

27TH UPR WORKING GROUP SESSIONS. SOGIESC RECOMMENDATIONS
(May 1 – May 12, 2017)

This report contains a summary and the SOGIESC recommendations of the 27th Working Group Session.

The structure of the report contains the relevant SOGIESC remarks made by the State under Review, recommendations of Cycle II and III and advanced questions. The report also includes SOGIESC mentions at the UPR outcomes of each country during Item 6 of the agenda of the Human Rights Council.

The report is based on the draft report submitted by the Working Group and notes taken by ILGA during the sessions.

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**UNIVERSAL PERIODIC REVIEW – ALGERIA
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 8 May 2017, 14:30 – 18:00

Date and time of the adoption of the report: 11 May 2017, 16:30 – 18:00

During the 27th UPR Working Group Sessions, Algeria received 6 SOGIESC recommendations. It partially accepted 1 recommendation and noted 5 recommendations.

A. SOGIESC information:

- [National Report:](#) None
- [Compilation of UN information:](#)

15. OHCHR indicated that traditional social mores had created an extremely hostile environment for lesbian, gay, bisexual and transgender persons. In 2015, advocacy groups for those communities had focused mainly on personal safety, due to an increase in the intensity of hate speech coming from conservative clerics and the media.

- [Summary of stakeholders' information:](#)

13. JS4¹ stated that despite the constitutional guarantee of the right to non-discrimination, lesbian, gay, bisexual and transgender (LGBT) persons continued to be subjected to discriminatory acts that marginalized them even more, that limited opportunities to set up associations for the promotion of LGBT rights and that made greater awareness of their existence nearly impossible. FLD² reported that accusations related to being anti-Islam are also used against human rights defenders addressing LGBTI rights, who face stigmatisation and persecution and are forced to that Algeria introduce legislation to combat discrimination, including discrimination on grounds of sexual orientation and gender identity, that it define homophobic crime and that it impose severe criminal penalties for homophobic acts and discrimination on grounds of gender identity and sexual orientation.

14. JS4 found it regrettable that the Criminal Code described homosexual sex as unnatural and considered it to be immoral. S4 recommended that Algeria repeal the articles of the Criminal Code that criminalized homosexual sex.

15. JS4 indicated that hate speech and incitement to hatred targeting the LGBT community had become common even in the media. Prominent religious figures took to television studio sets and encouraged violence against homosexuals. In addition, health workers still viewed homosexuals as persons with psychological disorders. There was a lack of activist human rights and feminist associations owing to the fear that taking a public stance in favour of LGBT rights would result in the immediate withdrawal of accreditation. JS4 recommended the adoption of legal reforms to prevent, penalize and eliminate discrimination, including discrimination on grounds of sexual orientation and gender identity.

37. The National Advisory Commission for the Promotion and Protection of Human Rights encouraged the Government to review Act No. 12-06 to respond better to the concerns of the non-governmental sector JS5³ recommended that Algeria adopt the Best practices on freedom of peaceful assembly put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his 2012 annual report which call for simple notification rather than explicit permission to assemble; remove all undue restrictions on the ability of civil society organizations to receive international and national funding; immediately reinstate all civil society organizations which have been arbitrarily sanctioned or deregistered; and guarantee the independent functioning of autonomous trade unions. JS4 recommended that Algeria draft a new law on associations that was in line with international human rights law and that provided for a notification procedure rather than a requirement for prior authorization; a simple, non-discriminatory, swift and free procedure for the constitution of associations; and the right to create associations that promoted the rights of LGBT persons.

¹ Joint Submission 4 submitted by: Association Alouen, Algeria, and Mantiqitna, Brussels, Belgium;

² Front Line Defenders, Dublin, Ireland;

³ Joint Submission 5 submitted by: CIVICUS, Johannesburg, South Africa and Ibn Khaldoun Center for Research and Maghrebi Studies, Brighton, UK.

51. (...) JS4 regretted that article 336 of the Criminal Code, under which rape was considered to be a crime, did not address the different circumstances of rape in the case of lesbian, bisexual, transgender and queer women, who were often victims of corrective rape perpetrated by persons in their social or family circles.

52. JS4 recommended that Algeria define spousal rape, in the law, as a separate criminal offence, that it adopt a law to combat gender-based violence in cooperation with civil society and that it ensure that the victims of sexual violence, including LGBT women, had access to effective remedies. HRW recommended Tunisia to adopt additional legislation enabling survivors of domestic violence to obtain protection orders from the police and from courts; and to support the development of specialized domestic violence units or district-level focal points in the police force in all regions.

56. FLD reported on intimidation and targeting of human rights defenders working on ethnic, religious and sexual minorities, as well as indigenous rights, including defenders belonging to Mozabite and Kabyle groups. Indigenous recommended that the Government invite the Special Rapporteur on the Rights of Indigenous Peoples to visit Algeria before the end of her current mandate.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks: Universality only makes sense if the diversity of the human family is respected. For this reason, Algeria considers that respect for revealed religions and their representations cannot admit, in the name of freedom of expression, harm to the beliefs and convictions of hundreds of millions of faithful. I take this opportunity to refute the amalgamation in many fora over the issue of "sexual orientation", which is an inherent choice of persons, to present it as constituting discrimination.⁴

Intervention made by Algeria after 70 interventions: Some recommendations also referred to practices that do not correspond to universally recognized rights. So, Algeria does not specifically ask this or that individual about their practices, sexual or private or whatever. We consider them as a full citizen and we do not seek to get into the way those people live their private lives.⁵

C. Recommendations for the Third Cycle (2017):

a) Remarks made by States:

- **Ireland:** We urge Algeria to decriminalize consensual same-sex relations, amend provisions in the penal and family code that discriminate on the basis of gender.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by Algeria and have been partially accepted by Algeria:

- **6.62 France:** Adopt legislation against discrimination, including discrimination based on sexual orientation and gender identity and amend provisions with a tendency to maintain discrimination related to gender⁶

c) The recommendations formulated during the interactive dialogue/listed below have been examined by Algeria and have been noted by Algeria:

- **6.60 Canada:** Repeal Article 338 of the Penal Code, which criminalizes sexual acts between two consenting adults of the same sex
- **6.61 Sweden:** Decriminalise same-sex sexual relations by repealing Article 339 of the Penal Code and to include LGBT persons in its legal provisions against discrimination

⁴ **French version:** L'universalité n'a de sens que si la diversité de la famille humaine est respectée. C'est pourquoi, l'Algérie considère que le respect des religions révélées et à leurs représentations ne sauraient admettre, au nom de la liberté d'expression, d'atteinte aux croyances et aux convictions des centaines de millions de fidèles. Je saisis cette occasion pour réfuter l'amalgame entretenu dans de nombreux fora au sujet de la question de « l'orientation sexuelle » qui est un choix relevant de l'intimité des personnes, pour le présenter comme constituant soit disant une discrimination.

⁵ **French version:** Certain nombre de recommandations portent également sur des pratiques qui ne correspondent pas à des droits universellement reconnue. Donc l'Algérie ne demande pas spécifiquement à tel ou tel individu quelles sont ces pratiques sexuelles ou privés ou autres, nous les considérons comme citoyen à part entière et nous ne cherchons pas à entrer dans la manière dont ces personnes conduisent leurs vies privées

⁶ Algeria partially accepted this recommendation as it denoted the part which states 'including discrimination based on sexual orientation and gender identity' yet supported the rest of the recommendation.

