of prisoners (O'Flaherty and Fisher 2008, 243). However, the external normative environment was not unproblematic, with protuberant notions of "defending sovereignty, security and notions of 'traditional' national identity" (Chase 2016, 710). For example, the Ugandan government accused homosexuality of being a Western perversion (Langlois 2015, 391), and Russia held the universal traditional values campaign (Symons and Altman 2015, 78). Furthermore, 2006 saw the replacement of the Commission of Human Rights with the Human Rights Council, such institutional change overshadowed the development of international human rights norms (O'Flaherty and Fisher 2008, 238). Nonetheless, between 2006 and 2010, policy entrepreneurs achieved far more than just the endurance of transgender language; and all developments were crucial steps for the future normalisation of transgender persons' protection under international human rights norms.

2011 – 2013: Normalisation of transgender language

From 2011, language and action of the OHCHR affirming sexual orientation is non-discriminable under international human rights norms also referenced transgender persons. Despite the citing of transgender language less per source compared to sexual orientation,¹³ the guaranteed reference signals this had become the norm at the OHCHR. The increase in

¹³ See Appendix I for table documenting these references.

OHCHR activity further implies normalisation, with Charles Radcliffe, Chief of Global Issues Section at the OHCHR, addressing sexual orientation and transgender issues, as well as UN Assistant Secretary-General for Human Rights Ivan Simonovic, in addition to Navi Pillay and Ban Ki-moon (OHCHR.ORG, 2017b). For example, Radcliffe called for “[o]vercoming resistance, countering prejudice, [and] convincing Governments to step up and protect LGBT people” (Radcliffe 2013).

Normalisation is also ostensible from the office’s growing use of LGBT(I) because this abbreviation does not exist without reference to transgender persons. The headline of the OHCHR’s 2013 campaign highlights this practice: “*Free & Equal* is a United Nations campaign for lesbian, gay, bisexual, and transgender [LGBT] equality” (UNFE.ORG 2017). *Free and Equal* was the first international public advocacy campaign for LGBT equality, and directly confronted sexual orientation-related and gender identity-related definitions through fact sheets. This shows a major shift from the OHCHR’s evasion of developing the *Yogyakarta Principles*. More notable is the campaign’s mention of intersex persons: someone “born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female” (OHCHR 2014, 1). Even the 35-page *Yogyakarta Principles* (acting as the international dictionary for sexual orientation and gender identity issues from 2007) only made one undefined reference to intersex persons (ICJ 2007, 8). Thus, not only has transgender language endured, the expansion of international human rights norms continues, apparent from this addition of intersex persons.

2011 seems particularly poignant, with a series of UN and state action forcing regular reference to transgender-based discrimination together with sexual orientation-based discrimination. This action included Columbia’s joint statement in March, adoption of the Human Rights Council’s first resolution on sexual orientation and gender identity in June, and publication of the OHCHR’s report, *Discrimination and violence against individuals based on*

their sexual orientation and gender identity, in December (OHCHR 2011b). More specifically, Columbia called for “outreach and constructive dialogue to enhance understanding and awareness of these [sexual orientation and gender identity] issues” (UNHRC 2011b), and the OHCHR report revealed the horrors of LGBT human rights abuses across the world. These demands and atrocities presented the OHCHR with more opportunity to act, most likely laying the foundations for the outreach and dialogue that is *Free and Equal*. Columbia also “encourage[d] the Office of the High Commissioner for Human Rights to continue to address human rights violations based on sexual orientation and gender identity” (UNHRC 2011b). Such expectations of the OHCHR to protect transgender persons, as well as lesbian, gay, and bisexual persons, indicates the normalisation of transgender persons’ protection under international human rights norms.

Compared to the two preceding phases, 2011 onwards sees a further fall in norm contestation. Given the normalisation of transgender terminology, Krook and True (2012, 104) anticipate this fall because transgender language is no longer constantly challenged. This is apparent from the cease in counter statements presented to the UN (e.g. end of active condemnation by the Holy See), as well as greater consensus, apparent from the growing number of signatories to pro-LGBT equality statements (e.g. joint statements’ rise from 54 signatories in 2006 to 85 in 2011). Even the application of Finnemore and Sikkink’s (1998, 901) life cycle of norms to non-treaty-based developments indicates transgender language has been normalised. This is because the 85 signatories to Columbia’s 2011 joint statement represents well over a third of the 193 UN member-states needed for a norm cascade and internalisation (Baisley 2016, 163). Consensus over sexual orientation and gender identity issues is also apparent from *Free and Equal’s* diverse support; states, NGOs, influential personnel, celebrities, and many others endorsed the campaign (OHCHR 2015, 2).

