



Human Rights Council, 33rd session

General Debate on Item 6 (23 September 2016)

Mr President,

The International Bar Association's Human Rights Institute (IBAHRI), Allied Rainbow Communities International (ARC International) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) will release in November a report assessing the role of the UPR in advancing the protection of human rights including the protection of sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

We welcome the fact that throughout 22 UPR sessions, 1,110 recommendations addressed sexual orientation, gender identity and expression and sex characteristics issues in 158 countries. Of these recommendations 413 have been accepted by 108 states. This signals that violations against LGBTI people are consistently considered by recommending states of particular concern. It also means that the vast majority of states under review have had to focus their attention on the situation and needs of LGBTI people. We welcome these positive developments.

However, we would like to raise the most striking findings and gaps that our research has evidenced:

1. the fact that only 6 per cent of the recommendations asking for decriminalising consensual same-sex relationships were accepted;
2. the quasi-absence of recommendations addressing torture and other cruel, inhuman or degrading treatment committed against LGBTI persons and very few recommendations addressing death penalty based on sexual orientation; and
3. the alarmingly few recommendations addressing the specific issues related to gender identity, expression, and sex characteristics, letting trans and intersex persons off the radar.

Mr. President,

The end of the second cycle is an opportunity to strengthen this mechanism and we believe that the following measures **can improve the quality and impact of the SOGIESC recommendations:**

1. **To address all challenges specific to each of the LGBTI groups**
 - Throughout the sessions there has been an increase of the SOGIESC and LGBTI recommendations. However they often refer to LGBTI people as a homogenous group.

There is a need to address gender identity and expression and sex characteristics issues in a more targeted manner. To date, only ten recommendations focused on trans people. Not one recommendation has focused on intersex people. While children and youth is a key segment to protect and actively engage in SOGIESC issues, only LGBTI minors have been mentioned once, and the right to education has just been mentioned in 11 recommendations.

2. To address the structural causes of violence and discrimination against LGBTI persons

- States should not wait until the situation has worsened in a country to make a recommendation: the root causes of violence and discrimination on the grounds of SOGIESC require ongoing attention. The UPR objective is not to respond to an emergency situation, but to improve the human rights situation in a country, therefore even though some of the recommendations do not address directly the right to life or to personal integrity, or are not about decriminalisation or imprisonment; they are as valuable and important as the ones that address these situations.

3. To refer systematically to the Yogyakarta Principles

- Legal basis provides legal strength and further content to a recommendation. It also creates a ripple effect that strengthens the international legal framework applicable to LGBTI persons. In that respect, the Yogyakarta Principles constitute the key reference instrument for a SOGIESC application of human rights law. The fact that only 7 per cent of SOGIESC recommendations have an either general or specific legal basis constitutes a missed opportunity, to further strengthen existing instruments, especially the Yogyakarta Principles.

4. To address in the recommendations not only the ‘what’ to achieve, but also the ‘how’, by addressing the involvement of key stakeholders, including civil society, legal and health professionals

- In order to foster the impact of their recommendation, states are encouraged to address not only the ‘what’ to achieve but also the ‘how’ through possible implementation measures. For instance, the obligation to investigate and prosecute is rarely completed by a concrete measure, such as a complaint mechanism responding to the issue of reporting in the country. The creation of LGBTI desks at police stations or specific complaint mechanisms constitutes key measures. The involvement of the main stakeholders is another approach to the ‘how’. Training and involving legal and health professionals in the dialogue on SOGIESC issues is absolutely key to facilitate law reform, access to justice and better access to health care for LGBTI persons.

5. To continue to listen to civil society

- Since the very beginning of the UPR process, civil society has made consistent efforts to engage with their states and inform recommending states about the most pressing SOGIESC issues on the ground. One in every ten civil society submissions has included information on SOGIESC issues, most of them very rich and detailed. Yet, state recommendations often fall short of addressing the key concerns voiced by human rights defenders. It is key that states listen to local civil society voices and take up issues that address the daily lived struggles of LGBTI people.

We look forward for the beginning of Cycle 3 and we stand ready to work with all UN Member states.

Thank you, Mr. President

The following organisations have joined this statement:

Allied Rainbow Communities International (ARC International)

International Bar Association's Human Rights Institute (IBAHRI)

International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)