
**SEXUAL ORIENTATION,
GENDER IDENTITY AND EXPRESSION,
AND SEX CHARACTERISTICS,
AT THE UNIVERSAL PERIODIC REVIEW**

NOVEMBER 2016



ARC International

Since 2003, ARC International has been advocating for the advancement of lesbian, gay, bisexual and transgender people's human rights at the international level. Registered in Canada, but also with an office in Geneva, ARC has played a key role in advancing LGBT issues within the UN human rights system. It was closely involved in the development of the Yogyakarta Principles in the application of international human rights law in relation to sexual orientation and gender identity.

ARC seeks to facilitate strategic planning around LGBT issues internationally through a key focus on strengthening global networks, producing inside knowledge and critical analysis to assist with implementation of human rights norms and using its consultative status with the UN to enhance access to UN mechanisms. ARC has been successful in engaging UN mechanisms around sexual orientation and gender identity issues while also bringing international support to the work of NGOs in countries around the world.

International Bar Association's Human Rights Institute (IBAHRI)

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI holds that when the legal profession is not able to function independently or effectively, this gives rise to human rights violations, impunity and injustice. A leading institution in international fact-finding, the IBAHRI produces expert reports with key recommendations, delivering timely and reliable information on human rights and the legal profession. We support lawyers and judges who are arbitrarily harassed, intimidated or arrested through advocacy and trial monitoring and provide human rights training and technical assistance for legal practitioners and institutions, building their capacity to effectively promote and protect human rights under a just rule of law.

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

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) is the world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people. ILGA is an umbrella organisation of more than 1200 member organisations presented in six different regions: ILGA-Asia, ILGA-Europe, ILGA-LAC (Latin America and the Caribbean), ILGA North-America, ILGA-Oceania (Aotearoa/New Zealand, Australia and Pacific Islands) and Pan Africa ILGA. Established in 1978, ILGA enjoys consultative status at the UN ECOSOC. As the only global federation of LGBTI organisations, ILGA voices its agenda in various United Nations fora. ILGA gives visibility to the struggles of its members advocating at the Human Rights Council, helping them in questioning their government's record on LGBTI rights in the frame of the Universal Periodic Review and provides support and guidance to member organisations in their engagement with the treaty bodies and special procedures.

This summary provides an overview on how the Universal Periodic Review (UPR) has shaped the protection of the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons to date. It also addresses the challenges and the ways forward to try and turn the UPR into a greater mechanism to protect the rights of LGBTI persons on the ground

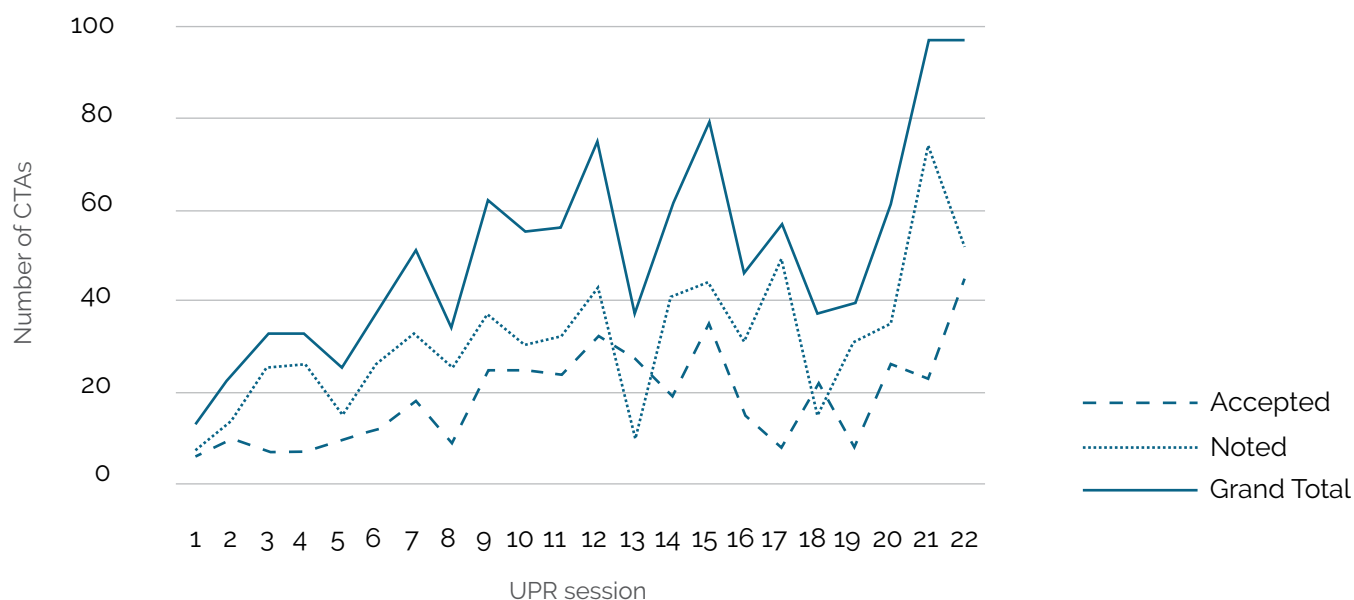


FIGURE NO. 1 EVOLUTION OF THE SOGIESC RECOMMENDATIONS AT THE UPR (SESSIONS 1 – 22)

As highlighted by a number of human rights defenders, the UPR is an investment into long-term change. While it may not be the best tool for immediate change, it can start the ongoing processes at the national level and open up new avenues for engaging governments on issues related to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). Over its first two cycles, the UPR has positively evolved as a truly multi-stakeholder process. Both states and civil society have gone through a learning process in order to work not only with their respective peers, but also together. As the UPR enters into its third cycle, expectations arise as the impact of the process on the ground starts to unfold.