Contestation still endures today through Human Rights Council debates, as seen from the coalition of African countries' challenge to the first independent expert on sexual orientation and gender identity in September 2016 (Taylor 2016). But this is not the OHCHR, and this still fits Krook and True's (2012, 106) central argument that norms are processes, and not static once adopted. The process continues because discussion creates opportunity for future norm modification, thus the normalisation of transgender language 2011-2013 does not rule out the prospect of future norm reversal (Krook and True 2012, 104). Nonetheless, as noted towards the end of the previous phase, the debate is less on the applicability of pre-existing international human rights norms to LGBT persons, but on concerns of "'new' rights" privileging LGBT persons, and "the sanctity of the traditional family" (Baisley 2016, 158-9). In theory, this fall in norm contestation makes the role of policy entrepreneurs easier as sexual orientation and gender identity policies already have greater universal resonance.

2011-2013 witnesses more activity from the policy entrepreneurs already mentioned, an increase in actors fulfilling policy entrepreneurial roles, and more novel activities. Together with sexual orientation, gender identity issues were raised more frequently by both Pillay and Ban, with written statements and videos used in addition to speeches. Moreover, *Free and Equal* deliberately targeted all domestic actors, including "civil society activists, human rights defenders and others" (OHCHR.ORG 2017a), as well as state actors. As expected, this shows OHCHR efforts to resonate the policy with as many people as possible (Krook and True 2012, 110). This pursuit of global solidarity is also apparent from the inclusive and personal tone of Ban's declaration, "I stand with you [and] call upon all countries and people to stand with you [lesbian, gay, bisexual and transgender persons], too" (Ki-moon 2012). Furthermore, the Human Rights Council resolution presented by South Africa expressed "grave concern at acts of violence and discrimination... committed against individuals because of their sexual orientation and gender identity" (UNHRC 2011a, 1). This was the first resolution voted upon

exclusively by the Human Rights Council's 45 member-states that explicitly referenced transgender language (Baisley 2016, 152-3). Despite votes against and abstentions to the resolution, the successful adoption shows greater consensus, particularly as previous statements, including those only referencing sexual orientation, were not even voted upon for fear of failure (e.g. Brazil's draft resolution and New Zealand's joint statement).

On the other hand, any of the UN's 193 member-states could sign joint statements containing transgender language. All signatories could be considered policy entrepreneurs, but countries presenting these statements display even greater policy entrepreneurial characteristics. Producing statements required the effective framing of transgender issues in need of remedying before others could even contemplate signing. Moreover, with their names at the forefront of the statement, these countries willingly risked becoming the target of norm contestation, as seen from Brazil's eventual dropping of the *Resolution on sexual orientation and human rights* (UNHRC 2003).¹⁴ From 2011, Columbia (joint statement) and South Africa (resolution) can also be considered policy entrepreneurs. The 2012 *Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity* is another novelty (UNHRC 2012). A new tool invoked by the Human Rights Council, the panel discussion allowed in-depth dialogue on sexual orientation and transgender issues for the first time; former joint statements and resolutions of one or two pages were brief in comparison. Furthermore, the panel's opening addresses by Pillay and Ban reaffirms the ability of influential UN personnel to shape LGBT discourse at this international level (Karsay 2014, 11).

Like many norm-setting theories, Krook and True (2012, 110) anticipate transnational activism, but as noted, limited resources corresponded to low representation of transgender

¹⁴ See pages 18-19 for Pakistan's letter confronting Brazil's 2003 draft resolution, and pages 23-24 for Russia's statement confronting Argentina's 2008 joint statement.

groups at the UN (Karsay 2014, 25). Lack of representation continued into this phase (2011-2013), with “less than [twenty] of 3,735 NGOs with consultative status deal[ing] with discrimination on the basis of” (Baisley 2016, 144) sexual orientation and gender identity by May 2013. However, the UN’s reluctance to grant LGBT groups consultative status was partly to blame for this lack of representation. For example, the *International Lesbian and Gay Association’s* (ILGA) consultative status was suspended in 1994 due to a misunderstanding. Despite the ILGA’s 1995 statement resolving the misunderstanding (confirmation that the organisation does not promote paedophilia in any way), and multiple reapplications, consultative status was not reapproved until 2011 (Baisley 2016, 144). Given the normalisation of transgender language at the UN from 2011 onwards, it appears the ILGA, despite being a leading LGBT NGO, could not have been a committed policy entrepreneur because of this late re-approval of consultative status. On the other hand, the external norm environment appears most conducive to transgender issues during this period, hence the OHCHR successfully launched *Free and Equal*. The “intersect with race, socio-economic status, disability, housing rights, women’s rights and children’s rights” (Karsay 2014, 28), to name a few, confirms that both sexual orientation and gender identity were no longer competing with the likes of women’s equality in international relations, but fit with them.

