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NQHR

Netherlands Quarterly of Human Rights
2017, Vol. 35(3) 176–192
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DOI: 10.1177/0924051917724654
journals.sagepub.com/home/nqh

The compatibility of sexual orientation change efforts with international human rights law

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Abstract

Sexual orientation change efforts (SOCE) have been promoted aggressively under the belief that homosexuality is a curable disease. However, scientific research has shown that such practice can cause detrimental effects such as self-loathing, depression and even suicidal urges. It has also revealed that homosexuality is a mere variation of human sexuality and dispelled the myth that it is a 'contagious disease'. This raises some concerns that the practice of SOCE could amount to human rights violations, and thus this article shall tackle the issue of whether such practice is compatible with international human rights law. Given that children have been identified as a group that is particularly vulnerable to SOCE, this article shall commence by scrutinising whether there is an obligation to ban SOCE for minors under the jurisprudence of the Convention on the Rights of the Child. This article shall then proceed to the question of whether a similar obligation is also applicable to SOCE for adults through the application of the right not to be subjected to torture or cruel, inhuman or degrading treatment.

Keywords

Sexual orientation change efforts, conversion therapy, reparative therapy, human rights, children's rights, best interests of the child, torture

1. Introduction

Various therapies have been advertised by several groups who claim that they can 'cure' homosexuality. Such therapy is usually founded on religious principles or is purportedly scientific.[1] As an illustration, the Indonesian Clinical Hypnotherapy Association argued that homosexuality could

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be 'reverted' into heterosexuality through hypnosis based on the belief that same-sex orientation is caused by 'subconscious thoughts induced by a traumatic past'.[2] Moreover, one of the largest Indonesian Muslim organisations, Muhammadiyah, planned to establish an institution that would provide counseling sessions to remove homosexuality from children,[3] while a spiritual healing session for homosexuals was offered in a mosque in Jakarta.[4] A film sponsored by the Malaysian government's family, social and development department has even openly endorsed sexual orientation change efforts in general.[5] Meanwhile, in the Netherlands, several Christian-inspired mental health organisation such as 'Different' claimed that they could provide therapy to repress homosexuality.[6] In the United States, such therapy is advocated and promoted by various Christian-related groups.[7]

Scientific findings, however, have demonstrated that sexual orientation change efforts could have detrimental effects on its subject.[8] These include stress, depression, or even suicidal thoughts.[9] The efficacy and validity of sexual orientation change efforts have also been questioned by mainstream health organisations such as the American Psychological Association,[10] the American Psychiatric Association,[11] and the Pan American Health Organization.[12] Furthermore, homosexuality has long been removed from the list of mental illnesses in the Diagnostic and Statistical

1. Kenji Yoshino, 'Covering' (2002) 111 Yale Law Journal 769; American Psychological Association and others, *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (American Psychological Association 2008) 2.
2. Herman, 'Hipnoterapi Klinis Bisa Sembuhkan Gay' (*BeritaSatu*, 14 November 2013) <http://www.beritasatu.com/kesra/150123-hipnoterapi-klinis-bisa-sembuhkan-gay.html> accessed 20 July 2016.
3. Dian Kurniawan, 'Demi Sembuhkan LGBT, Muhammadiyah Siapkan Lembaga Konseling' (*Liputan 6*, 27 February 2016) <http://regional.liputan6.com/read/2446418/demi-sembuhkan-lgbt-muhammadiyah-siapkan-lembaga-konseling> accessed 20 July 2016.
4. Arief Hidayat, ''Sembuhkan' LGBT Lewat Rukiah Dilarang, Terapi Pindah Tempat' (*Tempo*, 28 February 2016) <https://m.tempo.co/read/news/2016/02/28/214748969/sembuhkan-lgbt-lewat-rukiah-dilarang-terapi-pindah-tempat> accessed 20 July 2016.
5. Rachel Roberts, 'Malaysian government openly endorses gay conversion therapy' *The Independent* (14 February 2017) <http://www.independent.co.uk/news/world/malaysia-gay-conversion-therapy-endorses-lgbt-rights-islam-a7578666.html> accessed 26 June 2017.
6. Mel Spencer, 'Dutch minister stops gay 'cure' therapy health insurance' (*Pink News*, 5 June 2012) <http://www.pinknews.co.uk/2012/06/05/dutch-minister-stops-gay-cure-therapy-health-insurance/> accessed 26 June 2017.
7. Jonathan Merritt, 'How Christians Turned Against Gay Conversion Therapy' *The Atlantic* (15 April 2015) <https://www.theatlantic.com/politics/archive/2015/04/how-christians-turned-against-gay-conversion-therapy/390570/> accessed 26 June 2017.
8. American Psychological Association, 'Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation' (2009) <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf> accessed 20 July 2016; Christi R McGeorge, Thomas Stone Carlson, Russell Toomey, 'An Exploration of Family Therapists' Beliefs about the Ethics of Conversion Therapy: The Influence of Negative Beliefs and Clinical Competence with Lesbian, Gay, and Bisexual Clients' (2015) 41 Journal of Marital and Family Therapy 42, 42.
9. ibid (APA 2009) 42.
10. ibid; APA and others (n 1) 6-7.
11. American Psychiatric Association, 'Sexual Orientation, Therapies Focused on Attempts to Change (Reparative or Conversion Therapies)' (2000) <https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2000-therapies-change-sexual-orientation.pdf> accessed 20 July 2016.
12. Pan-American Health Organization, '"Therapies" to Change Sexual Orientation Lack Medical Justification and Threaten Health' (17 May 2012) <http://www2.paho.org/hq/index.php? option=com_content&view=article&id=6803%3A2012-therapies-change-sexual-orientation-lack-medical-justification-threaten-health&Itemid=1926&> accessed 20 July 2016.