The report has been developed in a period of transition for the protection of the rights of LGBTI persons at the international level. A new United Nations (UN) independent expert has just been appointed with the task of advancing the protection of individuals at risk of violence and discrimination on the basis of sexual orientation and gender identity. Concomitantly, the Yogyakarta Principles – which constitute the main international instrument spelling out human rights from a SOGIESC perspective – will soon celebrate their tenth anniversary. An addendum to the Principles is currently being developed by civil society, which will allow taking stock of the most recent legal developments at international and national levels.

Against this backdrop, the report provides an assessment of the UPR on the protection of LGBTI persons from a threefold perspective. It looks successively at the content of, and acceptance gained by, the UPR recommendations on SOGIESC issues (Chapter 2); civil society participation at the UPR (Chapter 3); and the impact of the UPR on the international legal framework protecting the rights of LGBTI persons (Chapter 4).

1,110 SOGIESC recommendations (1-22 sessions)

2.5% of all UPR recommendations

An increase on more than 70% of recommendations between session 1 and 22

Keeping in mind that the UPR was set up only eight years ago, the overall picture looks promising. 1,110 SOGIESC and LGBTI recommendations have been made over the 22 UPR sessions considered here. If SOGIESC issues are not in the top list of issues addressed, a great percentage of countries putting the LGBTI community in a critical situation have been addressed. More than half of the recommendations made between 2008 and 2015 are close to qualifying as specific, measurable, achievable, relevant and time-bound (SMART) recommendations.

Recommended calls to action mostly lie in law reform and, to a lesser extent, in awareness-raising and training measures.

Great emphasis has been placed on the principle of non-discrimination, the right to security, freedom from arbitrary detention and the right to privacy, through the decriminalisation of consensual same-sex sexual relationships. Most remarkably, the recommendations related to the right to found a family, addressing both partnerships and right to adopt, constitute the fourth main category of rights addressed