Findings and conclusions

The assessment of attitudes and discourse on transgender developments at the UN contradicts theories that treat norms as static ‘things’, and contradicts scholars who treat the development of sexual orientation and gender identity rights as simultaneous. There is an unquestionable shift in OHCHR attitude towards international human rights norms and their expansion to protect LGBT persons. *Free and Equal’s* advocacy for transgender persons is distinct from the office’s backing of *Toonen v. Australia*, which was limited to sexual

orientation. From analysing transgender language in UN sources between 1994 and 2013, the development of gender identity references compared to sexual orientation and human rights have been effectively traced.¹⁵ Tone and content of these joint statements, addresses, conferences, and reports have also been assessed, as well as previous scholarly literature. From this in-depth analysis, no single tipping point was identified as expected by Finnemore and Sikkink (1998, 901), and Baisley (2016, 134). Instead, incremental steps connect no mention of transgender persons' protection under international human rights norms to all-out advocacy by the OHCHR. This gradual change, as seen from the three overarching phases of norm development identified, supports Krook and True's (2012, 103) norms as processes. For example, between 1994 and 2005, any transgender reference was dismissed, 2006-2010 revealed the emergence of transgender language, and 2011 onwards indicates the automatic attachment of gender identity to sexual orientation and human rights discourse.

There is no mention of transgender persons during the 1990s, while the whole period 1994-2005 sees no enduring reference, as any attempt to reference gender identity was dismissed.¹⁶ Despite little mention of transgender persons between 1994 and 2005, this still fits Krook and True's (2012, 109-11) expectations. Continued debate on sexual orientation and human rights, noticeable from special procedures and states' joint statements, presented policy entrepreneurs with opportunities to add transgender language to ongoing discussions on sexual orientation. This addition of gender identity to international discourse was crucial for empowering the policy entrepreneurs who shaped transgender issues in the following phases (2006-2010 and 2011-2013). The external norm environment between 1994 and 2005 prioritised women's equality, dismissing lesbian issues, let alone transgender issues. Furthermore, gender was treated in the heteronormative cisgendered sense. Therefore, the

¹⁵ See Appendix I for table documenting these references.

¹⁶ See page 18 for resolutions on extrajudicial killings.

external norm environment was even less conducive because transgender persons did not fit the prevalent heteronormative male/female classifications. Nonetheless, 1994-2005 was fundamental, creating openings for future transgender discussions.

The second phase reveals infrequent and contested references to gender identity. Increased discussion and imprecise references to transgender issues between 2006 and 2010 helped clarify norm content, and generated greater support for the norm. This is apparent from the rise in states signing Argentina's 2008 joint statement compared to Norway's 2006 statement, and the Holy See's attitude change. The fall in norm opponents, and greater clarity of transgender language, contributed to the eventual normalisation of transgender persons' protection under international human rights norms (2011-2013). Furthermore, women's equality, previously dominating the external norm environment, was no longer in competition with sexual orientation, but welcomed sexual orientation and gender identity on the international agenda. Nonetheless, Russia's counter statement shows contestation still existed.¹⁷ Plus, the analysis of transgender language in UN documentation reveals OHCHR references to sexual orientation without the automatic attachment of gender identity persisted, as seen in the *Strategic Management Plan* (OHCHR 2011a). Unquestionably, the evolution of international human rights norms to encompass transgender persons was in process, but not yet taken for granted, internalised, nor institutionalised by 2010.

From the analysis of important UN documents, 2011 onwards shows any OHCHR reference to lesbians', gays', and bisexuals' right to non-discrimination referenced transgender persons too. Despite transgender language receiving fewer mentions than sexual orientation, this guaranteed attachment implies norm normalisation. 2011-2013 saw definitional conflicts replaced with demands for UN action in response to human rights violations based on gender identity and sexual orientation. Violence and discrimination targeted at LGBT persons is cited

¹⁷ See pages 23-24 for Russia's counter statement.

in Columbia's joint statement, the Human Rights Council's first resolution on sexual orientation and gender identity, and the 2011 OHCHR report. Requests by Columbia and South Africa for public information campaigns, and the extent of violations revealed by the 2011 report presented greater scope for the OHCHR to respond (Krook and True 2012, 109-10; Capoccia and Kelemen 2007, 343). Ultimately, the continuous process of norm evolution enabled the OHCHR's launch of *Free and Equal* in 2013, and this success cannot be attributed to a single tipping point.