- 6.63 **Spain:** Take the necessary measures to combat discrimination based on sexual orientation and gender identity and to repeal legislation criminalizing consensual sexual relations between person of the same sex, in accordance with the constitutional provision on the elimination of discrimination
- 6.64 **Argentina:** Ensure the respect for the rights and fundamental freedoms of LGBTIQ persons, by repealing the norms that criminalise and stigmatise them
- 6.65 **Israel:** Stop arresting people for same-sex relations

D. Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Eliminate legislation criminalizing sexual relations between persons of the same-sex, as well as discriminatory legislation on the ground of sexual orientation	Spain	Noted
Guarantee the rights to the protection of privacy to all persons and take measures to ensure equality and non-discrimination on all grounds, including sexual orientation, in conformity with articles 17 (1) and 26 of the ICCPR, by revising article 338 of its Penal Code, which criminalizes sexual acts between consenting adults of the same sex	Canada	Noted

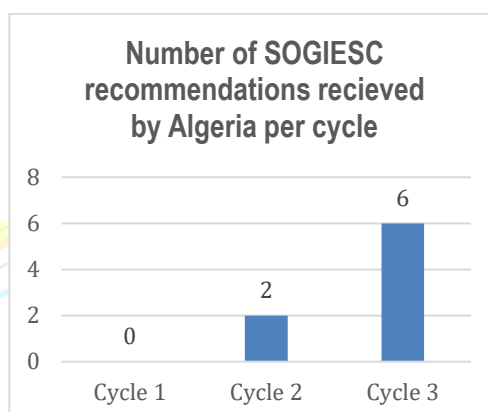
E. SOGIESC questions submitted in advance for Algeria:

- [Sweden:](#) Could the Government of Algeria please specify how it intends to address the severe discrimination and harassment of LGBT persons? How will the Government approach the religious, cultural and societal challenges to establishing equal rights for LGBT persons?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

None

G. Graphic comparison between cycles (1-3)



H. [Video of Algeria's UPR Working Group Session](#)

**UNIVERSAL PERIODIC REVIEW – BAHREIN
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 1 May 2017, 9:00-12:30

Date and time of the adoption of the report: 5 May 2017, 9:00-12:30

During the 27th UPR Working Group Sessions, Bahrain received 0 SOGIESC recommendations

- A. SOGIESC information:
 - [National Report](#): None
 - [Compilation of UN information](#): None
 - [Summary of stakeholders' information](#): None
- B. Remarks of the State Under Review: None
- C. Recommendations for the Third Cycle (2017): None
- d) Remarks made by the Recommending State: None
- D. Recommendations for the Second Cycle (2012): None
- E. SOGIESC questions submitted in advance for Bahrain: None
- F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva: None
- G. [Video of Bahrain's UPR Working Group Session](#)

**UNIVERSAL PERIODIC REVIEW – BRAZIL
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 5 May 2017, 9:00 – 12:30

Date and time of the adoption of the report: 9 May 2017, 16:30 – 18:00

During the 27TH UPR Working Group Sessions, Brazil received 11 SOGIESC recommendations. It accepted all 11 recommendations.

A. SOGIESC information:

- **National Report:**

LGBT (Recommendations 24*, 97 and 140)

38. In 2011, the Federal Supreme Tribunal recognized same-sex families, granting homosexual couples the right to civil union. Based on CNJ's Resolution 175/2013, Public Civil Register Offices cannot deny the celebration of civil marriage between same-sex people or deny the conversion of civil unions into marriage.

39. The promotion of LGBT's rights still demands legislative and institutional responses, nevertheless. Discrimination against LGBT people is not considered a crime in Brazil. IBGE's data, from 2014, demonstrates that only 7.7% of 5,570 municipalities in Brazil have specific policies regarding LGBT people.

40. The Report on Homophobic Violence is a very important subsidy for the development of Government's policies. It is a pioneering initiative coordinated by the SEDH, which brings detailed data about the profile of victims. The third edition of the report was published in 2016 with data from 2013. In 2017, the fourth edition of the report will be disclosed with data from 2014 and 2015.

41. The 2016 Report indicates a context of constant violence and violation of human rights, having presented cases of homicide and robbery involving deaths against LGBT population. It is important to bear in mind that underreporting of such cases is a reality. The present scenario of negligence and violence requires from Brazil the creation of policies and legislation devoted to punish and prevent discrimination against the LGBT population.

42. The National System for the Promotion of Rights and Fight against Violence suffered by LGBT People of 2013 aims to allow the of the federation. In 2014, the National Committee of LGBT Public Policies, a forum that assembles public agents from state and municipal levels in order to promote the National System, was established. In 2015, the Federal Government created the Inter- ministerial Committee to Fight Homophobia. In addition to this, there is the National Covenant to Fight Violence against LGBT People.

43. Through the Decree 8,727/2016, the use of social names by transgender people on official documents provided by the of the National Council to Fight Discrimination and Promote the Rights of Lesbians, Gays, Bisexuals and Transgender People (CNCD/LGBT)

- **Compilation of UN information:**

9. The Committee on the Rights of the Child was concerned about structural discrimination against indigenous and Afro-Brazilian children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in rural and marginalized urban areas, including favelas.

10. The Committee was concerned that strategies aimed at eliminating discrimination based on gender, sexual orientation and race had been removed from the education plans of several states. It recommended that Brazil enact legislation to prohibit discrimination and incitement to violence on the basis of sexual orientation and gender identity.

11. The country team noted that, despite the international leadership of Brazil on lesbian, gay, bisexual, transgender and intersex issues, Congress had created additional challenges to the rights of lesbian, gay, bisexual, transgender and intersex persons. The proposed family statute, which excluded lesbian, gay, bisexual, transgender and intersex families from the concept of family, and the proposed national heterosexual pride day had gained support in Congress, while proposals such as the gender identity bill and the criminalization of homophobia had not made any progress.

21. The country team indicated that although Brazil did not criminalize homosexual acts, reports indicated that it had one of the highest levels of violence against lesbian, gay, bisexual, transgender and intersex persons.

26. The Special Rapporteur and the Subcommittee noted that in general, detention conditions were poor regarding basic sanitation and access to drinkable water, edible food and medical and psychological care. The lack of sanitation and overcrowding had turned prisons into places where disease prevention was a permanent challenge. The Special Rapporteur noted that lesbian, gay, bisexual, transgender and intersex persons were particularly likely to be affected by overcrowding in terms of access to health services.

40. Regarding the recommendation on statistics, the country team recommended that Brazil adopt human rights indicators and include disaggregated data regarding people living with HIV, lesbian, gay, bisexual, transgender and intersex persons, persons with disabilities, indigenous children and adolescents.

64. The United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that, while Brazil had significantly increased its investment in education over the past decade, it still faced major challenges in financing education. The Literate Brazil Programme had promoted literacy. Brazil had not taken the necessary measures to combat structural discrimination against lesbian, gay, bisexual, transgender and intersex children, particularly after several states had done away with strategies aimed at eliminating such discrimination.

- **Summary of stakeholders' information:**

7. JS15⁷ reported the humiliation, the fear and the physical and psychological intimidation suffered by LGBT people, including young people and teenagers in school and university environments and the discrimination suffered by homo-affective families.

10. Global Compact stated that Brazil should support initiatives and strategies to combat discrimination and promote the inclusion of people with disabilities, women, LGBT, refugees, developed by companies and the various levels of government, in cooperation with civil society. It noted that Brazil should promote the UN Guiding Principles on Business and Human Rights to government bodies that were not traditionally active in the area of human rights.

71. JS3⁸ noted that Brazil had not accomplished recommendations 119.33, 119.47, and 119.94 on gender equality, since the withdrawal of gender and sexuality related issues from education plans. Under pressure from religious leaders, local representatives in at least 12 of the 27 Brazilian states removed from Education Plans strategies aimed at overcoming gender, sexual orientation and race inequalities. JS15 noted the exclusion suffered by LGBTI people in school and universities environments.

B. Remarks of the State Under Review (opening and closing speech):

- **Opening remarks:** Our country has made significant progress on the rights of the LGBT persons, in 2013 we created the national system for promoting LGBT rights, the aim of this is to coordinate public policies at the three levels of government in our Federal State. In 2015, the Federal

⁷ Joint submission 15 submitted by: Institute for Development and Human Rights (IDDH); Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM BRAZIL); "Maria Augusta Thomaz" Human Rights Clinic (PUC-SP); Specialized Center for the Promotion and Defense of Women's Rights (NUDEM); Ecos — Communication and Sexuality; Geledes — Black Women's Institute; Educational Action, Advisory, Research and Information; Feminist Network of Jurist (deFEMde)

⁸ Joint submission 3 submitted by: Brazilian Campaign for the Right to Education; Acao Educativa; Latin-American Campaign for the Right to Education (CLADE); National Association of Centers for the Defense of Child Rights (Anced) (Brazil);

Government created the inter-ministerial committee for fighting homophobia. The Brazilian supreme court, has already ratified the legality of the same-sex civil unions and why not?