Manual of Mental Disorders, and major medical organisations concur that both homosexuality and heterosexuality are 'normal expressions of human sexuality'.[13] As a result, SOCE have been condemned by major health organisations and it is advised that such therapy be avoided due to its potential harm.[14] Instead, organisations such as the American School Counselor Association recommend the promotion of self-acceptance among LGB people.[15]

Despite the lack of credible scientific grounds and the risks that it presents, efforts to change homosexual orientation are still being promoted aggressively.[16] The American Psychological Association has noted the particular vulnerability of sexual minority children and youth, as they 'lack adequate legal protection from involuntary or coercive treatment'.[17] In response to this, SOCE for minors have been banned by several States and provinces in the United States and Canada, including Manitoba,[18] California,[19] and Washington D.C.[20] Principle 18 of the Yogyakarta principles also states that 'no person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity'.[21] Nonetheless, efforts to change the sexual orientation of minors are still legal in almost all parts of the world. Since such effort is considered harmful to the subject's well-being, this raises a concern of whether SOCE are contrary to human rights. Thus, in light of the available scientific evidence, this article analyses the existing legal framework to determine whether SOCE infringe international human rights law. It will first consider the compatibility of SOCE with the 'best interests of the child' principle in the Convention on the Rights of the Child (CRC), as sexual minority children and youth have been identified as a particularly vulnerable population. It will then argue that, objectively, SOCE are not in line with this principle, which implies that this deliberation must be primarily considered in all measures concerning children that are undertaken by public or private social welfare institutions, administrative or legislative bodies and courts of law.[22] Subsequently, it will take a step further by applying Articles 3 and 19 of the CRC to demonstrate that States Parties are required to ban SOCE for minors. This obligation, however, is a *lex specialis* that is only applicable for children. In order to examine whether a similar obligation also exists for SOCE in general, this article shall rely on the *lex generalis* that stems from the prohibition of torture or cruel, inhuman or degrading treatment under

13. APA and others (n 1) 5.
14. ibid 5-8.
15. ibid 8.
16. ibid 2, 5.
17. American Psychological Association, 'Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts' (2009) <http://www.apa.org/about/policy/sexual-orientation.aspx> accessed 22 July 2016.
18. David Larkins, 'Manitoba Bans Conversion Therapy' *Toronto Sun* (22 May 2015) <http://www.torontosun.com/2015/05/22/manitoba-bans-conversion-therapy> accessed 21 July 2016.
19. Katy Steinmetz, 'California Ban on Gay Conversion Therapy Stands' *Time* (30 June 2014) <http://time.com/2940790/california-ban-on-gay-conversion-therapy-stands/> accessed 21 July 2016.
20. Aaron C Davis, 'D.C. Bans Gay Conversion Therapy of Minors' *The Washington Post* (2 December 2014) <https://www.washingtonpost.com/local/dc-politics/dc-bans-gay-conversion-therapy/2014/12/02/58e6aae4-7a67-11e4-84d4-7c896b90abdc_story.html> accessed 21 July 2016.
21. International Commission of Jurists, 'Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity' (March 2007) <http://www.refworld.org/docid/48244e602.html> accessed 29 June 2017.
22. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

the the International Convention on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). The result is decisive in establishing an overarching prohibition of SOCE.

2. The peril of sexual orientation change efforts

The term 'sexual orientation change efforts' (SOCE) has been defined by the American Psychological Association as 'methods that aim to change a person's same-sex sexual orientation to other-sex, regardless of whether mental health professionals or lay individuals (including religious professionals, religious leaders, social groups, and other lay networks such as self-help groups) are involved'.[23] Other umbrella terms that have been coined include 'conversion therapy' or 'reparative therapy'.[24] The scope of these terms seems to be narrower, since they refer only to 'counseling and psychotherapy aimed at eliminating or suppressing homosexuality'.[25] Nonetheless, these terms are included within the more general definition of SOCE.

Methods of SOCE may include behavioral, psychoanalytic, medical, religious and spiritual techniques.[26] As an illustration, the widely discredited Bieber methodology claimed that long-term psychoanalytic therapy is required to remove 'unconscious childhood conflicts' that are deemed to be responsible for homosexuality. [27] Another therapy is designed to condition homosexuals to heteroerotic content and associate homoerotic content with an aversive stimulus.[28] The example of this is 'the application of electric shock to the hands and/or genitals, or nausea-inducing drugs, which would be administered simultaneously with the presentation of homoerotic stimuli'.[29] Other approaches include 'masturbatory reconditioning, visualization, and social skills training'.[30] There are even methods that involve the use of drugs, hormones, exorcism, X-Ray treatment, anaphrodisiacs, hydrotherapy, hypnosis, and 'fantasy satiation' that bombards the subject to sexually arousing stimuli until he/she is 'satiated'.[31]

In general, SOCE are grounded on the belief that homosexuality is an illness or disorder that needs to be cured, and thus it has been actively promoted by several religious and political organisations, particularly the so-called 'ex-gay movement'[32] However, scientific findings have demonstrated that such conjecture is erroneous. Homosexuality was removed from the International Classification of Diseases (ICD-10) in 1990[33] and from the Chinese Classification of Mental

23. APA 2009 (n 8) 2.
24. APA and others (n 1) 5.
25. ibid.
26. ibid.
27. Douglas C Haldeman, 'Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination' in John C Gonsiorek and James D Weinrich (eds), *Homosexuality: Research Implications for Public Policy* (Sage Publications 1991) 151.
28. Douglas C Haldeman, 'Gay Rights, Patient Rights: The Implications of Sexual Orientation Conversion Therapy' (2002) 33 Professional Psychology: Research and Practice 260, 261.
29. ibid 260.
30. ibid.
31. David B Cruz, 'Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and Law' (1999) 72 Southern California Law Review 1297, 1306-1307.
32. Haldeman (n 28) 260; APA and others (n 1) 5.
33. World Health Organization, 'The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines' (World Health Organization 1992) 11 <http://www.who.int/classifications/icd/en/bluebook.pdf> accessed 22 July 2016.