It took almost twenty years to achieve all-out advocacy for LGBT equality through the 2013 *Free and Equal* campaign, however this is unsurprising after analysing Krook and True's (2012, 109) internal and external components of norm development. To begin with, discourse on gender identity did not exist, and was contested when it did endure, the external norm environment was originally unfavourable, and committed policy entrepreneurs at the UN shaping transgender issues emerged somewhat later. Nonetheless, the unfavourable norm environment became more conducive, and committed policy entrepreneurs emerged. The analysis of UN sources implies states originally acted as policy entrepreneurs on transgender issues through joint statements. However, under Pillay (2008-2014), the OHCHR took a leading role; Pillay occupied an influential position as High Commissioner of Human Rights, but more importantly, her speeches were more confrontational than her predecessors.¹⁸ Following Pillay's example, other high-ranking UN personnel, including Ban, Radcliffe, and Simonovic, also began addressing gender identity issues together with sexual orientation. Both Jepperson (2012, 153) and Sandholtz (2008, 104) struggle to explain the role of these individuals in the transgender discussion, whereas Krook and True (2012) anticipate action of influential UN personnel. Undoubtedly, under Secretary-General Ban Ki-Moon, and High Commissioner Navi Pillay in particular, OHCHR activity and activity of the broader UN

¹⁸ See pages 22-23 for Pillay's confrontational tone.

human rights system increased. This is apparent from the first Human Rights Council resolution and first OHCHR report on sexual orientation and gender identity, as well as the first international public information campaign on these issues: *Free and Equal*.

The theoretically significant conclusion is that international norms are modifiable long after their internalisation. The gradual expansion of international human rights norms originally outlined in the 1948 UDHR to encompass lesbian, gay, and bisexual persons (clarified 1994 by *Toonen v. Australia*), and then transgender persons (clarified 2013 by *Free and Equal*), shows this ability to adapt. This gradual expansion, taking almost twenty years, directly contradicts many constructivist theories that treat norms as static once the internalisation process has commenced (Finnemore and Sikkink 1998, 895-6; Risse and Ropp 2013, 7-8). The addition of intersex persons in the OHCHR's *Free and Equal* campaign exemplifies this further because intersex persons were not initially referenced together with transgender persons in 2006, nor in many of the activities of policy entrepreneurs prior to 2013.¹⁹ Krook and True's (2012, 110) emphasis on discourse combined with the ability of policy entrepreneurs, whether states, individuals, or others, to reshape pre-existing international norms clearly sets this theory apart, particularly when researching international human rights norms. The evolution of international human rights norms to protect transgender persons is effectively explained by the efforts of states, and eventually UN personnel (most noticeably Pillay), acting as policy entrepreneurs. These policy entrepreneurs successfully generated transgender discourse through definitional contestation and debate, leading to the automatic attachment of gender identity issues to sexual orientation issues. The effective framing of LGBT discrimination and violence spurred greater universal resonance, and calls for action meant more scope for OHCHR response. All explanative factors, including the increasingly conducive external norm environment, contributed to *Free and Equal's* launch in 2013. However, it seems without

¹⁹ See Appendix I for table documenting these references.

committed policy entrepreneurs generating and shaping the transgender discussion, *Free and Equal* may not have materialised, and we could still be awaiting the expansion of international human rights norms to protect transgender persons.

Given that these findings substantiate Krook and True's (2012, 103) norms as processes suggests theoretical applicability to other international norms. However, this is just one theory from the constructivist school of thought, other theories can make valuable explanative contributions. The use of the OHCHR to measure international human rights norms and their protection of transgender persons could be considered a limitation of this study because this is only one office of the UN. To look in-depth at other UN bodies, or the regional development of transgender issues would further strengthen this research.