Intervention made by Brazil after 65 interventions:

- (...) I would like to say that we have also allowed transgender persons to use their own name on identity documents. What we have done is that we have try to ensure that LGBT people are protected from threats. We use a data to record acts committed against the LGBT and we are trying to have a public policy. Brazil has undertaken measures to protect the rights of the LGBT population.

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Montenegro:** According to the UNCT report, LGBTI people continue to be subject of structural discrimination and violence. Does the Government of Brazil plan to enact legislation to prohibit discrimination and incitement to violence on the basis of sexual orientation and gender identity?
- **Norway:** Norway commends Brazil's efforts to protect and promote human rights since its previous UPR. These include reduction of poverty, combating slave labor and enhancing the rights of women as well as LGBT- persons
- **Sweden:** Violence against LGBTI-persons increased during the last years. In 2015, 343 persons were murdered because of their sexual orientation. As Brazil does not record crimes against LGBTI persons, we expect the problem to be significantly under-reported.
- **UK:** We welcome Brazil's progress, including the National System to Fight and Prevent Torture, recognition of same sex marriage, legislation on femicide, establishment of the Truth Commission, and implementation of custody hearings by some states.
- **Argentina:** My delegation would like to wishes to praise the efforts undertaken by Brazil in combating discrimination and violence experienced by LGBTI persons. In particular we hail the work don to set up an independent expert.
- **Finland:** We commend Brazil for its efforts to promote the rights of LGBTI persons, such as the establishment of the National Committee of LGBT Public Policies, the reporting on Homophobic Violence by the Secretariat for Human Rights and the creation of the National System for the Promotion of Rights and Fight against Violence suffered by LGBT People. Finland laments the reports of increased homo- and transphobia and discrimination against the LGBTI population in Brazil. Finland expresses concern about possible exclusion of policies aimed at overcoming gender and sexual orientation inequalities in schools.
- **Ireland:** We welcome Brazil's emerging position allowing for same sex civil unions. We urge Brazil to formalise its position and expand on these steps taken to ensure full equality of LGBTI persons.
- **Israel:** We would like to welcome the delegation of Brazil and thank it for its report. Israel commends Brazil for many measures taken in recent years, such as the establishment of the National Human Rights Council and the Inter-Ministerial Committee to Fight Homophobia, the enactment of the Statute of Persons with Disability, and the National Plan to Combat Human Trafficking.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by Brazil and have been supported by Brazil:⁹

- 6.39. **Sweden:** Take necessary measures to address homo-and transphobic crime, including by establishing a system for recording such crimes
- 6.40. **Argentina:** Take urgent measures to adopt legislation sanctioning discrimination and incitement to violence on the grounds of sexual orientation, and investigate and sanction cases of violence against LGBTIQ persons

⁹ Brazil received also an openly/obliquely hostile recommendation to LGBTI persons and their right to found a family: 6.99. **Holy See:** Sustain and promote the family, based on marriage between a man and a woman, as the natural and fundamental unit of society as well as the un born. Brazil noted this recommendation.

- 6.41. **Chile:** Continue advancing the promotion of the laws and initiatives that ban discrimination and incitement to violence on the grounds of sexual orientation and gender identity, in particularly, in the case of young persons and adolescents
- 6.42. **Colombia:** Re-double the efforts of capacity-building for all the security forces aiming at avoiding practices of the racial bias or directed, among others, against vulnerable minorities such as the LGBTI
- 6.43. **Finland:** Continue taking measures to develop legislation and policies at federal, state and municipal level to punish and prevent hate crimes and discrimination against the LGBTI population
- 6.44. **Honduras:** Approve a specific legislation, in line with its international human rights obligations, that prohibits discrimination and incitement to violence based on sexual orientation and gender identity
- 6.45. **Israel:** Following measures taken at the national level, to ensure that municipalities in Brazil develop specific policies to guarantee rights of LGBTI people
- 6.66. **Israel:** Take measures to improve the situation of underreporting of cases of violence and discrimination against LGBTI people, and to develop policies to punish and prevent those actions
- 6.67. **Canada:** Ensure that all hate crimes against LGBTI persons are thoroughly investigated and prosecuted and seek to reduce hate by integrating human rights education into school curricula
- 6.90 **Ireland:** Ensure conditions at detention centres comply with international and Brazilian law and that particular attention is given to conditions faced by vulnerable prisoners including pregnant women, children and LGBTI persons; and to provide human rights training to officials in the legal and judicial system
- 6.196. **Mexico:** Ensure the effective implementation of measures to prevent, punish and eradicate of all forms of violence and discrimination against women and LGBTI persons

D. Recommendations for the Second Cycle (2012):

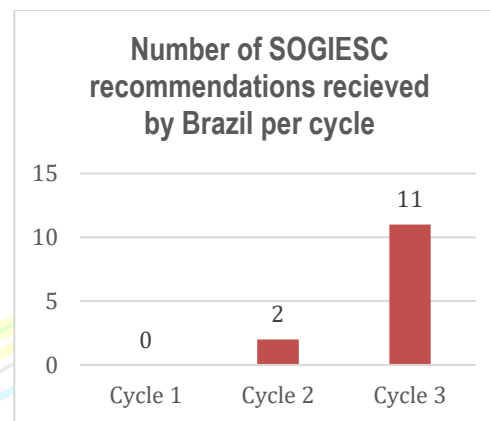
RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Amend the legislation for the legal recognition of same-sex	Finland	Accepted
Take measures to address homo and transphobic crime, including establishing a system for recording such crimes	Finland	Accepted

E. SOGIESC questions submitted in advance for Brazil:

- [UK:](#) We would welcome information on Brazil's plans to effectively enact and implement policies that prevent, criminalise and prosecute homophobic crimes, especially regarding transgender people.
- [Switzerland:](#) What measures does Brazil foresee to prevent and punish racism, discrimination and violence against indigenous peoples, afro-descendants, women, LGBTI and to protect their leaders and human right defenders?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

G. Graphic comparison between cycles (1-3)



H. [Video of Brazil's UPR Working Group Session](#)

I. SOGIESC mentions during Brazil's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of Brazil, the State Under Review said in its closing statement that "The [Ministry of Human Rights] enjoys greater coordination capacity and is able to harmonise policies aimed at the promotion of racial equality, the rights of children, adolescents, LGBTI, older persons, and persons with disabilities".
- The **Association for Prevention of Torture** called for better conditions for vulnerable groups in detention, including LGBTI persons.

**UNIVERSAL PERIODIC REVIEW – ECUADOR
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 1 May 2017, 14:30 – 18:00

Date and time of the adoption of the report: 5 May 2017, 15:00-18:00

During the 27th UPR Working Group Sessions, Ecuador received 9 SOGIESC recommendations. It accepted 8 and noted 1 recommendation.

A. SOGIESC information:

- [National Report:](#)

B. Igualdad y no discriminación (Recomendaciones 135.9, 135.16, 135.17, 135.18, 135.19)

17. En 2014 entró en vigencia la Ley Orgánica de los Consejos Nacionales para la Igualdad. Esta ley establece el marco institucional y normativo para el funcionamiento de dichos Consejos, encargados de asegurar la plena vigencia y ejercicio de derechos a través de la promoción, y del enfoque del derecho a la igualdad y no discriminación hacia los siguientes grupos históricamente discriminados: 1. Mujeres y personas LGBTI, 2. Niñas, niños, adolescentes, jóvenes y personas adultas mayores, 3. Pueblos y nacionalidades (Indígena, Afroecuatoriano y Montubio), 4. Personas con discapacidad, y, 5. Personas en situación de movilidad humana.