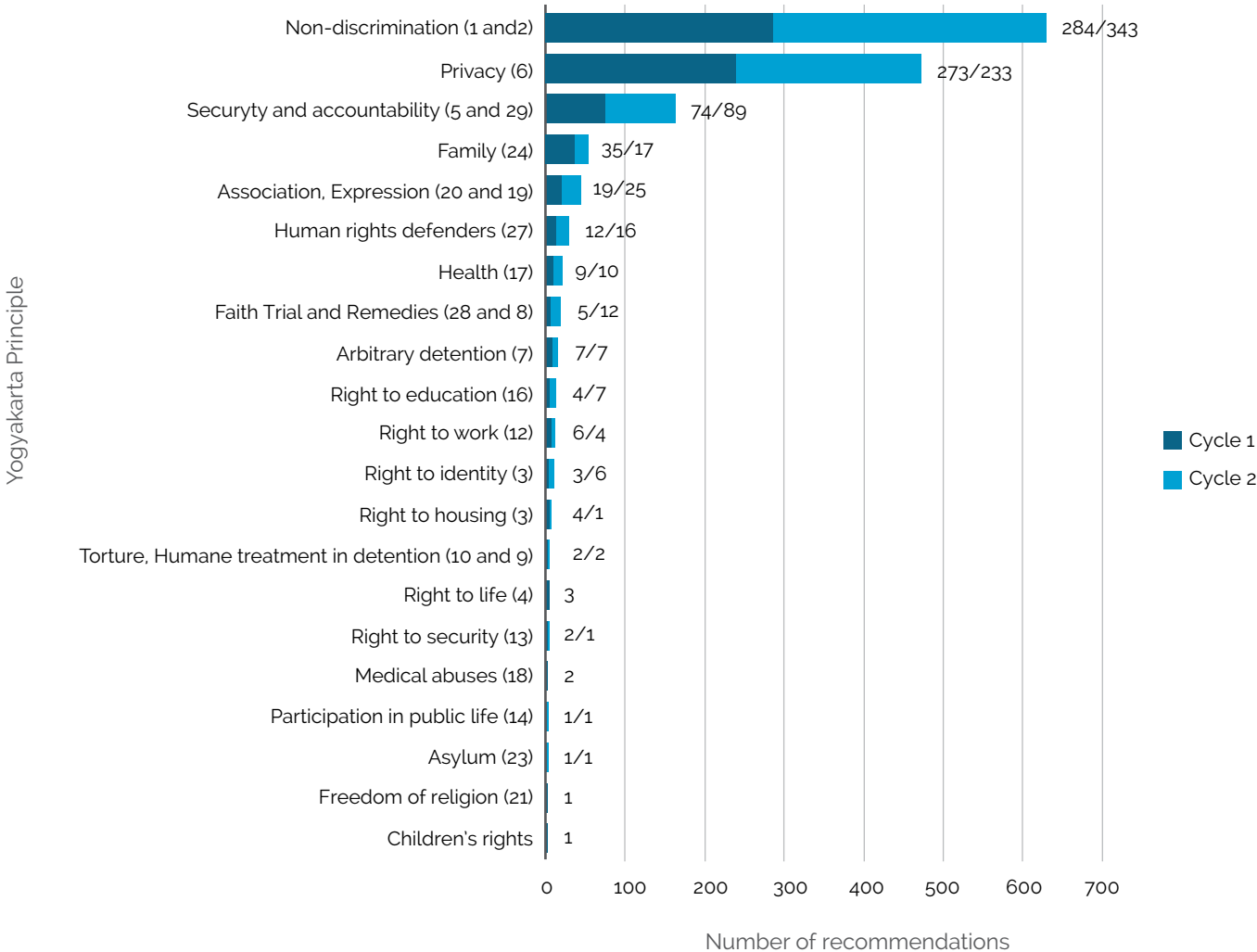


FIGURE NO. 2 NUMBER OF CALLS TO ACTION/YOGYAKARTA PRINCIPLES

From a legal perspective, the UPR has not only consolidated the contained international recommendations made by other international, regional and national mechanisms. It has also triggered unprecedented political traction for the recognition of the right to found a family, with the recognition of the diversity of 'family'. It constitutes in that respect, the most progressive arena for the protection of the LGBTI community at the international level.

From a civil society perspective, the UPR has been a crucial platform to make visible a wide array of human rights violations against LGBTI persons worldwide and to hold states to account. Civil society has claimed space for SOGIESC issues by making submissions, presenting oral interventions, advocating with governments, embassies and missions. One in every ten civil society submissions in the UPR has included SOGIESC issues, which signals a truly impressive level of engagement. The presence of LGBTI groups in these processes has also been significant, including local LGBTI groups who can take ownership of the recommendations and follow-up on the ground. Coalition work has been a defining feature of civil society engagement. Coalitions have been formed and/or strengthened not only between local and international groups but also across movements.

Civil society recommendations have had a really strong impact on state recommendations and they have been reaffirmed in great numbers. It is particularly positive that LGBTI groups have had a firm presence in the process of civil society forming its voice on SOGIESC issues. The presence of local LGBTI groups has also increased considerably. While mainstream human rights INGOs continued making submissions in the second cycle, international LGBTI organisations have changed their engagement strategy and have reallocated resources to better support the work of local human rights defenders. This may have meant a drop in the number of submissions and statements but has ensured that states receive more in-depth and nuanced information about the human rights situation on the ground and that local civil society has ownership of the process. The interviews conducted shed light on the various ways civil society and the legal profession work together to define litigation strategy. While gaps remain, some new paths are opening up. Ways to conduct strategic litigation and strategic advocacy among countries in a complementary manner certainly deserves more comparative analysis.