Bibliography

- ABGLT, ARC International and IGLHRC, 2009. *United Nations: First lesbian, gay, bisexual, and transgender organization from the global south to gain consultative status results of the vote*. pp.1-2. Available at: <http://www.sxpolitics.org/ptbr/wp-content/uploads/2009/01/press-release-abglt-granted-un-consultative-status.pdf> [Accessed 16/05/2017].
- Arbour, L., 2006. *Presentation by the United Nations High Commissioner for Human Rights, Madam Louise Arbour*. International conference on LGBT human rights (Lesbians, Gays, Bisexuals and Transgendered). Montreal. Available at: http://www.montreal2006.info/en_louise_arbour.html [Accessed 16/05/2017].
- ARC International, 2017. *SOGI statements*. Available at: <http://arc-international.net/global-advocacy/sogi-statements/> [Accessed 16/05/2017].
- Baisley, E., 2016. Reaching the tipping point?: Emerging international human rights norms pertaining to sexual orientation and gender identity. *Human Rights Quarterly*, 38(1), pp.134-163.
- Bennett, A., 2011. 'Process tracing', in B.Badie, D.Berg-Schlosser, and L. Morlino (eds), *International Encyclopedia of Political Science* (Sage Publications, Thousand Oaks).
- Capoccia, G. and Kelemen, R.D., 2007. The study of critical junctures: Theory, narrative, and counterfactuals in historical institutionalism. *World Politics*, 59(3), pp.341-369.
- Center for Reproductive Rights, 2000. The Holy See at the United Nations: An obstacle to women's reproductive health and rights. *Briefing Paper*, pp.1–12. Available at: https://www.reproductiverights.org/sites/default/files/documents/pub_bp_holyseeattheun.pdf [Accessed 16/05/2017].
- Charlesworth, H., 2005. Not waving but drowning: Gender mainstreaming and human rights in the United Nations. *Harvard Human Rights Journal*, 18, pp.1-18.
- Chase, A.T., 2016. Human rights contestations: Sexual orientation and gender identity. *The International Journal of Human Rights*, 20(6), pp.703-723.
- Clapham, A., 1994. Creating the High Commissioner for Human Rights: The outside story. *European Journal of International Law*, 5, pp.556-568.
- Declaration of Montreal, 2006. *International conference on LGBT human rights*, pp.1–7. Available at: <http://www.declarationofmontreal.org/DeclarationofMontreal.pdf> [Accessed 16/05/2017].
- Deyi, B., May, C., Smith, E., Pilcowitz, J., Schoole, J., Mudarikwa, M., Ndelu, S., and Kgositau, T., 2016. *Recognition of civil and political rights: A continued struggle for transgender and intersex persons in South Africa*, pp.1-28. Available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/INT_CCPR_CSS_ZAF_23065_E.pdf [Accessed 16/05/2017].

- Finnemore, M. & Sikkink, K., 2001. The Constructivist Research Program in International Relations and Comparative Politics. *Annual Review Political Science*, 4, pp.391-416.
- Finnemore, M. and Sikkink, K., 1998. Norm dynamics international and political change. *International Organization*, 52(4), pp.887-917.
- Gerber, P. and Gory, J., 2014. The UN human rights committee and LGBT rights: What is it doing? What could it be doing? *Human Rights Law Review*, 14(3), pp.403-439.
- Heinze, E., 2000/2001. Sexual orientation and international law: A study in the manufacture of cross-cultural “sensitivity”. 22 *Mich. J. Int'l L*, pp.283-309.
- Holy See, 2009. *Holy See statement*. United Nations General Assembly, 10 December, <http://arc-international.net/global-advocacy/sogi-statements/holy-see-statement-at-ga-2009/> [Accessed 16/05/2017].
- Human Rights Watch, 2007. ‘*Yogyakarta Principles*’ a milestone for lesbian, gay, bisexual, and transgender rights. 26 March, Available at: <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights> [Accessed 16/05/2017].
- International Commission of Jurists (ICJ), 2007. *Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*, pp.1-35. Available at: http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf [Accessed 15/05/2017].
- Jepperson, R.L., 2012. ‘Institutions, institutional effects, and institutionalism’, in W.W. Powell and P.J. Dimaggio (eds), *The new institutionalism in organizational analysis* (University of Chicago Press, Chicago).
- Karsay, D., 2014. How far has SOGII advocacy come at the UN and where is it heading? *ARC International*, September, pp.1-34. Available at: <http://arc-international.net/wp-content/uploads/2013/09/How-far-has-SOGII-for-web.pdf> [Accessed 16/05/2017].
- Ki-moon, B., 2013a. *Message to the International Forum on the International Day against Homophobia and Transphobia [delivered by Navanethem Pillay, High Commissioner for Human Rights]*. The Hague, 16 May. Available at: <https://www.un.org/sg/en/content/sg/statement/2013-05-16/secretary-generals-message-international-forum-international-day> [Accessed 15/05/2017].
- Ki-moon, B., 2013b. *Video message to the Oslo Conference on human rights, sexual orientation and gender identity*. Oslo, 15 April. Available at: <https://www.un.org/sg/en/content/sg/statement/2013-04-15/secretary-generals-video-message-oslo-conference-human-rights-sexual> [Accessed 18/05/2017].
- Ki-moon, B., 2012a. *Remarks to special event on “Leadership in the fight against homophobia”*. New York, 11 December. Available at: <https://www.un.org/sg/en/content/sg/statement/2012-12-11/secretary-generals-remarks-special-event-leadership-fight-against> [Accessed 15/05/2017].