Salud (Recomendaciones 135.5 y 135.52):

29. En octubre de 2016 fue publicada la Ley Orgánica que Regula las Compañías de Salud Prepagada y de Asistencia Médica que prohíbe la discriminación por razones de identidad de género, sexo o edad en los contratos de atención a la salud entre otros aspectos para proteger el derecho a la Salud.

Derechos de la Población LGBTI

101. En 2014, por compromiso de la Presidencia de la República con los colectivos de la diversidad sexo-genérica, se creó la Mesa Interinstitucional de la Política Integral para Personas LGBTI, logrando avances significativos para garantizar sus derechos como fue la legalización de la unión de hecho entre personas del mismo sexo, a través de una Reforma al Código Civil en 2015.

102. La Ley Orgánica de Gestión de la Identidad y Datos Civiles de 2015, incluye la opción de incorporar la variable “género” por “sexo” en la cédula de ciudadanía, logrando que en las elecciones presidenciales del 19 de febrero pasado, las personas que han incorporado su género en su documento nacional de identidad pudieran ejercer su derecho al voto con su auto identificación.

103. En el ámbito de salud, se cuenta con un Manual de Atención en Salud a Personas LGBTI, a partir del cual todos los establecimientos públicos de salud usan la variable sexo-genérica en sus registros administrativos, entre otras medidas.

104. En el ámbito educativo, la campaña “Construyendo Igualdad en la Educación Superior” incorporó 43 lineamientos de política pública en el ámbito de la educación superior, en temas de género y diversidad sexo-genérica.

- [Compilation of UN information:](#)

21. El Comité de Derechos Humanos recomendó al Ecuador que redoblara sus esfuerzos para combatir los estereotipos y prejuicios contra las personas lesbianas, gais, bisexuales, transgénero e intersexuales; investigara, enjuiciara y sancionara debidamente a los responsables de actos de violencia en su contra; y garantizara que se otorgara una reparación integral a las víctimas.

28. El Comité tomó nota con reconocimiento de la adopción en 2016 del Protocolo de Atención a Población Lesbiana, Gay, Bisexual, Transexual e Intersexual en Situación de Privación de Libertad.

29. Tres comités expresaron su preocupación por la persistencia de las denuncias de casos de internamiento forzoso en clínicas para “curar” la orientación sexual o la identidad de género, a pesar de las medidas adoptadas por el Estado. El Comité de Derechos Humanos recomendó al Ecuador que redoblara sus esfuerzos para eliminar esas prácticas, adoptara las medidas necesarias para investigar, enjuiciar y sancionar con penas apropiadas a los responsables de tales actos y otorgara reparación integral a las víctimas.

D. Derechos de personas o grupos específicos

1. Mujeres

76. El Comité para la Eliminación de la Discriminación contra la Mujer valoró la aprobación del Código Orgánico Integral Penal, que tipificaba como delito los actos de femicidio y discriminación por motivos de sexo, identidad de género y orientación sexual, entre otros. El Comité celebró el amplio marco legislativo y normativo para la eliminación de la discriminación contra la mujer y recomendó que se acelerara su aplicación en todos los campos que abarca la Convención

- Summary of stakeholders' information:

16. Varias organizaciones observaron que, si bien se habían logrado avances, aún existían prácticas y normas discriminatorias en virtud de la orientación sexual. Joint Submission 20 (JS20)¹⁰ recomendó velar porque autoridades e instituciones cumplieran con la normativa constitucional que garantiza la igualdad y el derecho a la vida digna y a no ser Silueta X (ASX) recomendó promulgar una ley contra la discriminación que incluyera la orientación sexual y la identidad de género y estableciera sanciones. Joint Submission 2 (JS2)¹¹ recomendó diseñar un programa de educación pública en los distintos niveles escolares para erradicar patrones y estereotipos socioculturales que inciten al odio, la violencia y la discriminación contra la población LGBTI.

17. JS2 y Joint Submission 8 (JS8)¹² recomendaron reformar la Ley Orgánica de Salud para incorporar los estándares internacionales de no patologización y no medicalización de la orientación sexual y la identidad de género reconocidos en los principios de Yogyakarta

21. FNP¹³ recomendó incrementar el acceso de las personas privadas de libertad a talleres laborales y recreativos y el uso de audiencias virtuales, boletas electrónicas y régimen de prelibertad. La Comisión Ecuatoriana de Derechos Humanos (CEDHU) recomendó investigar toda agresión y privación de la vida de personas detenidas en la que estuvieran involucrados agentes policiales y a capacitar a estos sobre los derechos de las personas detenidas. CEDHU también recomendó no vulnerar el derecho a la integridad personal de mujeres y niñas que visitan a sus parientes so pretexto de evitar que en sus partes íntimas ingresen algo ASX recomendó implementar en los centros penitenciarios campañas de prevención y protección de los derechos de las personas LGBTI.

22. JS2 observó que algunos centros de recuperación de adicciones seguían en funcionamiento a pesar de sus antecedentes de prácticas de “deshomosexualización” violatorias de los derechos humanos de mujeres lesbianas y personas sexo-género diversas. JS2 observó que las sanciones contra estos centros habían sido en su mayoría de carácter administrativo y que no existían datos sobre algún caso que hubiera llegado a judicializarse.

¹⁰ Joint submission 20 submitted by: Matrimonio Civil Igualitario (Ecuador); Observatorio Ecuatoriano de Derechos Humanos, Colectivos y Minorías (Ecuador); Todo Mejora Ecuador (Ecuador); Organización Ecuatoriana de Mujeres Lesbianas - OEML (Ecuador); Grupo Rescate Escolar (Ecuador);

¹¹ Joint submission 2 submitted by: Taller Comunicación Mujer (Ecuador); Sexual Rights Initiative (Switzerland);

¹² Joint submission 8 submitted by: Frente Ecuatoriano por la Defensa de los Derechos Sexuales y Derechos Reproductivos - FEDDSR (Ecuador), Fundación Taller de Comunicación Mujer - TCM (Ecuador); Coalición Nacional de Mujeres del Ecuador - CNME (Ecuador);

¹³ Fundación Nuevo Propósito (Ecuador);

42. JS20 observó que la legislación ecuatoriana no permitía a las parejas homoparentales la posibilidad de reconocer a sus hijos e hijas comunes. JS20 recomendó que en los cuerpos legales correspondientes existiera el reconocimiento de todos los tipos de familia.

65. Joint Submission 5 (JS5)¹⁴ recomendó promover planes de manejo para la atención y prevención del acoso recomendó que se investigara y sancionara a los responsables de agresiones a estudiantes, que no se revictimizara a las víctimas y se adoptaran mecanismos indicados que no existían políticas de prevención del bullying homofóbico ni políticas de inclusión y protección para los estudiantes trans

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks by H.E: Guillaume Long, Ministro de Relaciones Exteriores y Movilidad Humana de Ecuador: Nuestros objetivos no solo están en buscar la igualdad material, sino también la igualdad simbólica y la no discriminación. En ese sentido, es preciso destacar la promulgación en el 2014 de la Ley Orgánica de los Consejos Nacionales para la igualdad, que crea las entidades especializadas para la evaluación y observancia de los derechos constitucionalmente reconocidos a los grupos históricamente discriminados.

Por otra parte, la reforma del Código Civil ha significado un gran avance, ahora las uniones de hecho de personas del mismo sexo se reconocen como un estado civil, con derechos y obligaciones para las parejas. En esta misma línea, la Ley Orgánica de Gestión de la Identidad y Datos Civiles de 2015 permite a una persona sustituir en su cédula de identidad y por una sola vez, el campo sexo por el de género, de acuerdo a su auto determinación. Esto se enmarca en una amplia política pública por el reconocimiento de las personas LGBTI. En seguimiento a esa política el Presidente de la República ha mantenido su compromiso de hace varios años de reunirse personalmente y cada seis meses con los representantes de ese colectivo para escuchar sus demandas y generar compromisos de gobierno.