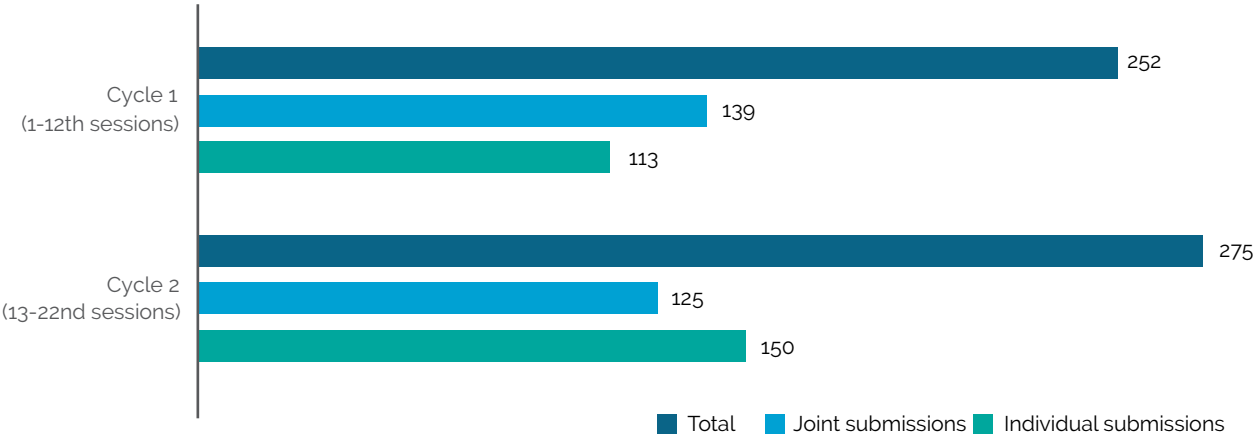


FIGURE NO. 3 THE NUMBER OF INDIVIDUAL AND JOINT CIVIL SOCIETY SUBMISSIONS ON SOGIESC ISSUES

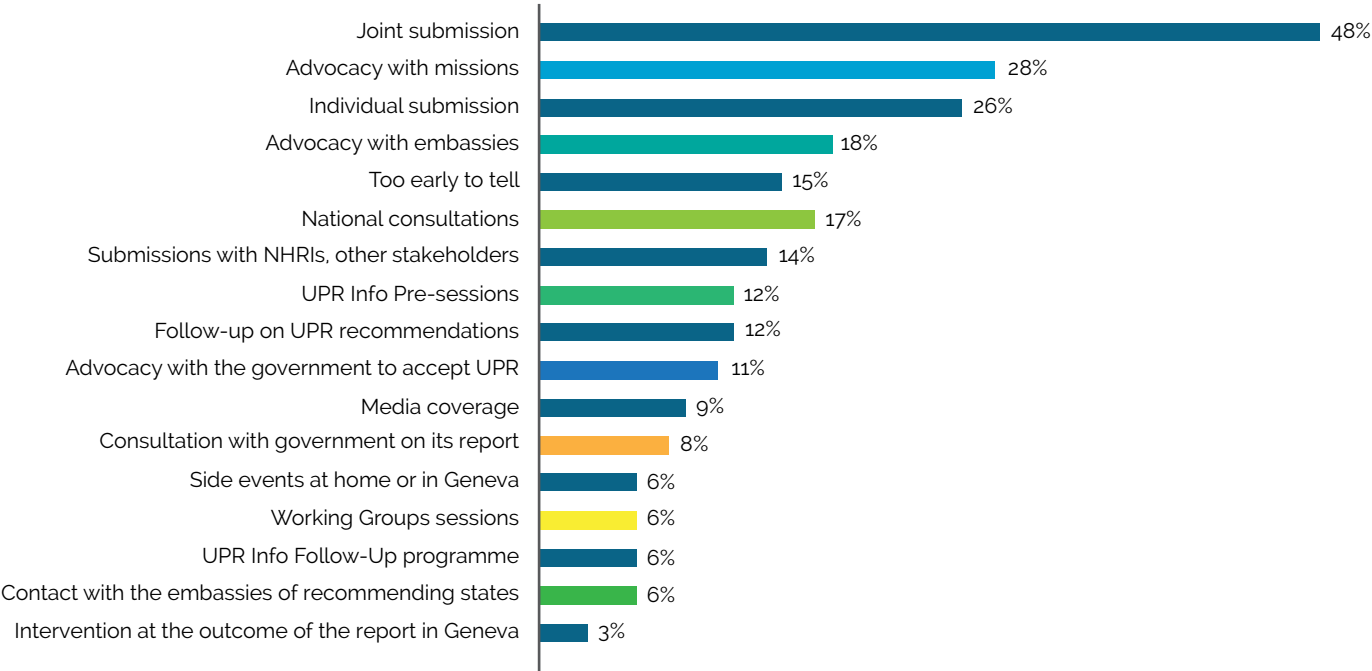


FIGURE NO. 4 PERCENTAGE OF SURVEY RESPONDENTS WHO INCLUDED A PARTICULAR FORM OF ENGAGEMENT IN THEIR TOP THREE MOST EFFECTIVE FORMS OF UPR ENGAGEMENT

Civil society has also made significant contributions to making visible a wide array of human rights violations faced by LGBTI people across the world including homophobic and transphobic murders, sexual violence, detention, sterilisation, threats, discrimination in health care, employment and education and many others. Their engagement has increased awareness among states and in many cases translated into useful and practical state recommendations. A number of key issues such as death penalty based on sexual orientation and the quasi-absence of recommendations addressing torture and other cruel, inhuman or degrading treatment committed against LGBTI persons remain among the most striking gaps in the UPR recommendations. So is the extremely low level of acceptance of decriminalisation of consensual same-sex relationships, with less than six per cent committing to do so, as well as the absence of reference to children and youths in the SOGIESC recommendations.

Similarly, children and youths have been mostly ignored and the right to education has been little addressed compared to general recommendations addressing 'awareness-raising' and 'educational' measures. The few recommendations addressing social and economic rights have addressed very specific and relevant issues but have remained sporadic. These trends justify human rights defenders continuing to invest time in engaging and addressing gaps in the UPR and in legal frameworks.

A number of issues remain to be specifically addressed at the UPR, like gender identity, expression and sex characteristics which is rather concerning given the high level of particularly trans-specific civil society submissions and recommendations. It is particularly concerning that states have only made a handful of recommendations on trans issues, despite the abundance of civil society recommendations. Some of the recommendations still use inadequate and offensive language, such as 'transgendered'.