- Ki-moon, B., 2012b. *Video message to Human Rights Council meeting on violence and discrimination based on sexual orientation or gender identity*. Geneva, 7 March, Available at: http://www.ohchr.org/Documents/Issues/Discrimination/SG_LGBTVideoMessage.doc [Accessed 16/05/2017].
- Ki-Moon, B., 2010. *Ending violence and criminal sanctions based on sexual orientation and gender identity*. SG/SM/13311-HR/5043, New York, 10 December, <http://www.un.org/press/en/2010/sgsm13311.doc.htm> [Accessed 16/05/2017].
- Krook, M.L. and True, J., 2012. Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality. *European Journal of International Relations*, 18(1), pp.103–127.
- Langlois, A.J., 2016. International relations theory and global sexuality politics. *Politics*, 36(4), pp.385–399.
- O’Flaherty, M. and Fisher, J., 2008. Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta Principles. *Human Rights Law Review*, 8(2), pp.207-248.
- OHCHR.ORG, 2017a. *Booklet, “Born Free and Equal”*. United Nations Office of the High Commissioner of Human Rights. Available at: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/BornFreeEqualBooklet.aspx> [Accessed 16/05/2017].
- OHCHR.ORG, 2017b. *LGBT speeches and statements*. United Nations Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx> [Accessed 16/05/2017].
- OHCHR.ORG, 2017c. *Special Procedures of the Human Rights Council*. United Nations Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> [Accessed 15/05/2017].
- OHCHR.ORG, 2017d. *What are human rights*. United Nations Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> [Accessed 15/05/2017].
- Oxford Dictionaries, 2017. *Queer: definition of queer*. Available at: <https://en.oxforddictionaries.com/definition/queer> [Accessed 15/05/2017].
- Pillay, N., 2013. *Opening remarks by United Nations High Commissioner for Human Rights Navi Pillay at the Free and Equal campaign press launch*. Cape Town, 26 July. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14289&LangID=E> [Accessed 17/05/2017].

- Pillay, N., 2012. *Pillay on homophobia: Punish violence and hatred, not love!* 7 May. http://www.ohchr.org/Documents/Issues/Discrimination/Transcript/IDAHO2012_en.doc [Accessed 17/05/2017].
- Pillay, N., 2011. *High Commissioner video message on homophobia*. 31 March. Available at: http://www2.ohchr.org/SPdocs/HC/transcript/HC_video_homophobia_script_en.doc [Accessed 15/05/2017].
- Pillay, N., 2009a. *Address by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights on the theme of gender identity, sexual orientation and human rights*. 12 June. Available at: <http://arc-international.net/ohchr/hc-statement-sogi-event-2009/> [Accessed 17/05/2017].
- Pillay, N., 2009b. *Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights on the theme of human rights, sexual orientation and gender identity*. World Congress, 15 May. Available at: <http://arc-international.net/ohchr/hc-statement-paris-2009/> [Accessed 17/05/2017].
- Pillay, N., 2008. *Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights, on the theme of gender identity, sexual orientation and human rights*. 63rd session of the General Assembly, New York, 18 December. Available at: <http://arc-international.net/global-advocacy/sogi-statements/hc-ga-200/> [Accessed 16/05/2017].
- Radcliffe, C., 2013. *Draft video message by Charles Radcliffe Chief, Global Issues, United Nations Office of the High Commissioner of Human Rights, New York, 22 March*. Available at: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTVideos.aspx> [Accessed 16/05/2017].
- Risse T. and Ropp, S.C., 2013. 'Introduction and overview', in T. Risse, S.C. Ropp, and K. Sikkink (eds), *The persistent power of human rights* (Cambridge University Press, Cambridge).
- Saiz, I., 2004. Bracketing sexuality: Human rights and sexual orientation: A decade of development and denial at the UN. *Health and Human Rights*, 7(2), pp.48-80.
- Sanders, D., 2008. The Role of the Yogyakarta Principles. *Human Rights*, pp.1-9.
- Sandholtz, W., 2008. Dynamics of international norm change: Rules against wartime plunder. *European Journal of International Relations*, 14(1), pp.101-131.
- Schilt, K. and Westbrook, L., 2009. Doing gender, doing heteronormativity: "Gender normals", transgender people, and the social maintenance of heterosexuality. *Gender and Society*, 23(4), pp.440-464.
- Simmons, B., 2010. Treaty compliance and violation. *Annual Review of Political Science*, 13(1), pp.273-296.
- Swiebel, J., 2009. Lesbian, gay, bisexual and transgender human rights: The search for an international strategy. *Contemporary Politics*, 15(1), pp.19-35.