Intervention made by Ecuador after 46 interventions:

Vicepresidenta de la Asamblea Nacional - Rosana Alvarado: (...) La ley de gestión de identidad sustituyó sexo por género en la cédula de identidad incluyendo una aspiración de las personas LGBTI.

Closing remarks:

Ministra de Justicia, Derechos Humanos y Cultos – Ledy Zuñiga (...) Así como el protocolo de atención de la población LGBTI en privación de libertad.

Ministra de salud pública – Verónica Espinosa (...) Recordemos que la salud en su visión integral es vital para el ejercicio de los demás derechos ¿cómo podemos exigir o hablar de derechos sin primero garantizar aquellas condiciones básicas para el más fundamental de los derechos, el derecho a la vida? El derecho a la salud es una prioridad nacional y luchamos por eliminar todas las barreras de acceso económicas, sociales, legales o institucionales que mantenían a grupos vulnerables marginados o excluidos, como es el caso de las personas LGBTI.

(...) los tratamientos de deshomosexualización han sido expresamente prohibidos, así como cualquier otra práctica discriminatoria o denigrante en el sistema nacional de salud. Como resultado, hemos clausurado más de 45 centros e iniciado 6 procesos judiciales. Implementamos también un manual en salud a personas LGBTI y capacitamos en buenas prácticas para eliminar la discriminación de estos grupos a más de 33,000 profesionales de salud.

En 2016 brindamos 70,000 atenciones de salud a personas autodefinidas como LGBTI y hemos certificado 228 servicios como inclusivos y libres de discriminación.

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Australia:** We also welcome Ecuador's efforts to improve LGBTI rights, highlighted by the implementation of inclusive voting rights for transgender people in the recent elections.

¹⁴ Joint submission 5 submitted by: Grupo Rescate Escolar (Ecuador); Centro de Derechos Humanos de la Pontificia Universidad Católica del Ecuador - CDH- PUCE (Ecuador);

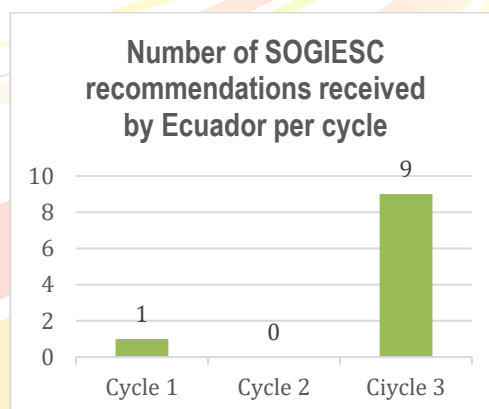
- **Chile:** We congratulate Ecuador on the approval on the comprehensive Criminal Code on 2014 which criminalizes femicide and discrimination on the grounds of sex, gender identity and sexual orientation.
 - **Ireland:** We further note that, in the first cycle, Ecuador accepted a recommendation to combat discrimination on the grounds of sexual orientation and gender identity. However, we share the concerns of the Human Rights Committee regarding the persistence of stereotypes underpinning discrimination and violence against LGBTI persons and encourage Ecuador to take further steps to combat such prejudice, prohibit discrimination and to promptly investigate and prosecute any such acts of violence.
 - **Paraguay:** We welcome the criminalization of femicide and discrimination on the grounds of sex, gender identity and sexual orientation amongst others.
 - **Portugal:** We welcome the measures to protect the rights of LGBTI persons namely the adoption for the protocol for the treatment of members from the LGBTI community who are deprived of their liberty. We are however concerned about the allegations of treatment to 'allegedly' cure sexual orientation or gender identity.
 - **Thailand:** While we applaud the aspirational of the National Equality Council we remain concerned with continue discrimination on the basis of gender, especially against women, LGBTI persons (...)
 - **Uruguay:** We praise the progress achieved against violence and discrimination on grounds of sexual orientation and gender identity including the recent approval of the Criminal Code and the protocol for support for LGBTI population. We are still concerned about discriminatory practices and standards in terms of sexual orientation.
- b) **The recommendations listed below have been examined by Ecuador and enjoy the support of Ecuador, which considers that they are already implemented or in the process of implementation:**
- 7.17 **Australia:** Progress efforts to end discrimination based on sexual orientation, gender identity and intersex status
 - 7.18 **Uruguay:** Continue to increase efforts to end discrimination against LGBTI persons
 - 7.19 **Spain:** Guarantee the protection of all people from discriminatory norms and practices on the grounds of sexual orientation and gender identity in all spheres of life
 - 7.20 **Chile:** Continue promoting the rights of LGBTI persons and protect them from violence and social and cultural discrimination
 - 7.21 **Israel:** Take all appropriate measures to prevent, investigate and punish manifestations of violence, intolerance and discrimination against LGBTI people; Investigate, prosecute and punish those responsible for acts of violence against lesbians, gays, bisexual, transgender and intersexual persons as part of its efforts to combat stereotypes and bias against them (**Argentina**)
 - 7.23 **France:** Fight against discrimination based on sexual orientation and gender identity, especially against children, carrying out public awareness programs and teacher trainings on this subject
 - 7.34 **Israel:** Acknowledge the existence of the so-called "rehabilitation clinics" and "sexual reorientation" therapies and take measures to eradicate them
 - 7.35 **Portugal:** Eliminate practices of forced placement in clinics for treatment to allegedly "cure" sexual orientation or gender identity of LGBTI persons, and ensure due accountability for persons responsible, as well as the full reparation for victims
- c) **The recommendations formulated during the interactive dialogue/listed below have been examined by Ecuador and have been noted by Ecuador:**
- 9.1 **Israel:** End the policy of providing two different types of identity documents for trans and cisgender people (Israel);
- D. **Recommendations for the Second Cycle (2012):** None
- E. **SOGIESC questions submitted in advance for Ecuador:**
- **United States:** We are encouraged by some of the efforts made by the government to improve equal treatment under the law for all citizens the rights of LGBTI persons. However, we remain

concerned that LGBTI persons continue to experience higher levels of discrimination when seeking access to public services, as well as higher levels of violence. How will the government ensure equal protection and non-violence for LGBTI persons?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:
Fundación Ecuatoriana Equidad:

- To take concrete measures to protect and create a safe environment for LGBTI students in schools.
- To Include education on sexual orientation, gender identity and sex characteristics in school curricula to combat bullying, discrimination and violence.
- To continue combating discrimination in employment and occupation of LGBTI persons, in accordance with the Constitution and legislation of Ecuador.
- To adopt an anti-discrimination law, to protect people from discrimination based on sexual orientation, gender identity and expression and sex characteristics in the labor market.
- To create and implement a labor integration policy plan for trans people.
- To Investigate promptly, independently and timely all allegations of mistreatment of LGBTI people by the police.
- To guarantee timely and proper access to the justice system for victims of discrimination and violence based on sexual orientation, gender identity or sex characteristics.
- To end the policy of providing two different types of identity document for trans and cisgender people.

G. Graphic comparison between cycles (1-3)



H. Video of Ecuador's UPR Working Group Session

I. SOGIESC mentions during Ecuador's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of Ecuador, the State Under Review spoke of a "social contract which defends LGBTI rights". It also said in its closing statement that "We continue to be dedicated to the scourge of the so-called ill-famed clinics on sexual re-education. We are totally determined to eradicate these practices and will continue to engage in the struggle to uphold the rights of the LGBTI community".
- **Action Canada for Population and Development** welcomed the acceptance of the recommendations to end conversion therapies and investigate violence against LGBTI persons, although expressed concern that these recommendations were made in earlier cycles and there has been little action on these issues.

**UNIVERSAL PERIODIC REVIEW – FINLAND
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 3 May 2017, 14:30-18:00

Date and time of the adoption of the report: 5 May 2017, 13:00-18:00

During the 27th UPR Working Group Sessions, Finland received 10 SOGIESC recommendations. It accepted 2, partially accepted 1 and noted 7 recommendations.