'SOGIESC recommendations could be more useful for my country if they addressed trans and intersex issues specifically rather than being focused primarily on general LGBTI issues.' (Queer trans man in the WEOG region)

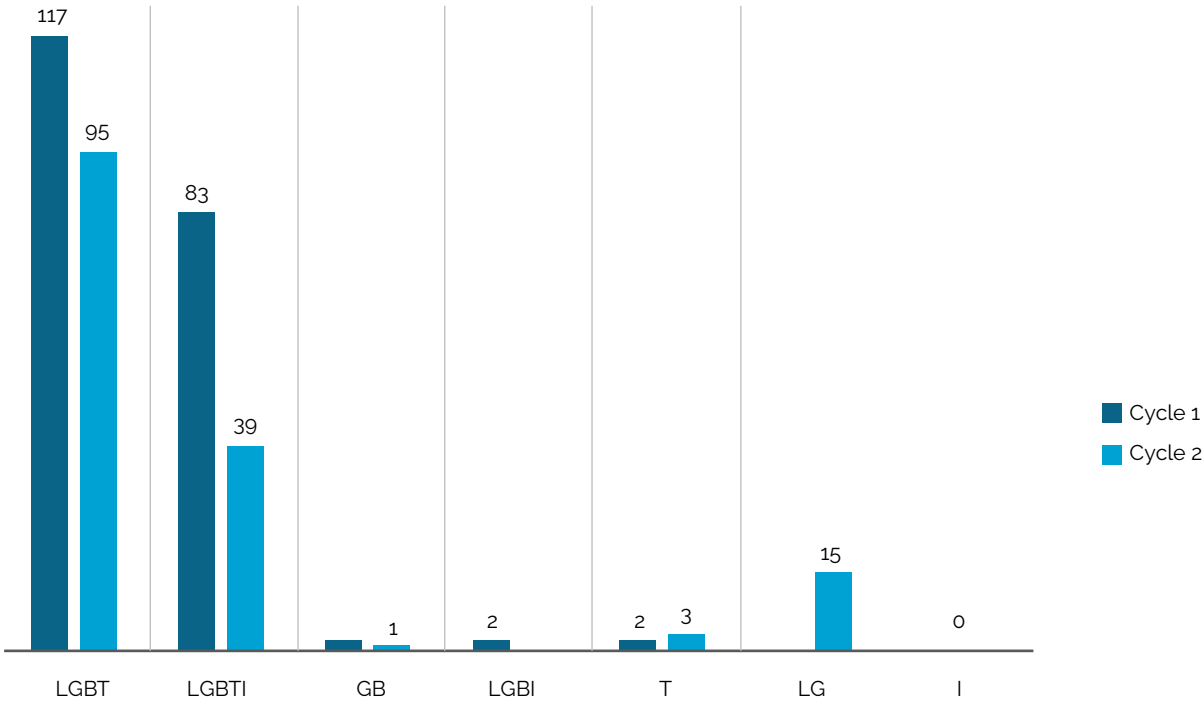


FIGURE NO. 5 REFERENCE TO GROUPS (LGBTI) IN THE UPR RECOMMENDATIONS BY CYCLE

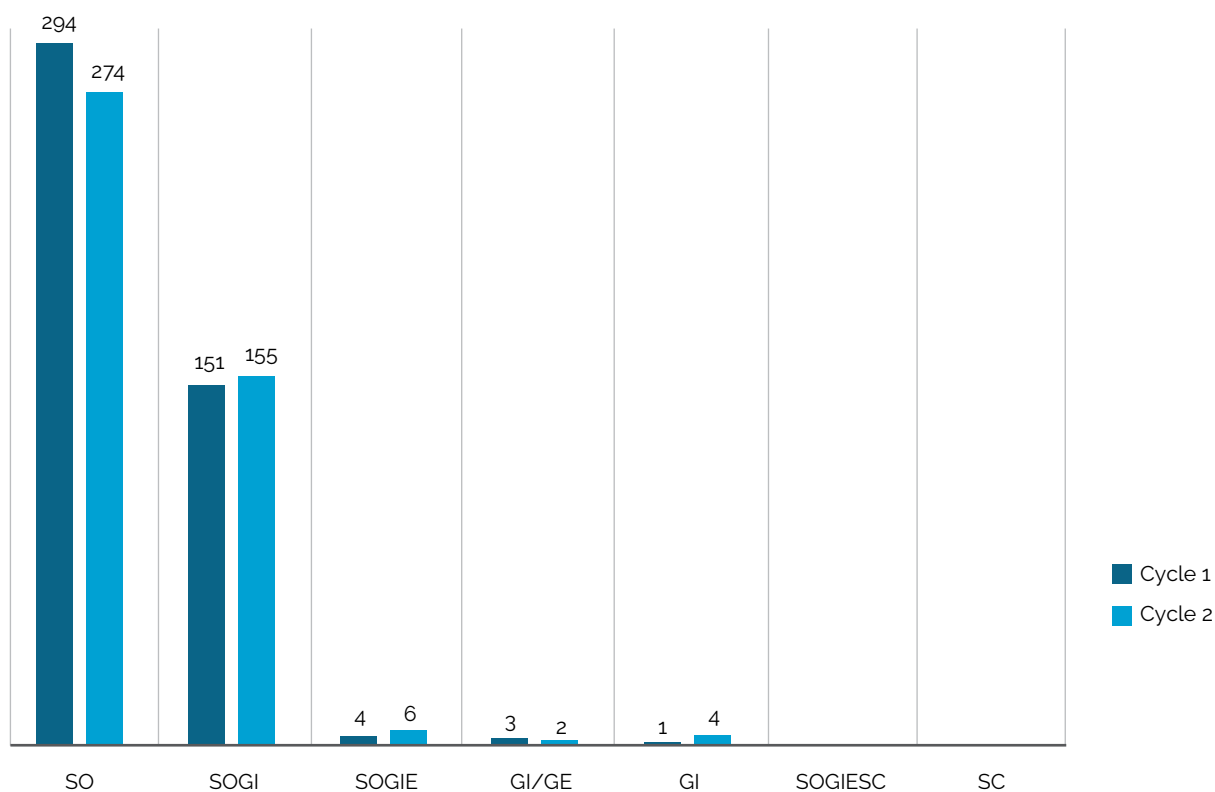


FIGURE NO. 6 REFERENCE TO GROUNDS (SOGIESC) RECOMMENDATIONS ACCEPTED AND NOTED AT THE UPR

If some recommendations have addressed various aspects of economic and social rights, these recommendations remain too few. As to states under review, they rarely report on SOGIESC or LGBTI issues in their national report and infrequently answer the more detailed questions put forward on these topics.

In addition, a common challenge facing all topics at the UPR is the implementation phase. SOGIESC recommendations are no exception here. Civil society has often taken upon itself to monitor the practice of these plans, while in some countries they are part of the state monitoring mechanism. Civil society has also encouraged cooperation with the government, to ensure that they are aware of SOGIESC issues and what steps they need to take. At the same time, too little has been recommended as to 'how' states should proceed and the role of key professionals such as legal and health professionals have been little addressed. However, more will need to be done to foster the eventual impact. The UPR has a key role in disseminating information on good practices and implementation measures in order to foster a ripple effect. To date, much of the information on positive steps taken is not available.