Disorders by the Chinese Society of Psychiatry in 2001.[34] The American Psychiatric Association also declassified homosexuality from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973 for the reason that it 'implies no impairment in judgment, stability, reliability, or general social or vocational capabilities'.[35] The American Psychological Association, the American Psychiatric Association, and the National Association of Social Worker further explained in an *amici curiae* brief before the Californian Supreme Court in *In re Marriage Cases* that:

> Professionals in medicine, mental health, and the behavioral and social sciences reached the conclusion that it was inaccurate to classify homosexuality as a mental disorder and that the DSM classification reflected untested assumptions based on once-prevalent social norms and clinical impressions from unrepresentative samples comprising patients seeking therapy and individuals whose conduct brought them into the criminal justice system.[36]

In addition, there is consensus among mental health professionals and researchers that 'being homosexual poses no inherent obstacle to leading a happy, healthy, and productive life, and that the vast majority of gay and lesbian people function well in the full array of social institutions and interpersonal relationships'.[37] Thus, homosexuality is not pathological and is a mere variation of human sexuality.[38]

It should also be noted that the claim that homosexuality is a choice or a learned behaviour is unsubstantiated. Scientific findings have indicated that sexual orientation in general is determined by a combination of genetic, hormonal and environmental factors.[39] As for the root cause of homosexuality itself, the American Academy of Pediatrics (AAP) in *Pediatrics* explained that biological theories are favoured, since they are supported by 'the high concordance of homosexuality among monozygotic twins and the clustering of homosexuality in family pedigrees support biological models'.[40] Research has also demonstrated that the development of sexual orientation is influenced by prenatal hormonal exposure.[41] While there might still be some controversies over the origin of homosexuality, the AAP emphasised that 'there is no scientific evidence that abnormal parenting, sexual abuse, or other adverse life events influence sexual orientation'.[42] Psychologists Glenn Wilson and Qazi Rahman further affirmed that 'modern scientific research indicates that sexual orientation is largely determined by the time of birth, partly by genetics, but more specifically by hormonal activity in the womb arising from various sources'.[43]

34. Jing Wu, 'From "Long Yang" and "Dui Shi" to "Tongzhi": Homosexuality in China' in Vittorio Lingiardi and Jack Drescher (eds), *The Mental Health Professions and Homosexuality: International Perspectives* (CRC Press 2003) 136-137.
35. American Psychiatric Association, 'Position Statement on Homosexuality and Civil Rights' (1974) 131 American Journal of Psychiatry 497.
36. Brief of Amici Curiae of the American Psychological Association, California Psychological Association, American Psychiatric Association, National Association Of Social Workers, and National Association Of Social Workers, California Chapter, *In re Marriage Cases* (Summary of Argument) (2008) 9 <https://www.apa.org/about/offices/ogc/amicus/marriage-cases.pdf> accessed 22 July 2016.
37. ibid 10.
38. ibid 1.
39. Glenn Wilson, Qazi Rahman, *Born Gay? The Psychobiology of Sexual Orientation* (Peter Owen Publishers 2005) 55-57.
40. Barbara L Frankowski, 'Sexual Orientation and Adolescents' (2004) 113 Pediatrics 1827, 1828.
41. ibid; Wilson and Rahman (n 39) 10.
42. Frankowski (n 40).
43. Wilson and Rahman (n 39) 36.

Thus, from a scientific perspective, it is inaccurate to claim that SOCE methods constitute a medical therapy. A therapy is designed only to treat physical or mental illness, and it has been scientifically established that homosexuality is not a disease.[44] In the field of psychology, it is not even diagnosable as a mental disorder. As a result, 'treatments' that purport to 'cure homosexuality' seem to be senseless. This is further reinforced by the fact that SOCE proponents have failed to produce credible evidence of its effectiveness.[45] The American Psychological Association has reviewed various studies related to the effectiveness of SOCE and concluded that lasting change of sexual orientation is rare.[46] Studies have also revealed that SOCE participants still experience same-sex attractions and that reports of change could not be empirically confirmed.[47] Furthermore, while there might be some anecdotal reports of participants being 'cured', this is 'counterbalanced by anecdotal claims of psychological harm'.[48] Consequently, as was concluded by the Task Force on Appropriate Therapeutic Responses to Sexual Orientation of the American Psychological Association:

> There are no studies of adequate scientific rigor to conclude whether or not recent SOCE do or do not work to change a person's sexual orientation. Scientifically rigorous older work in this area found that sexual orientation was unlikely to change due to efforts designed for this purpose.[49]

The problem with SOCE is more serious than a mere lack of credible grounds. Research has shown that SOCE methods can cause harm to its subjects.[50] Research conducted by Bancroft revealed that SOCE intervention produced harmful effects to 50% of the 16 research subjects, and these include treatment-related anxiety, suicidal ideation, depression, impotence, and relationship dysfunction.[51] SOCE participants have also reported various negative side effects such as 'anger, anxiety, confusion, depression, grief, guilt, hopelessness, deteriorated relationships with family, loss of social support, loss of faith, poor self-image, social isolation, intimacy difficulties, intrusive imagery, suicidal ideation, self-hatred, and sexual dysfunction'.[52] Such assessment is countered by reports of enhanced mental health, happiness, and improved relationship with God, although studies by Shidlo and Schroeder (2002) and Beckstead and Morrow (2004) later revealed that many participants first recounted the positive effects before finally recognising the negative side effects.[53] Overall, the American Psychological Association has reviewed various research outputs on this topic in recent decades and concluded that 'attempts to change sexual orientation may cause or exacerbate distress and poor mental health in some individuals, including depression and suicidal thoughts'.[54] As a result of this potential harm, SOCE have been denounced by major health