- Symons, J. and Altman, D., 2015. International norm polarization: Sexuality as a subject of human rights protection. *International Theory*, 7(1), pp.61-95
- Tahmindjis, P., 2005. Laws and sexual identities: closing or opening the circle? *Journal of Homosexuality*, 48(3-4), pp.227-232.
- Taylor, L., 2016. *U.N. appoints first expert to protect LGBT people from violence, discrimination*. 30 September. Available at: <http://www.reuters.com/article/us-un-lgbt-abuse-idUSKCN12029E> [accessed 10/12/2016].
- The Permanent Observer Mission of the Holy See to the United Nations (Holy See), 2017. *Discover the mission*. Available at: <https://holyseemission.org/contents/mission/discover-the-mission.php> [Accessed 16/05/2017].
- UNFE.ORG, 2017. *Free and Equal*. United Nations Office of the High Commissioner of Human Rights. Available at: <https://www.unfe.org/> [Accessed 16/05/2017].
- United Nations General Assembly (UNGA), 2008. *Joint statement on sexual orientation and gender identity*. A/63/635. 3rd Session of the Human Rights Council, Geneva, 1 December. Available at: http://arc-international.net/global-advocacy/general-assembly/ga_jointstatement_en/ [Accessed 16/05/2017].
- United Nations General Assembly (UNGA), 2000. *Extrajudicial, summary or arbitrary executions*. Fifty-fifth session, A/55/288, 11 August, pp.1-13. Available at: <http://www.un.org/documents/ga/docs/55/a55288.pdf> [Accessed 16/05/2016].
- United Nations General Assembly (UNGA), 1948. *Universal Declaration of Human Rights*, pp.1-2. Available at: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 16/05/2017].
- United Nations Human Rights Commission (UNHRC), 2005. *Joint statement on sexual orientation and human rights*. March, Available at: <http://arc-international.net/global-advocacy/soqi-statements/2005-joint-statement/> [Accessed 16/05/2016].
- United Nations Human Rights Commission (UNHRC), 2003. *Resolution on sexual orientation and human rights*. pp.1-8. Available at: <http://www.iglhrc.org/sites/default/files/213-1.pdf> [Accessed 16/05/2017].
- United Nations Human Rights Committee, 1994. *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992. Available at: <http://hrlibrary.umn.edu/undocs/html/vws488.htm> [Accessed 16/05/2017].
- United Nations Human Rights Council (UNHRC), 2012. *Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity*. Geneva, 7 March, pp.1-8. Available at: <http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/SummaryHRC19Panel.pdf> [Accessed 16/05/2017].

- United Nations Human Rights Council (UNHRC), 2011a. *Human rights, sexual orientation and gender identity*. Resolution A/HRC/RES/17/19, 14 July, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement> [Accessed 16/05/2017].
- United Nations Human Rights Council (UNHRC), 2011b. *Joint statement ending acts of violence and related human rights violations based on sexual orientation and gender identity*. 22 March, Available at: <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement/> [Accessed 16/05/2017].
- United Nations Human Rights Council (UNHRC), 2008. *Joint statement on human rights, sexual orientation and gender identity*. 18 December. Available at: <http://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement/> [Accessed 17/05/2017].
- United Nations Human Rights Council (UNHRC), 2006. *Joint statement*. 3rd Session of the Human Rights Council, 1 December. Available at: <http://arc-international.net/global-advocacy/sogi-statements/2006-joint-statement/> [Accessed 16/05/2017].
- United Nations Office of the High Commissioner for Human Rights (OHCHR), 2015. *UN Free and Equal campaign progress report 2015*. pp.1-13. Available at: https://www.unfe.org/system/unfe-75-UNFE_2015_progress_report.pdf [Accessed 15/05/2017].
- United Nations Office of the High Commissioner for Human Rights (OHCHR), 2014. *Factsheet LGBT rights: Frequently asked questions*. pp.1-2. Available at: https://www.unfe.org/system/unfe-7-UN_Fact_Sheets_v6_-_FAQ.pdf [Accessed 16/05/2017].
- United Nations Office of the High Commissioner for Human Rights (OHCHR), 2011a. *High Commissioner's strategic management plan 2010-2011*. pp.1-160. Available at: <http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf> [Accessed 16/05/2017].
- United Nations Office of the High Commissioner for Human Rights (OHCHR), 2011b. *Study on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. A/HRC/19/41, 15 December, pp.1-25. Available at: http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf [Accessed 16/05/2017].
- United Nations Office of the High Commissioner for Human Rights (OHCHR), 2005. *International Covenant on Civil and Political Rights: Selected decisions of the human rights committee under the optional protocol*. Volume 5 (Forty-seventh to fifty-fifth sessions), pp.1-194. Available at: <http://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf> [Accessed 16/05/2017].
- UN.ORG, 2017. *Third Committee - Social, Humanitarian and Cultural*. United Nations General Assembly. Available at: <https://www.un.org/en/ga/third/> [Accessed 15/05/2017].

Waites, M., 2009. Critique of “sexual orientation” and “gender identity” in human rights discourse: global queer politics beyond the Yogyakarta Principles. *Contemporary Politics*, 15(1), pp.137-156.

Wendt, A., 1995. Constructing international politics. *International Security*, 20(1), pp.71-81.