Overall, the calls to action by recommending states have been rather similar from one country to another and focused on the 'what' to achieve rather than the 'how'. Every country has a different background and a distinct situation. Strategic litigation and advocacy taking place at country level should go hand-in-hand in order to foster SMART recommendations at the UPR. The legal basis of the UPR recommendations and especially reference to the Yogyakarta Principles will be key in order to provide legal strength and further content to the recommendations and serve the monitoring phase. Key stakeholders like the legal and medical professions will need to be further addressed

in the recommendations and involved in their implementation. Civil society inputs need to be considered as a primary source of recommendations for recommending states. Meetings with civil society have demonstrated that these are good opportunities to increase understanding of what is happening in a country and what type of recommendations are most useful.

There exists a discrepancy between the growing consensus among courts and human rights mechanisms for a SOGIESC approach to human rights on the one hand and the slow international political progress towards the protection of LGBTI persons on the other. Against this backdrop it appears from the findings presented above that the UPR is slowly but steadily contributing to a move away from the polarisation currently slowing down political progress. More states are making SOGIESC recommendations and more states are receiving SOGIESC recommendations for the first time.

Regional group	Number of states in regional group	Number of states receiving SOGIESC recommendations	Proportion of states in region receiving SOGIESC recommendations	SOGIESC recommendations received	Average number of recommendations received per state under review
AFRICA	54	40	74 per cent	325	8.13
ASIA	53	41	77 per cent	199	4.85
EEG	23	22	96 per cent	215	9.77
GRULAC	33	31	94 per cent	272	8.77
WEOG	30	24	86 per cent	99	4.13
Grand Total	193	158		1.110	7.13*