A. SOGIESC information:

- [National Report:](#)

37. The new Finnish non-discrimination legislation took effect in January 2015. The reform strengthened the legal protection of victims of discrimination, enlarged the scope of prohibitions of discrimination and expanded the obligations to promote equality. The new Non-discrimination Act defines the forms of prohibited discrimination and the supervision of compliance with the Act. It obligates authorities, employers and providers of education and training to promote equality. The Act applies to all public and private activities, excluding private life, family life and religious worship. The Act on Equality between Women and Men prohibits discrimination based on gender, gender identity and gender expression.

38. The new Non-Discrimination Ombudsman and National Non-Discrimination and Equality Tribunal started operating at the beginning of 2015. The Ombudsman can be contacted in cases of experienced or observed discrimination based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics. The Ombudsman is also responsible for promoting the conditions, rights and position of groups at risk of discrimination, e.g. aliens. Furthermore, the Ombudsman supervises the removal of aliens from Finland and acts as the National Rapporteur on Trafficking in Human Beings. The Tribunal is an autonomous and independent legal protection body appointed by the Government to provide legal remedies to anyone who has experienced discrimination or related prohibited victimisation.

140. The fundamental rights protected by the Constitution of Finland and the human rights based on international treaties belong without discrimination to members of sexual and gender minorities, too. The State must ensure the equal realisation of these rights. The Act on Equality between Women and Men was revised in 2015 by introducing prohibitions of discrimination based on gender identity and gender expression and by obligating authorities, providers of education and employers to prevent such discrimination purposefully and methodically. A key principle under the programme to address child and family services is to take account of the diversity of families in the organisation and development of services.

141. At the end of 2014, Parliament adopted the gender-neutral Marriage Act, based on a citizens' initiative. As of March 2017 same-sex couples may conclude marriage. Until then they have been able to register their partnership.

142. In a joint position in November 2016, the Ombudsman for Equality and the Non-Discrimination Ombudsman stated that the current Act on Legal Recognition of the Gender of Transsexuals violates transgender persons' right to self-determination. The Act should be amended so that sterilisation or infertility for other reasons is no longer required for the recognition of gender.

143. In an opinion issued in 2016 the National Advisory Board on Social Welfare and Health Care Ethics proposed that, in the treatment of intersexual children, measures to modify their external sexual characteristics not be taken until the children themselves can both define their gender and form a position on their sexuality. A study on the rights and experiences of intersexual children will be made under the National Action Plan on Fundamental and Human Rights 2017-2019.

- [Compilation of UN information:](#)

10. The Committee on the Elimination of Discrimination against Women welcomed the proposed amendment to the Act on Equality between Women and Men, which expanded the definition of sex and gender-based discrimination to include discrimination based on gender identity and gender expression. It noted with concern that that Act and the Non-Discrimination Act did not currently provide adequate protection to women against multiple or intersecting forms of discrimination.

11. The Human Rights Committee was concerned that the current legislation on combating discrimination based on sexual orientation and gender identity was not comprehensive. It was also concerned about reports of acts of discrimination based on sexual orientation and gender identity. It recommended that Finland increase its efforts in the field of combating and eliminating discrimination on the grounds of sexual orientation and gender identity, inter alia, by implementing comprehensive legislative reform that guaranteed equal protection from discrimination on all grounds.

33. The same Committee was concerned about the obligation on transgender persons to prove infertility or undergo sterilization for the legal recognition of their gender under the Law on Legal Recognition of the Gender of Transsexuals of 2002. It recommended that Finland expeditiously amend that Law in order to ensure that gender recognition was carried out without requiring transgender persons to conform to stereotypical ideas of masculine or feminine appearance or behaviour and that it did not require individuals to consent to sterilization.

- Summary of stakeholders' information:

6. It encouraged to further improve the equality of transgender people by abolishing the requirement to be infertile as a condition for the legal recognition of gender reassignment.

15. In her statement submitted in 2011 to the UPR Working Group, the Ombudsman for Equality expressed her concern that there were no specific provisions in the Equality Act prohibiting discrimination based on gender reassignment. An improvement took place in this respect when the Equality Act was amended in 2015 with a provision prohibiting discrimination based on gender identity and gender expression. The Equality Act was also amended with the inclusion of an obligation to the authorities, providers of education and employers to prevent discrimination against gender minorities. However, persons belonging to gender minorities still face diverse problems in the attainment of equality. The Ombudsman for Equality has been contacted in cases of suspected discrimination that concern, inter alia, labour market, education and services, but also in various questions related to the gender reassignment process.

18. SETA and TRASEK noted that in the conclusions of the 2nd Cycle of UPR Finland approved recommendation (90.8) to increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity, inter alia by review of national legislation and administration with a view to eliminate discrimination against LGBTI people with regard to family and parental rights and the right to security and integrity of the person. Since then the legal situation has improved mainly through the reform of the non-discrimination and equality legislation. In the Non-discrimination Act protection from discrimination on ground of sexual orientation has been extended to all areas of life. In the Act on Equality gender identity, gender expression and sex characteristics are explicitly mentioned as non-discrimination grounds. The non-discrimination and equality ombuds mandates cover explicitly sexual orientation (non-discrimination ombud), gender identity, gender expression and sex characteristics (equality ombud). The Finnish Parliament has passed legislation on same-sex marriage and same sex couples will be able to 2017. However, issues such as legal gender recognition, physical integrity of intersex persons, family and parental rights, hate crime and violence against LGBTI people are largely unsolved and remain concerns.

27. SETA and Trasek recommended to ensure that the police, prosecutors, judges and lawyers have the necessary knowledge and skills to address hate crimes against LGBTI people by providing mandatory training and guidelines; to amend laws specific to hate crime and hate speech so that gender identity is explicitly included as a bias ground and to raise awareness about hate speech against LGBTI people and its harmful effects.

38. SETA and TRASEK recommended to provide teachers and other school staff further education regarding the tackling of homophobic and transphobic bullying and discriminatory practices. This should be included in the obligatory teacher training; ensure that young LGBTI people in schools and educational institutions receive necessary information, protection and support to enable them to live in accordance with their sexual orientation, gender identity and gender expression inter alia by raising awareness of LGBTI people in the school welfare services and provide guidelines or toolkits to schools and educational institutions on including concerns of LGBTI pupils and staff in non-discrimination and equality plans.

B. Remarks of the State Under Review (opening and closing speech):

- **Opening remarks by Ms. Pirkko Mattila, Minister of Social Affairs and Health:** Regarding the Netherlands' question, the study on the rights and experiences of intersex children will be initiated during the current year. The Government will assess the outcome and decide on relevant measures after the study has been completed. (...) Finally, Spain enquired about the Government's measures to prevent hate crimes and tackle bullying. The Non-discrimination Act places an obligation upon authorities, schools and employers to promote equality. These bodies and organisations are thus not only required to treat everyone equally, but they are also under a legal obligation to take active steps to prevent discrimination and harassment and to promote equality in fact. For example, in schools the requirement to promote equality typically entails active measures to combat bullying as well as to foster diversity and tackle discrimination.

Intervention made by Finland after 43 interventions:

- (...) With regards the discrimination legislation (...) the new discrimination act now covers all discrimination grounds in all areas of life. It should also be noted that the act on equality between women and men prohibits discrimination based on gender, gender identity and gender expression.
- (...) The rights of the LGBTI people were mentioned by many delegations, the same-sex marriage law entered into force on the 1st of March of 2017, so very recently. It enhances the rights of gay and lesbian couples but also trans people, in the sense that marriages continue if gender is reassigned. Perhaps this should also be noted, that this new legislation on the basis of a citizens initiative in Finland. There were also questions related to transsexual and the need of sterilization in the context of reassignment of gender, and this piece of legislation is at the moment not at the government legal program, for this government period. However, we have taken other measures, we are introducing programs for example the Minister of Justice is implementing a project called rainbow rights promoting LGBTI equality in Finland as well as in the region, otherwise the purpose is to raise awareness and develop national, regional and local awareness raising program on multiple discrimination facing LGBTI groups.
- There was also a question regarding the best interest of intersex children. Recently increasing attention has been paid to the information provided to parents and instances have been placed on the child's development and right to self-determination, specially in northern Finland there have been a tendency to avoid corrective surgery on intersex infants. Still, however opinions of pediatric urologists defer on this issue, discussions are ongoing on the matter. Last year the Minister of Social Affairs and Health published a guide on gender equality when working with clients for maternity and child welfare clinics, this guide also includes information on intersex individuals and how to support the development of children of diverse gender.