44. Reidar Kjær, 'Look to Norway? Gay Issues and Mental Health Across the Atlantic Ocean' in Vittorio Lingiardi and Jack Drescher (eds), *The Mental Health Professions and Homosexuality: International Perspectives* (CRC Press 2003) 65.
45. APA and others (n 1) 6; APA 2009 (n 8) 2-3.
46. ibid.
47. ibid.
48. APA and others (n 1) 6.
49. APA Resolution 2009 (n 17).
50. APA 2009 (n 8) 41-43.
51. Cited in APA 2009 (n 8) 42.
52. ibid.
53. ibid.
54. ibid.

organisations such as the American Counselling Association, the American Psychiatric Association, and the American Psychological Association.[55] The Pan American Health Organization (PAHO) has also condemned SOCE and emphasised that 'practices known as "reparative therapy" or "conversion therapy" represent a serious threat to the health and well-being—even the lives—of affected people'.[56]

As a note, it has been demonstrated that the appropriate response to homosexuality is acceptance, support and understanding.[57] Various studies have demonstrated that 'sexual minority adolescents in schools with support groups for LGB students reported lower rates of suicide attempts and victimisation than those without such groups'.[58] The American Psychological Association has further affirmed:

> Our review of the scholarly literature on individuals distressed by their sexual orientation indicated that clients perceived a benefit when offered interventions that emphasize acceptance, support, and recognition of important values and concerns.[59]

On the other hand, stigma relating to homosexuals has been associated with emotional distress,[60] and studies have even revealed that:

> The promotion in schools of efforts to change sexual orientation by therapy or through religious ministries seems likely to exacerbate the risk of harassment, harm, and fear for these youth. One result of the isolation and lack of support experienced by some lesbian, gay, and bisexual youth is higher rates of emotional distress, suicide attempts, and risky sexual behavior and substance use.[61]

Therefore, the American Psychological Association has concluded that the appropriate approach must be based on 'acceptance and support, comprehensive assessment, active coping, social support, and identity exploration and development'.[62] As for LGB children, the American School Counsellor Association recommends 'individual student planning or responsive services to (...) promote self-acceptance, deal with social acceptance, understand issues related to "coming out," including issues that families may face when a student goes through this process, and identify appropriate community resources'.[63]

55. APA and others (n 1) 6-8.
56. PAHO (n 12).
57. APA 2009 (n 8) 4, 63.
58. ibid 78.
59. ibid 4.
60. ibid.
61. APA and others (n 1); G Remafedi, S Frendh, M Story, MD Resnick, R Blum, 'The Relationship between Suicide Risk and Sexual Orientation: Results of a Population-Based Study' (1998) 88 American Journal of Public Health 57; MD Resnick and others, 'Protecting Adolescents from Harm: Findings from the National Longitudinal Study on Adolescent Health' (1997) 278 Journal of the American Medical Association 823.
62. APA and others (n 1).
63. ibid 7-8.

3. Sexual orientation change efforts, the best interests of the child and the CRC

The principle of the best interests of the child is among the cornerstone principles of the Convention on the Rights of the Child.[64] Article 3(1) of the CRC enshrines that the best interests of the child shall be assessed as a primary consideration 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.[65] Within the jurisprudence of the CRC, the best interests of the child are multifaceted and can be regarded as a substantive right, interpretative legal principle and a rule of procedure.[66] As a right, the best interests of the child create obligations for States that are 'directly applicable and can be invoked before a court'.[67] The Committee on the Rights of Children (CRC Committee) observed that these obligations consist of the duty to ensure that the best interests of the child are 'appropriately integrated and consistently applied' in every measure taken by a public institution. Furthermore, this duty entails that this principle is regarded as a primary consideration in all judicial and administrative decisions, and that the best interests of the child are 'assessed and taken as a primary consideration' in all decisions made by the private sector, including in service provision.[68] At the same time, in the event of uncertain or conflicting interpretation over a legal provision in the CRC, the best interests of the child as a principle mandate that the interpretation that serves the child's best interests should be selected.[69] The best interests of a child as a rule of procedure further require that decision-making process must evaluate the possible impact of a measure to the interests of the children concerned.[70] This implies that there is an obligation for the State to legislate and implement such a mechanism.[71]

While the legal nature of this concept has been clarified by the CRC Committee, the meaning of 'the best interests of the child' per se is complex and requires an assessment on a case-to-case basis.[72] As was stated by the CRC Committee:

> The concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs.[73]

The CRC Committee has also added that individual and collective decisions necessitate a thorough assessment of the circumstances of a particular child for the former and the circumstances of a particular group for the latter.[74] The Committee then ruled that the child's identity is among the elements to be considered in the assessment, and this includes not only sex, national origin, religion

64. Michael Freeman, *Article 3: The Best Interests of the Child* (Martinus Nijhoff 2007) 1.
65. CRC (n 22).
66. Committee on the Rights of the Child 'General Comment No 14 on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)' (29 May 2013) CRC/C/GC/14, para 6.
67. ibid.
68. ibid para 14.
69. ibid para 6b.
70. ibid para 6c.
71. Jean Zermatten, 'Best Interests of the Child' in Said Mahmoudi, Pernilla Leviner, Anna Kaldal, Katrin Lainpelto (eds), *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child* (Brill 2015) 32.
72. GC 14 (n 66) para 31.
73. ibid.
74. ibid.

and cultural identity, but also sexual orientation.[75] In addition, the Committee has listed other elements that are to be deliberated in the evaluation of the child's best interests, such as the child's views (which are protected under Article 12 of the CRC), care, protection, and safety of the child, situation of vulnerability and the child's right to health.[76] In the event of conflict between different elements, they have to be 'weighed against each other in order to find the solution that is the best interests of the child or children'.[77]