TABLE NO. 1 NUMBER OF SOGIESC RECOMMENDATIONS AT THE UPR PER REGION

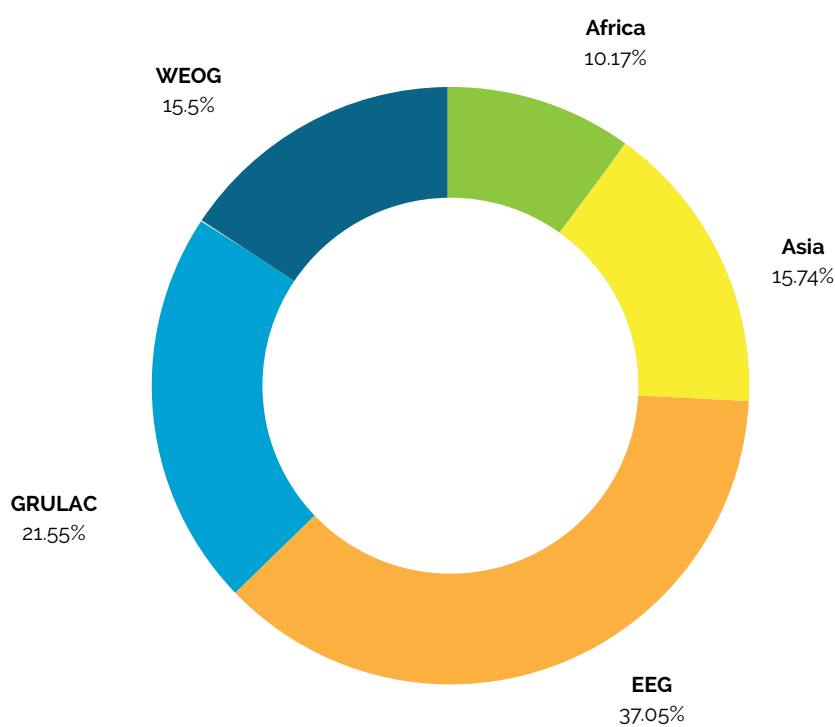


FIGURE NO. 8 PERCENTAGE OF ACCEPTED SOGIESC RECOMMENDATIONS BY REGIONAL GROUPS

Despite general criticisms of polarisation of the debate; a lack of understanding of LGBTI issues by governments; and gaps in reaffirming civil society recommendations, the findings provide elements for a more promising impact of the UPR. The consolidation of the international legal framework through progressive UPR recommendations is already a reality. The ways forward are clearer than ever for addressing the numerous existing challenges. The following recommendations aim to assist different stakeholders in addressing those challenges:

RECOMMENDATIONS TO RECOMMENDING STATES

- 1 To continue or start making recommendations that are specific, measurable, achievable, realistic and time-bound (SMART) and call for states under review to act in consultation with the LGBTI community
- 2 To address not only 'what' to achieve, but also 'how' to achieve it
- 3 To address in their recommendations: sexual orientation, gender identity and expression and sex characteristics issues as well as – both collectively and as individual sub-groups – lesbian, gay, bisexual, trans and intersex individuals, including children
- 4 To make sure that the recommendations are in line with terminology used by SOGIESC human rights defenders, using accurate and precise language when referring to SOGIESC or LGBTI
- 5 To explicitly mention the national, regional and/or international legal basis supporting the recommendations
- 6 To make country-specific recommendations, keeping in mind the reality and background of every country
- 7 To use the UPR as a forum to address structural root causes responsible for violence and discrimination on the grounds of SOGIESC
- 8 To more systematically address the need for states to monitor and collect data on discrimination and violence against LGBTI persons
- 9 To ask for the training of key stakeholders on SOGIESC issues such as legal and health professionals
- 10 To change the narrative on LGBTI persons by sharing SOGIESC good practices and the benefits of diversity
- 11 To coordinate with other recommending states to ensure that the whole spectrum of SOGIESC issues are covered
- 12 To be sure to follow up recommendations made with local embassies
- 13 To continue engaging in dialogue with states under review
- 14 To continue a dialogue with civil society when making recommendations

RECOMMENDATIONS TO STATES UNDER REVIEW

- 1 To hold a dialogue with civil society before presenting the UPR and before deciding (accepting or noting) on the proposed recommendations
- 2 To accept SOGIESC recommendations
- 3 To note all recommendations that jeopardise the diverse forms of family
- 4 To implement SOGIESC recommendations by making them a part of the human rights action plan and human rights public policy
- 5 To monitor SOGIESC issues in the country and ensure that implementation is carried out in close consultation and with the active participation of civil society, including key stakeholders such as legal and health professionals
- 6 To ensure that LGBTI and SOGIESC human rights defenders are not subject to reprisals
- 7 To include the developments on SOGIESC and LGBTI issues in their national report
- 8 To report on the progress of the recommendations through a voluntarily mid-term report that would include the progress on the implementation of SOGIESC recommendations

To National NGOs

- 1 To build ownership of the UPR process within the LGBTI community through community level consultations and processes
- 2 To consider the UPR as a primarily domestic process
- 3 To continue making civil society submissions and provide states with solid, evidence-based information
- 4 To prepare for the next UPR of a country no later than six months before the deadline for submission of the CSO report
- 5 To work in coalitions to ensure that civil society groups are broader in their approach
- 6 To propose SMART recommendations to recommending states
- 7 To identify three priority advocacy messages with recommending states, based on the identified priorities of each recommending state
- 8 To garner support from the INGO that best fits one's purposes
- 9 To pursue advocacy on multiple fronts at both national and international levels
- 10 To consider the UPR advocacy as complementary to other UN and regional mechanisms
- 11 To stay committed to the UPR in conjunction with other international recommendations
- 12 To see the UPR as an investment in long-term change

To international NGOs

- 1 To keep supporting local human rights defenders in all phases of the UPR
- 2 To consider reallocating funding to better support domestic advocacy work
- 3 To continue ensuring that local civil society actors take the lead on UPR work
- 4 To encourage and support NGO engagement with regional mechanisms in addition to UPR engagement
- 5 To make sure that strategic information is easily accessible and available to NGOs.
- 6 To facilitate capacity-building in Geneva on SOGIESC issues for the missions in order to separately appraise the human rights issues of each of the different groups (L/G/B/T/I) To provide more targeted support to trans and intersex groups engaging with the UPR

RECOMMENDATIONS TO LEGAL PROFESSIONALS AND PROFESSIONAL LEGAL ASSOCIATIONS

- 1 To organise and attend training on the principles of equality and non-discrimination and LGBTI issues as part of continuous legal education for all legal professionals
- 2 To assist in training communities, law enforcement officers, judges and members of the government on the principles of universality, equality and non-discrimination
- 3 To engage in strategic litigation for the protection of LGBTI persons, taking into account international norms and recommendations
- 4 To foster legal debate on the legal protection of LGBTI persons, taking into account international norms and recommendations
- 5 To engage with human rights defenders to coordinate strategic advocacy and litigation on SOGIESC issues in order to propose strong recommendations to recommending states
- 6 To organise regional legal symposia in order to exchange with peers from neighbouring countries on good practices for protecting the rights of LGBTI persons.