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Netherlands:** The Netherlands looks forward to continued close cooperation with Finland and stands ready to share its experiences with regard to legal recognition of gender identity.
- **Sweden:** Finland has an extensive legislation against discrimination. Provisions to prohibit discrimination based on gender identity or gender expression were added to the Equality Act, and came into force in January 2015. However, transgender persons and intersex children continue to face discrimination. According to the Act on Legal Recognition of the Gender of Transsexuals, the gender registered at birth can only be changed if the person presents a medical statement certifying that they, among other things, have been sterilized or are infertile. Intersex infants and children are still subjected to medical procedures for social or cosmetic purposes.

- **Australia:** Australia commends Finland's progress in the field of discrimination on grounds of sexual orientation and gender identity. However, Australia is concerned that the Act on Legal Recognition of the Gender of Transsexuals still includes a requirement of infertility or sterilization before gender reassignment can be legally recognized.
 - **Iceland:** During the second UPR cycle Iceland made a recommendation to Finland on discrimination on the grounds of sexual orientation and gender identity, in this regard we welcome the 2015 revision on the act on equality between women and men, which introduced prohibitions of discrimination based on gender identity.
 - **Ireland:** We welcome other progress on human rights since the last review, including in particular passage of legislation permitting same sex marriage, as of March 2017. However, like CEDAW and CAT we are concerned that in order for transsexual persons to secure recognition of their gender, the Act on Legal Recognition of the Gender of Transsexuals requires the person concerned to be sterilized or infertile for other reasons.
- b) **The recommendations formulated during the interactive dialogue/listed below have been examined by Finland and have been accepted by Finland:**¹⁵
- 6.44. **Montenegro:** Ensure implementation of comprehensive legislative reform that guaranteed same level of protection for all grounds of discrimination, in particular discrimination on the grounds of sexual orientation and gender identity
 - 6.45. **Albania:** Continue its efforts in the field of combating and eliminating discrimination on the grounds of sexual orientation and gender identity, inter alia, by implementing comprehensive legislative reform that guarantees equal protection from discrimination on all grounds
- c) **The recommendations formulated during the interactive dialogue/listed below have been examined by Finland and have been partially accepted by Finland:**
- 6.50. **Sweden:** Revise the Trans Act by abolishing the need for sterilization, other medical treatment, and a mental health diagnosis, as requirements for a person's legal recognition of their gender identity and ensure that medical procedures performed on intersex infants and children take into account the best interest of the child¹⁶
- d) **The recommendations formulated during the interactive dialogue/listed below have been examined by Finland and have been noted by Finland**
- 6.46. **Mexico:** Eliminate, in the case of transsexuals, the requirement of sterilization, medical treatments and mental health diagnoses, in order to complete the process of legal recognition of gender identity
 - 6.47 **Netherlands:** Amend the current Act on Legal Recognition of the Gender of Transsexuals by abolishing the need for sterilization or infertility as requirement for a person's legal recognition of their gender identity
 - 6.48. **Portugal:** Eliminate sterilisation as a necessary criterion for the recognition of gender of transgender persons
 - 6.49. **Spain:** Remove the current norm for mandatory sterility to officially register the gender reassignment
 - 6.51. **Australia:** Legislative reform to remove the requirement of infertility or sterilisation as a condition for the legal recognition of gender reassignment
 - 6.52. **Canada:** Remove the requirement of infertility or sterilisation before an individual may change their gender on legal documents

¹⁵ Finland received also an openly/obliquely hostile recommendation to LGBTI persons and their right to found a family: 6.86. Egypt: Provide protection for the family as a natural and basic unit of society. Finland noted this recommendation and expressed support for 'diverse families'.

¹⁶ Finland did not fully accept the recommendation as the issue of sterilization has not been agreed upon by its Parliament. However, it partially accepted the recommendation on the basis that its National Advisory Board on Social Welfare and Health Care Ethics (ETENE) "issued a statement according to which a child has the right to define their own gender" and "the issue is being discussed with actors treating intersex individuals".

- 6.53. **Ireland:** Amend its laws to remove the requirement for sterilisation or infertility before recognition of the gender of transsexual persons and further, to consider moving to a process allowing persons to self-declare their gender identity

e) **Recommendations for the Second Cycle (2012):**

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Increase its efforts in the field of discrimination on the grounds of sexual orientation and gender identity, inter alia, by review of national legislation and administration with a view to eliminate discrimination against LGBTI people with regard to family and parental rights and the right to security and integrity of the person	Iceland	Accepted

D. **SOGIESC questions submitted in advance for Finland:**

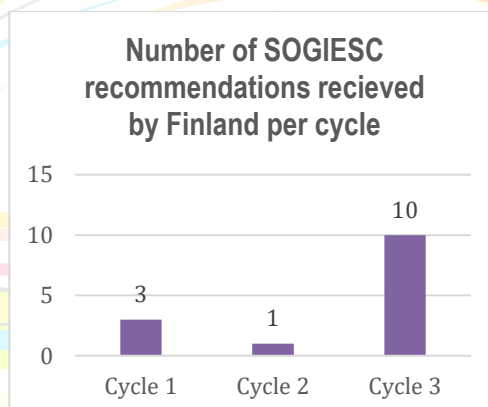
- **Spain:** Discrimination against migrants, as well as members of minorities (ethnic and religious minorities, especially Muslims, Roma and Sami, LGBTI people, children with disabilities ...) persists and even increases. Could you please, elaborate on the new Finnish non-discrimination legislation and particularly, on specific measures to prevent hate crimes and tackle bullying concerning children?
- **Netherlands:** In response to paragraph 143 of your national report, the Netherlands would like to ask if the intended study on the rights and experiences of intersex children under the National Action Plan on Fundamental and Human Rights 2017 – 2019 has been started and how the Finnish government will proceed on its outcomes?

E. **SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva or in the UPR-Info Pre-sessions:**

The National Youth Council Allianssi and the European Youth Forum

- Amend the Trans Act by abolishing the need for sterilization, other medical treatment, and a mental health diagnosis, as requirements for a person's legal recognition of their gender identity.
- Develop and implement training on LGBTI rights for all professionals that work with young people, such as educators and health professionals in particular.
- Ensure that trans and gender nonconforming youth have easy access to unbiased psychological, health and social support.

F. Graphic comparison between cycles (1-3)



G. [Video of Finland's UPR Working Group Session](#)

H. SOGIESC mentions during Finland's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of Finland, the State Under Review said: "The rights of persons belonging to minorities, LGBTI people, asylum seekers, refugees and migrants as well as of persons deprived of their liberty are not always fully realized. ... A working group was set up to evaluate the act on legal recognition of the gender of transgender persons and to propose necessary amendments. However, the Government has not yet agreed on presenting the issue to Parliament".
- The NHRI **Finish Human Rights Centre** then said "At least seven States recommended Finland to abolish the requirement for sterilization or infertility as a condition for the legal recognition of gender reassignment. The Government did not accept these recommendations although the current Act is clearly in breach of binding human rights obligations".
- **ILGA Europe**, in consultation with Trasek and Finnish Youth Co-operation Allianssi, made a [statement](#) in which it said "The requirement of sterilization as a condition for legal gender recognition gravely violates one's right to autonomy, bodily integrity, privacy and self-determination. It is a grave human rights violation, forcing people to choose between the fulfillment of different rights".
- **Amnesty International** and **International Federation for Human Rights Leagues** also called on Finland to end forced sterilization of transgender persons.