As for SOCE, scientific findings elaborated in the previous section seem to demonstrate that it is against the best interests of the child when the elements to identify such interest that are elaborated in the previous paragraph are considered. SOCE claim to change the sexual orientation of an LGB child. While science has demonstrated that its efficacy is dubious, such efforts are still contrary to the right of a child to have his or her identity respected under Article 8 of the CRC. Moreover, there have been cases of LGB children being forced to undergo SOCE as a result of their parents' or legal guardian's insistence, and this is not in line with the right of the child to be heard under Article 12 of the CRC. As was stressed by the CRC Committee, 'any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests'.[78] Furthermore, the situation of an LGB child is already vulnerable, as they are often facing a homophobic environment, and administering SOCE could produce self-loathing.[79] This is further exacerbated by the fact that SOCE techniques (such as the use of aversive stimuli) could constitute a form of torture or cruel, inhuman or degrading treatment.[80] Most importantly, SOCE jeopardise the health of LGB children. The CRC Committee has held that 'the child's right to health and his or her health condition are central in assessing the child's best interest', and added that in light of uncertainty 'the advantages of all possible treatments must be weighed against all possible risks and side effects'.[81] SOCE can induce harmful effects such as depression and suicidal urges, which can be further exacerbated when it is propagated in schools as it could create a hostile environment for LGB children. Its proponents have also failed to produce evidence of its supposed beneficial effects. Instead, as was demonstrated in the previous section, health professionals recommend acceptance and support. The promotion of SOCE in school is also discouraged due to its negative backlashes toward the mental health of LGB children. Therefore, based on these elements, it can be concluded that SOCE in any form or in any terminology contravene the best interest of LGB children. It should also be highlighted that qualified health professionals have established the facts about the detrimental effects of SOCE. The CRC Committee has stressed the importance of obtaining relevant facts and information from well-trained professionals 'in order to

75. ibid para 55.
76. ibid para 53-78.
77. ibid para 81.
78. ibid para 53.
79. APA and others (n 1) 7; As a note, it is actually "ego-dystonic sexual orientation" that is regarded as a mental illness in the ISD-10. Although people who have this problem do not doubt their sexual orientation, "the individual wishes it were different because of associated psychological and behavioural disorders, and may seek treatment in order to change it." For more information see <http://apps.who.int/classifications/icd10/browse/2010/en#/F66.1> accessed 22 July 2016.
80. PAHO (n 12).
81. GC 14 (n 66) para 77.

draw up all the elements necessary for the best interest assessment'.[82] Thus, the conclusion of the experts in the previous section has weight in the evaluation of the best interests of the child.

Since scientific findings have demonstrated that objectively SOCE are against the best interests of the child, it can be deduced based on the multifaceted nature of Article 3(1) of the CRC that it bestows the right of LGB children to have their best interest of not being subjected to SOCE being 'appropriately integrated and consistently applied' in all governmental measures. It also creates a procedural safeguard against SOCE, as governmental bodies must evaluate this interest in their decision-making process as a primary consideration. As an illustration, in November 2015, several conservative Christian groups held conversion therapy seminars in the building of the South Korean National Assembly Members Office.[83] The best interests of the child principle requires the National Assembly of South Korea as a governmental institution to assess the best interests of LGB children in the authorisation process. The authorities involved seem to have failed to consider this, particularly in light of the fact that children have been identified as a group that are particularly vulnerable to SOCE. Furthermore, when the scientific conclusion on the harms of SOCE to LGB children is included in the evaluation as a primary consideration, the measure should have been rejected. Thus, it can be concluded that in this case the South Korean government violated the right and the procedural safeguard provided under Article 3(1) of the CRC. Similarly, a parliamentary body that passes a law which allows non-consensual conversion therapy by parents or legal guardians has also ignored the best interest of LGB children of not having to endure the damaging effects of SOCE in its assessment, and accordingly has acted contrary to the best interests of the child.

This line of thought, however, might be challenged by the claim that the best interests of the child principle is not an objective notion per se. During the drafting process of the CRC, a representative from Venezuela highlighted that the concept is 'inherently subjective' for the reason that it lacks reference to 'physical, mental, moral, spiritual and social development', which is present in the 1959 Declaration of the Rights of the Child and the original draft of the CRC.[84] The implication of this is that the interpretation of the best interests of the child would depend on the judgment of the relevant authorities.[85] Based on this argument, States who are still hostile to LGB people could invoke the preamble of the CRC, which enunciates that States Parties to the convention are 'taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child'.[86] They would then contend that the application of the best interests of the child principle in their country should include their cultural or religious considerations that homosexuality is a 'grave sin' or a 'perversion'. For instance, the Tunisian Minister of Human Rights and Transitional Justice, Samir Dilou, refused to recognise the rights of homosexuals based on the conviction that Tunisia 'has its own history, heritage, religion and customs and we need to deal with everything on such a basis'.[87] He even

82. ibid para 92.
83. Darren Wee, 'South Korea Government Slammed for Hosting 'Conversion Therapy' Seminars' (8 April 2015) <http://www.gaystarnews.com/article/south-korea-government-slammed-hosting-conversion-therapy-seminars080415/#gs.Gd0Rd2g> accessed 23 July 2016.
84. Freeman (n 64) 26; Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Brill 1999) 89.
85. Detrick (n 84).
86. CRC (n 22).
87. Jocelyne Cesari, *The Awakening of Muslim Democracy* (Cambridge University Press 2014) 249.

stressed that homosexuality is a 'sexual perversion' that 'needs to be treated medically'.[88] Similarly, amid a string of anti-LGBT comments by public officials in Indonesia, a member of the Indonesian House of Representative, Reni Marlinawati, emphasised that homosexuality violates both religious norms and positive law in Indonesia, while the mayor of the city of Tangerang, Arief R Wismansyah, believes that 'adherents of LGBT [*sic*] should be returned to the appropriate nature of gender'.[89] Such relativistic arguments have been echoed from time to time when it comes to LGB rights.[90] Hence, they could assert that since LGBT is regarded as a cultural and religious perversion in their countries, from their perspective SOCE would be in line with the best interest of the child to 'develop as a heterosexual and cisgender human being'. Additionally, even if it is assumed that SOCE are against the best interests of the child, it could be claimed that the CRC employs the term 'a primary consideration' instead of 'the primary consideration', which implies that that the best interests of the child would not always trump other interests, such as the interests of the parents or the State.[91]