LESBIAN

"[...] lesbians or women perceived to be lesbian are targeted for murder or 'corrective' rapes in which a victim is chosen based on her real or perceived identity" (South Africa, Cycle 2)

"[...] the State still did not comply with its obligations to respect, protect and safeguard the rights of lesbians, who were subjected to discrimination, violence and inhuman and degrading treatment. The law allowed family members or legal representatives to send a person to a rehabilitation center on the grounds that they had problems with addiction, thus making it possible to intern lesbians without their consent" (Ecuador, Cycle 2)

GAY

"Article 319.3 of the Penal Code of Senegal says [...] anyone who commits an indecent act or act against nature with an individual of his sex [...] This provision serves the police base to conduct arbitrary arrests and illegal detentions, often orchestrated without any due process and in violation of the right to privacy. Just a simple denunciation or rumors about homosexuality in such person that it be stopped. Moreover, these last four years have been particularly tough for the gay community in Senegal" (Senegal, Cycle 2)

BISEXUAL

"Older bisexual women, lesbians, and couples experience a stark income gap that is the result of years of living at the intersection of compounding inequality caused by occupational segregation, pay inequality, increased caregiving responsibilities that take women out of the workforce, and discrimination based on sexual orientation. [...] After living a lifetime experiencing discrimination based on sex and sexual orientation, these lesbian and bisexual women are increasingly vulnerable and dependent upon federal benefits" (U.S., Cycle 2)

"Lesbians, bi-sexual women, and transgender men face violence, rape, psychological abuse, and confinement and stigmatization in Kyrgyzstan. Abuses may happen at the hands of strangers or family members. Social prejudice and silence mean that survivors find little practical hope of government protection. Police themselves sometimes abuse lesbian and bisexual women and transgender men, and harass organizations that defend their basic rights" (Kyrgyzstan, Cycle 1)

TRANS

"Transgender persons are discriminated against in Section 153 of the Summary Jurisdiction (Offences) Act⁸, because it establishes as an offence the fact that a man appears in female attire or a woman in male attire [...] Frequently, cross-dressers are attacked in the streets, especially in the nights. Police have been accused by cross-dressers of harassment and physical violence. Transgender sex workers mentioned that many police also rape and brutalise them, and even extort sexual favours from them. Most of the cases are not reported to the police, due to the lack of confidence in their response and reaction" (Guyana, Cycle 1)

"Many transwomen in the Philippines face great difficulty in securing gainful employment [...] Because of this, many transwomen in the Philippines are forced in illegal activities like prostitution to survive. Others revert back to niche industries that traditionally employ them such as the entertainment, fashion and beauty salon industries in spite of holding college degrees that over qualify them for such work. Some who are able to secure jobs in call centers, considered the country's sunshine industry, do so to the detriment of their gender identity and expression. Many call centers have no-crossdressing policies that target only transgender women and forbid transwomen employees from accessing the facilities of the gender they identify as (e.g., female toilets, changing rooms, etc.). There are some call centers that have, in fact, blatant discriminatory policies and explicitly do not hire transwomen applicants" (Philippines, Cycle 2)

"[...] First of all there is still a requirement that a person undergoes a complete castration in order to get the correct legal gender" (Norway, Cycle 2)

“A surgical approach to deal with those presenting as “intersex” became standard practice in the 1970s. Genital-normalising treatment, involving both surgery and hormone therapy, is however often medically unnecessary, not always consistent with the person’s gender identity, poses severe risks for sexual and reproductive health and is often performed without free and fully informed consent.” (New Zealand, Cycle 2)

“Intersex children have been exposed to non-medically based surgery, which may cause in later life serious mental or physical complications. There is also only very limited support or counseling to the parents of intersex children. So far no comprehensive, high-quality data on the experiences of intersex persons of the treatment has been gathered.” (Finland, Cycle 2)

This report was written by ARC International Research and Information Officer, Dodo Karsay; IBAHRI Senior Fellow and UN Liaison, Helene Ramos Dos Santos; and ILGA UN Programme Officer, Diana Carolina Prado Mosquera. The writing, development and publication of this report were overseen and supported by Eka Iakobishvili, IBAHRI Programme Lawyer. IBAHRI Director, Phillip Tahmindjis; ARC Executive Director, Kimberley Vance; ARC Geneva Director, Arvind Narrain; ILGA UN Programme and Advocacy Manager, André Du Plessis; and IBAHRI Senior Programme Lawyer, Muluka Miti-Drummond have collectively contributed to editing the report.

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