Appendix I

Mapping the addition of transgender language together with lesbian, gay, and bisexual equality, and international human rights in important developments at the United Nations

DATE	IMPORTANT DEVELOPMENT (speech/statement/document)	AGENT (states/UN personnel/other individual(s))	REFERENCES			
			HUMAN RIGHTS	LGBT(I)	SEXUAL ORIENTATION (sexual (orientation), lesbian, gay, bisexual, sexuality, homosexuality, homophobic/ia)	GENDER IDENTITY (gender (identity), transgender(ism), transsexual, intersex, transphobic/ia)
26-Jul-13	<i>Opening Remarks by United Nations High Commissioner for Human Rights Navi Pillay at the Free and Equal Campaign Press Launch (Pillay 2013)</i>	Navi Pillay (UN personnel)	4	2	9	4 (1 intersex reference)
16-May-13	<i>Message to the International Forum on the international Day against Homophobia and Transphobia [delivered by Navanethem Pillay, High Commissioner for Human Rights] (Ki-moon 2013a)</i>	Ban Ki-moon / Navi Pillay (UN personnel)	3	3	7	4
15-Apr-13	<i>Video message to the Oslo Conference on human rights, sexual orientation and gender identity (Ki-moon 2013b)</i>	Ban Ki-moon (UN personnel)	2	0	8	3

11-Dec-12	Remarks to special event on <i>Leadership in the fight against homophobia</i> (Ki-moon 2012a)	Ban Ki-moon (UN personnel)	12	6	15	9
07-May-12	Video message, <i>Pillay on homophobia: Punish violence and hatred, not love!</i> (Pillay 2012)	Navi Pillay (UN personnel)	1	0	8	3
07-Mar-12	Video message to Human Rights Council meeting, <i>Violence and discrimination based on sexual orientation and gender identity</i> (Ki-moon 2012b)	Ban Ki-moon (UN personnel)	5	0	8	3
07-Mar-12	Summary of discussion, <i>Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity</i> (UNHRC 2012)	Human Rights Council (states and UN personnel)	66	31	48	42 (1 intersex reference)
15-Dec-11	<i>Study on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity</i> (OHCHR 2011b)	OHCHR (UN personnel)	129	35	253	140 (7 intersex references)

17-Jun-11	Human Rights Council resolution, 17/19 Human rights, sexual orientation and gender identity (UNHRC 2011a)	South Africa (states)	17	0	5	5
31-Mar-11	High Commissioner video message on homophobia (Pillay 2011)	Navi Pillay (UN personnel)	5	0	22	10
22-Mar-11	Joint statement ending acts of violence and related human rights violations based on sexual orientation and gender identity (UNHRC 2011b)	Columbia (states)	17	0	8	8
2010/2011	High Commissioner's strategic management plan 2010-2011 (OHCHR 2011a)	OHCHR (UN personnel)		0	4	0
10-Dec-10	Ending violence and criminal sanctions based on sexual orientation and gender identity (Ki-moon 2010)	Ban Ki-moon (UN personnel)	11	0	11	2
12-Jun-09	Address by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights on the theme of gender identity, sexual orientation and human rights (Pillay 2009a)	Navi Pillay (UN personnel)	16	6 (no definition LGBTI)	21	10

15-May-09	<i>Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights on the theme of human rights, sexual orientation and gender identity (Pillay 2009b)</i>	Navi Pillay (UN personnel)	6	0	8	3
18-Dec-08	<i>Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights, on the theme of gender identity, sexual orientation and human rights (Pillay 2008)</i>	Navi Pillay (UN personnel)	13	0	16	9
18-Dec-08	<i>Joint statement on human rights, sexual orientation and gender identity (UNHRC 2008)</i>	Argentina (states)	17	0	11	11
Mar-07	<i>Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (ICJ 2007)</i>	International Commission of Jurists (other individual(s))	131	0	224	182 (1 intersex reference)
01-Dec-06	<i>Joint statement (UNHRC 2006)</i>	Norway (states)	9	0	4	4
29-Jul-06	<i>Declaration of Montreal (Declaration of Montreal 2006)</i>	International Conference (states and other individual(s))	60	104	31	27

26-Jul-06	<i>Presentation by the United Nations High Commissioner for Human Rights, Madam Louise Arbour (Arbour 2006)</i>	Louise Arbour (UN personnel)	13	8	10	5 (1 intersex reference)
Mar-05	<i>Joint statement on sexual orientation and human rights (UNHRC 2005)</i>	New Zealand (states)	6	0	8	0
Apr-03	<i>Resolution on sexual orientation and human rights (UNHRC 2003)</i>	Brazil (states)	9	0	5	0
31-Mar-94	<i>Toonen v. Australia (United Nations Human Rights Committee 1994)</i>	Nicholas Toonen (other individual(s))	13	0	54	0