In response to the claim that the best interests of the child are 'inherently subjective', it seems that the CRC itself is silent on this issue. Literal interpretation of Article 3(1) demonstrates that it does not refer to the concept as being objective or subjective; the convention itself does not even define the best interests of the child.[92] Historically, the concept originated from the British and French legal systems, which then spread throughout the world.[93] In the preparatory works, despite the claim of the Venezuelan representative, the delegates did not actually discuss the content of the concept, as it was assumed to be clear already due to its presence in their own legal system.[94] It was thus observed by legal scholar Marina Eudes that:

> The fact that since the year 1990s a number of international instruments and also national and European jurisprudences have referred to the concept of 'the best interests of the child' seems to demonstrate the existence of an international consensus around a concept whose meaning however is not evident.[95]

Accordingly, it seems that the objective or subjective nature of the principle is unclear. Despite this, when the principle is read in conjunction with other articles in the CRC, it is possible to determine objectively what constitutes the best interests of the child. The convention contains various rights, such as the right to health, the right to be heard, or the protection from all forms of physical or mental violence. Logically, the implementation of these rights should be considered as

88. ibid.
89. Human Rights Watch, '2016: Indonesia's "LGBT Crisis" in Words' (10 August 2016) <https://www.hrw.org/video-photos/interactive/2016/08/10/2016-indonesias-lgbt-crisis-words> accessed 23 July 2016.
90. Holning Lau, 'Sexual Orientation: Testing the Universality of International Human Rights Law' (2004) 71 The University of Chicago Law Review 1689.
91. Zermatten (n 71) 34; Detrick (n 84) 91.
92. Marina Eudes, 'La convention sur les droits de l'enfant, texte emblématique reconnaissant l'intérêt de l'enfant . . . et passant sous silence les droits des femmes?' (2013) 3 La Revue des Droits de l'Homme 4, para 9 <http://revdh.revues.org/192> accessed 25 July 2016.
93. ibid 3 para 5.
94. Freeman (n 64) 58; Philip Alston, 'The Best Interests Principle: Towards A Reconciliation of Culture and Human Rights' (1994) 8 International Journal of Law and the Family 11.
95. Eudes (n 92) 3 para 8. Original quote: "Le fait que depuis les années 1990, de nombreux instruments internationaux, mais aussi des jurisprudences internes et européennes, fassent appel à la formule « intérêt supérieur de l'enfant » semble démontrer l'existence d'un consensus international autour d'un concept dont il faut pourtant bien reconnaître que déterminer le sens n'a rien d'évident."

the best interests of the child, since without these rights the Convention overall would become meaningless and the rights of children would not be protected nor upheld on the international level. In addition, as was demonstrated earlier, the CRC Committee has identified objective elements that are relevant in the determination of the best interests of the child, which overlap to some extent with the substance of other articles in the CRC. Considering this, it follows that States cannot hide behind the veil of cultural relativism to impose SOCE on minors, as it would be contradictory to claim that practices that are contrary to the rights enunciated in the CRC (especially protection from physical or mental harm under Article 19) are within the best interests of the child. Furthermore, the text of the CRC itself does not allow cultural practices that are contrary to the rights of the child within the convention. Article 24(3) of the CRC unequivocally states that 'States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children'.[96] Although SOCE per se are developed in the modern era, this article demonstrates the fact that States cannot abuse culture to justify practices that infringe international human rights law. As for the claim that the best interests of a child are not 'the' but 'a' primary consideration, the best interests of the child still have its primacy. The CRC Committee, in General Comment 14, highlighted that 'the expression 'primary consideration' means that the child's best interests may not be considered on the same level as all other considerations'.[97] This implies that the usage of the article 'a' does not weaken the principle of the best interests of the child.[98] Thus, when the best interests of the child as a primary consideration are balanced against the cultural or religious interests of the parents, it still cannot justify the physical and/or mental harm that is caused to SOCE subjects. This is particularly exhibited in the case of female genital mutilation, where the 'cultural or religious interest' of the parents cannot trump the best interest of the child of not being subjected to such dangerous practice.[99]

The explanation above refers to the obligations of governmental institutions (including the *trias politica* of the executive, legislative and judiciary), and the question now is whether it extends to private institutions. Article 3(1) of the CRC merely refers to 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.[100] The scope of the term 'private social welfare institutions' appears to be much more restrictive compared to the original Polish proposal to the Working Group, which qualifies actions taken by 'parents, guardians, social or State institutions, and in particular by courts of law and administrative authorities'.[101] The deletion of the term 'parents' and 'guardians', therefore, seems to denote that the obligation shall not be imposed on them.[102] However, the original American draft to the working group employed the terminology 'official actions'.[103] With the non-inclusion of the term 'official' in the final version of Article 3(1) of the CRC, it can be deduced that the scope of the article does

96. CRC (n 22).
97. GC 14 (n 66) para 37.
98. Zermatten (n 71) 35.
99. Freeman (n 64) 52.
100. CRC (n 66).
101. Commission on Human Rights, 'Question of a Convention on the Rights of the Child, Note verbale dated 5 October 1979 addressed to the Division of Human Rights by the Permanent Representation of the Polish People's Republic to the United Nations in Geneva' (17 January 1980) UN Doc.E/CN.4/L.1349, 2-3.
102. Freeman (n 64) 47.
103. Commission on Human Rights, 'Question of a Convention on the Rights of the Child, Report of the Working Group' (17 February 1981) UN Doc.E/CN.4/L.1575, 20.

include private entities.[104] Since the CRC does not define 'private social welfare institutions', the term should be defined 'in accordance with the ordinary meaning to be given (. . .) in their context and in the light of its object and purpose' as articulated by Article 31 of the Vienna Convention on the Law of Treaties.[105] In this respect, the CRC Committee has ruled:

> Private social welfare institutions include private sector organizations – either for-profit or non-profit – which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.[106]

Thus, the scope of the terms does not extend to parents or guardians and is limited within the ambit of 'social welfare institutions'.[107]

While the description above has emphasised the obligation of States to ensure that the best interest of the child of not being forced to undergo SOCE is integrated and considered in their decision-making process, under the jurisprudence of the CRC it can be established that there is an obligation for States to forbid SOCE for minors in general. The CRC Committee has ruled that the term 'in all actions' in Article 3(1) of the CRC includes 'inaction or failure to take action and omissions', such as 'when social welfare authorities fail to take action to protect children from neglect or abuse'.[108] This implies that Article 3(1) of the CRC prescribes the imperative to protect children from the abuse of SOCE. However, as was revealed in the previous paragraph, the scope of Article 3(1) of the CRC is limited to public or private social welfare institutions and administrative, legislative and judicial bodies. If this article is applied alone, it would exclude parents, legal guardians or extended families. Nonetheless, when Article 3(1) of the CRC is read in conjunction with other articles in the CRC, it shows the obligation to ban SOCE for minors completely. Article 3(2) of the CRC pronounces that 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being (. . .) and, to this end, shall take all appropriate legislative and administrative measures'.[109] Moreover, Article 3(3) of the CRC underlines the obligation for the State 'to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision'.[110] Parents or legal guardians themselves cannot be excluded, as Article 18 of the CRC requires them as the primarily responsible person(s) to include the best interests of the child as their 'basic concern'.[111] Most importantly, Article 19 of the CRC enshrines that:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent

104. Freeman (n 64) 47.
105. Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980), 115 UNTS 331.
106. GC 14 (n 66) para 26.
107. Freeman (n 64) 48; Detrick (n 84) 90.
108. GC 14 (n 66) para 18.
109. CRC (n 22).
110. ibid.
111. ibid.

> treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.[112]

As can be deduced from the wording, the obligation that stems from this article is wide-ranging and cuts across all sectors of government.[113] The prohibition also applies to all forms of violence without any exception (including mental violence).[114] Self-harm such as 'suicidal thoughts, suicide attempts and actual suicide' is also included within the ambit of 'all forms of violence'.[115] Given the fact that SOCE can cause physical or mental harm to children such as depression and suicidal thoughts, the application of these articles together sets out the obligation for States Parties to the CRC to not only undertake measures within the public sphere to ensure that SOCE are not promoted or performed, but also to follow the steps of California or Manitoba by interdicting SOCE for minors completely, including attempts by private institutions or family. Article 19 of the CRC goes one step further by requiring States Parties to undertake 'social and educational measures' to protect the child from the abuse of SOCE, which means that it must also disseminate the information about its danger and futility to all relevant stakeholders.

4. SOCE and the prohibition of torture

The practice of SOCE has also raised concern that its methods can be regarded as a form of torture or degrading treatment, particularly when it is forcefully administered. The UN Special Rapporteur on torture, Sir Nigel Rodley, found that:

> In a number of countries, members of sexual minorities are said to have been involuntarily confined to state medical institutions, where they were allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other "aversion therapy", reportedly causing psychological and physical harm.[116]

The issue has also attracted the attention of Pan-American Health Organization, who observed that:

> As an aggravating factor, there have been a growing number of reports about degrading treatments, and physical and sexual harassment under the guise of such "therapies," which are often provided illicitly. In some cases, adolescents have been subjected to such interventions involuntarily and even deprived of their liberty, sometimes kept in isolation for several months.[117]

Furthermore, a stronger conclusion has been drawn by the United States Ninth Circuit Court of Appeals in the case of *Alla Konstantinova Pitcherskaia v. Immigration and Naturalization Service*. In this case, Pitcherskaia's ex-girlfriend was forcefully admitted into a psychiatric institution in Russia, where she was subjected to electric shock and other conversion therapy methods in order to 'cure' her homosexual orientation. When Ms Pitcherskaia was visiting her, she was seized by the

112. ibid.
113. Committee on the Rights of the Child (CRC), 'General comment No 13 (2011): The right of the child to freedom from all forms of violence' (18 April 2011) CRC/C/GC/13, para 39.
114. ibid para 17.
115. ibid para 28.
116. 'Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment' (3 July 2001) A/56/156, para 24.
117. PAHO (n 12).

militia and was registered in a local clinic as a 'suspected lesbian'. Subsequently, she was forced to attend 'therapy' sessions that employ sedative drugs and hypnosis under the threat that she would be institutionalised if she failed to appear during the sessions. As a result, she fled to the United States, where her asylum application was rejected. The Ninth Circuit in its assessment ruled that these methods constitute physical and mental torture, and pronounced that 'human rights laws cannot be sidestepped by simply couching actions that torture mentally or physically in benevolent terms such as "curing" or "treating" the victims'.[118]

The problem with this is that SOCE is an umbrella term that incorporates multifarious methods. Some methods that involve electric shock or other physical or mental harm might fall within the scope of torture.[119] However, it is unclear whether this is the case for techniques that rely on psychoanalysis or prayers. At the same time, SOCE might be performed by governmental or private actors, or by the later endorsed or supported by the former. In order to settle this question, it is firstly necessary to recall the definition of torture in the Convention against Torture (CAT):

> The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[120]

The important elements here are the intensity of the pain or suffering, the purpose of the act and the official status of the perpetrator.[121] In order to fulfil the second element, it could be argued that since SOCE are imposed exclusively on people with non-heterosexual orientation, it could be regarded as a discrimination based on sexual orientation, which is recognised as a ground by the Committee against Torture in General Comment 2.[122] The third element, however, is more problematic: not all SOCE would automatically attain this criterion, since SOCE performed exclusively by private actors are excluded by the requirement that the act must be carried out or instigated with the consent or acquiescence of a public official. There might be an exception when public officials have failed to undertake steps to protect the victim despite being well informed of the risks of torture, as was ruled by the Committee against Torture in the *Hajrizi Dzemajl* et al. *v. Yugoslavia* case.[123] Nonetheless, it should be emphasised that the prohibition of torture and cruel, inhuman or degrading treatment (CIDT) is also contained within Article 7 of the ICCPR.[124]

118. *Alla Konstantinova Pitcherskaia v Immigration and Naturalization Service* (1997) 118 F.3d 641 (USCA, 9th Circuit).
119. Human Rights Council, 'Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity Report of the Office of the United Nations High Commissioner for Human Rights' (4 May 2015) A/HRC/29/23, para 52.
120. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
121. Nigel S Rodley, 'The Definition(s) of Torture in International Law' (2002) 55 Current Legal Problems 467.
122. Committee Against Torture, 'General Comment No 2: Implementation of Article 2 by States Parties' (24 January 2008) CAT/C/GC/2, para 21.
123. *Hajrizi Dzemajl et al v Yugoslavia* Communication No 161/2000 (2002) para 9.2.
124. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

Contrary to the CAT, this article does not include the element of the official status of the perpetrator,[125] and the Human Rights Committee (HRC) has even ruled that:

> It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.[126]

Therefore, for the case of SOCE in general, it would be more appropriate to focus on Article 7 of the ICCPR.

Within the jurisprudence of the ICCPR, the terms 'torture' and 'CIDT' are not defined.[127] The HRC held in General Comment 20 that the distinctions between the two terms 'depend on the nature, purpose and severity of the treatment applied'.[128] Despite the uncertainty, methods that inflict physical pain such as electric shocks, beatings or sexual harassment appear to have passed the severity threshold. The United Nations Special Rapporteur on Torture considered these acts as a form of torture in his report to the United Nations Commission of Human Rights.[129] With regard to electric shocks in particular, there are even cases in which the Human Rights Committee has classified it as torture, such as in the case of *Tshitenge Muteba v. Zaire*.[130] Therefore, it follows that SOCE involving these methods could be categorised as torture. The issue now is whether SOCE methods that do not inflict physical pain can fall within the scope of torture as a result of its mental harm. The HRC has established in General Comment 20 that the prohibition under Article 7 of the ICCPR includes both physical and mental pain.[131] Various cases have also demonstrated that the lack of physical injury does not mitigate the fact that an act of torture has been conducted. In the case of *Miguel Angel Estrella v. Uruguay*, for instance, the HRC recognised that the applicant was subjected not only to physical but also psychological torture, which includes the threat of torture or violence to the victim or his/her family or friends.[132] However, this begs the question of to what extent the infliction of mental pain should be considered as torture. In this respect, the jurisprudence of the HRC is rather unclear, since in the case of *Dwayne Hylton v. Jamaica* it considered death threats by wardens as CIDT.[133] This seems to be inconsistent with the finding in *Miguel Angel Estrella v. Uruguay* that threat of violence is a form of psychological torture. Due to the lack of a clear-cut distinction or definition, it is important to evoke the observation of the HRC that each case should be assessed individually based on the nature, purpose and severity of the act.[134] Despite this, it is still possible to establish a general framework that SOCE methods that do not involve physical pain should at least be classified as CIDT if the act

125. Association for the Prevention of Torture & Center for Justice and International Law, *Torture in International Law: A Guide to Jurisprudence* (APT & CEJIL 2008) 8.
126. Human Rights Committee, 'General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) UN Doc HRI/GEN/1/Rev.1, para 2.
127. ibid para 5.
128. ibid.
129. Commission on Human Rights, 'Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report by the Special Rapporteur, Mr. P Kooijmans, Appointed Pursuant to Commission on Human Rights Resolution 1985/33' (19 February 1986) UN Doc.E/CN.4/1986/15, para 119.
130. *Tshitenge Muteba v Zaire* Communication No 124/1982 (1984).
131. GC 20 (n 126) para 5.
132. *Miguel Angel Estrella v Uruguay* Communication No 74/1980 (1983) para 1(6) and 8(3).
133. *Dwayne Hylton v Jamaica* Communication No 407/1990 (1994) para 9(3).
134. GC 20 (n 126) para 5.

inflicts prolonged mental harm that could cause self-loathing, depression and even suicide. This is particularly the case if the act is aggravated by the deprivation of liberty, which in itself is a violation of Article 9 of the ICCPR. Since the obligations under Article 7 of the ICCPR include positive measures, it can be inferred that this article requires States to ban SOCE methods that inflict both physical and mental pain.

5. Conclusion

While scientific findings have revealed that SOCE can cause detrimental effects, it is still practiced in many parts of the world. SOCE are often administered on minors, and this is contrary to the best interests of the child under the jurisprudence of the CRC. Such determination is essential, since the best interests of the child principle is a cornerstone principle of the CRC and functions as an interpretative legal principle and a rule of procedure. It also bestows a substantive right to children and this implies that the best interest of LGB children to be protected from SOCE as a primary consideration shall be 'appropriately integrated and consistently applied' in all governmental measures. However, although this primary consideration applies to private welfare institutions, parents and legal guardians are excluded from the scope. Therefore, this article needs to be read together with Article 3(2), Article 3(3), and particularly Article 19 of the CRC, which establish positive obligations to curb all practices that are harmful to children. Based on such reading, it could be concluded that the CRC establishes a *lex specialis* that requires States to prohibit SOCE for minors as a whole. Meanwhile, as for the issue of whether there is a *lex generalis* that is also applicable for SOCE as a whole, there are grounds to establish that SOCE methods could amount to torture or CIDT. This is especially the case for methods that incorporate physical pain, such as aversion therapy with electric shocks. In the case of psychological pain, however, the distinction between torture and CIDT is rather unclear, and thus each method needs to be assessed individually based on its nature, purpose and severity. Nevertheless, States in general are obliged under Article 7 of the ICCPR to undertake positive measures to ban SOCE methods that induce physical and psychological suffering.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.