UNIVERSAL PERIODIC REVIEW – INDIA
UPR SOGIESC RECOMMENDATIONS

Date and time of the review: 4 May 2017, 14:30-18:00

Date and time of the adoption of the report: 9 May 2017, 14:30 – 18:00

During the 27th UPR Working Group Sessions, India received 6 SOGIESC recommendations. It accepted 1 recommendation and noted 5 recommendations.

A. SOGIESC information:

- National Report:

Sexual orientation and gender identity

143. India agreed to study the possibility of eliminating any criminalisation of same sex relations.

144. Section 377, Indian Penal Code, criminalizes homosexuality. In 2009, the Delhi High Court declared this section to be, the Supreme Court in February 2016 agreed to another hearing on the matter, which is now subjudice. In a related judicial development, in 2014, the Supreme Court recognized that sexual orientation and gender identity are integral to a person's personality and are "basic aspects of self-determination, dignity and freedom." The Court stated that discrimination on the basis of sexual orientation violates India's constitutional guarantee of equality.

145. In 2014, the Supreme Court of India recognized that discrimination, violence and prejudice based upon a person's gender identity, as well as the non-recognition of transgendered persons in law, violates India's constitutional commitments to equality, liberty and life with dignity. The Court directed the state to include transgendered persons within the categories eligible for various affirmative action schemes. In 2016, the Transgender Persons (Protection of Rights) Bill, 2016 was introduced in the Lok Sabha. This Bill seeks to protect transgendered persons from violence and discrimination. It also provides for equal opportunities in education, employment and residence. Simultaneously, the Government is working on an Umbrella Scheme for the Welfare of Transgender Persons. India has also taken various steps to make state practices and public spaces safe and inclusive for transgendered persons.

- Compilation of UN information:

17. The country team reported on a 2014 landmark judgment of the Supreme Court affirming the equal rights of transgender persons and that, in 2014, the same Court had overturned a 2009 judgment by the Delhi High Court that had decriminalized consensual same-sex relationships between adults. Referring to a recommendation, the Committee on the Elimination of Discrimination against Women urged India to make efforts towards eliminating the criminalization of same-sex relations. The Special Rapporteur on violence against women recommended that India repeal section 377 of the Penal Code.

- Summary of stakeholders' information:

4. Regarding same-sex relations, although the Delhi court had decriminalized same- sex relations, it was overturned at the Apex court, which is again seized of the matter.

38. Noting the re-criminalization of homosexuality in 2013, JS21¹⁷ highlighted abuses against LGBTI persons since India's second cycle review in 2012. JS18 recommended that India repeal Section 377 of the Penal Code.

¹⁷ Joint Submission 21 submitted by Center for Health Law, Ethics and Technology, (CHLET) Haryana, India and India HIV/AIDS Alliance, New Delhi, India;

9. HRW reported that the Supreme Court recently recognized transgender individuals as a third gender and ordered a review of its earlier judgement that upheld a discriminatory colonial-era law criminalizing homosexuality. Nevertheless, JS21 noted that there has been little effort to give effect to one of the decision's key holdings—that transgender persons must be given legal recognition for the self-identified gender. ICJ recommended engaging in meaningful public consultation with members of the transgender community, with a view to substantially revising the Transgender Persons (Protection of Rights) Bill, 2016, to bring it in line with the Court's decision and international human rights law.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks: India has been in the forefront on recognizing rights of transgender persons. In April 2014, the Indian Supreme Court gave a landmark judgement, directing the government to declare transgender persons as the third gender, and include them as another backward class, entitled to affirmative action benefits. The court also reinforced that they should have all rights under law, including: marriage, adoption, divorce, succession and inheritance.

Intervention made by India after 35 interventions: On the issue of transgender persons, the government has introduced in the parliament, the transgender persons' protection of rights bill 2016, for welfare of transgender persons. The bill has provisions for non-discrimination against transgender, recognition of identity of such persons and conferring upon them, the right to self-perceived gender identity. Provision 14 of gender, right to residence, formulation of welfare schemes and programs for education, social security and health. It also provides for the formation of a national council for transgender persons and penalties for offenses against such persons. Presently, this bill has been referred to the parliamentary standing committee for their examination.

Additionally, in April 2014 the Supreme Court of India gave a landmark judging directing the government to declare transgenders as a third gender, and as included in other backward classes to ensure a large number of rights under the constitution.

On the issues of rights of lesbians, gays and bisexuals' persons Section 377 of the Indian Penal Code which criminalizes such acts by adults of the same-sex in private was in fact set aside and decriminalized by a high Court judgment which was however overturned by the Supreme Court. However, in an unprecedented move, the Supreme Court has itself agreed to reexamine the issue, but referring a curative provision to a larger bench. The hearing is expected in the near future.

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Iceland:** My delegation further regrets the vote against the amendment to decriminalize same-sex relations.
- **Sweden:** We wish India all success in promoting an inclusive society where everyone's rights are equally respected, regardless of caste, gender, sexual orientation, religion and belief.
- **Brazil:** We note with appreciation the 2014 landmark Supreme Court judgement affirming the equal rights of transgender persons. We encourage the Indian government to further promote policies to address discrimination based on sexual orientation and gender identity.
- **Canada:** Canada thanks India for its presentation and welcomes India's efforts to strengthen justice for victims of sexual assault. We also commend the Supreme Court of India's recognition of transgender persons.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by India and have been accepted by India:

- 5.80. **Israel:** Adopt measures to effectively protect transgender persons, including the implementation of the Transgender persons or (Protection of Rights) Bill

c) The recommendations formulated during the interactive dialogue/listed below have been examined by India and have been noted by India:

- 5.71 **Ireland:** Intensify efforts to guarantee equality and non-discrimination in line with its international obligations, by developing public human rights awareness programmes and taking concrete steps to advance the rights of women and girls, members or religious minorities, LGBTI persons and to combat caste-based discrimination including to: criminalise marital rape; de-criminalise consensual same-sex relations; and establish appropriate policies and practices for registering, investigating and prosecuting violence against women, girls and members or religious minorities.
- 5.76. **Iceland:** Repeal Section 377 of the Indian Penal Code and ensure that consensual same-sex relations are not criminalized
- 5.77. **Israel:** Take steps to end the criminalization of same-sex relations
- 5.78. **Norway:** Amend or revoke section 377 to de-criminalise same-sex relations (Norway);
- 5.79. **Canada:** Repeal Section 377 of the Indian Penal Code which criminalizes same-sex conduct between consenting adults and enact legislation consistent with the Supreme Court's recognition of the rights of transgender persons

D. Recommendations for the Second Cycle (2012):

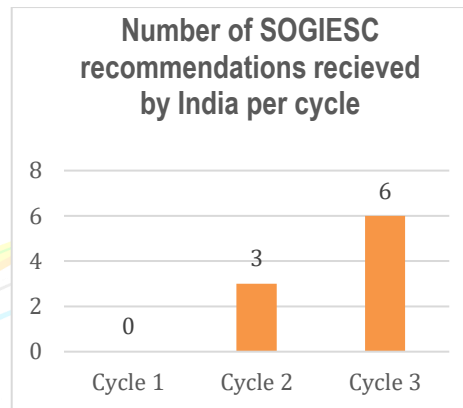
RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and Adivasi groups, as well as, women, trafficking victims, and LGBT citizens	US	Noted
Study the possibility of eliminating any criminalisation of same-sex relations	Argentina	Accepted
Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment	Canada	Noted

E. SOGIESC questions submitted in advance for India:

- [Sweden:](#) Same-sex sexual relations are prohibited by the Indian Penal Code. Civil society organizations have reported discrimination of LGBT persons. What measures is the Government of India taking to ensure full equality before the law of all individuals regardless of their sexual orientation or gender identity?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:
None

G. Graphic comparison between cycles (1-3)



H. [Video of India's UPR Working Group Session](#)

I. SOGIESC mentions during India's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of India, no States made SOGIESC mentions.
- However, **Allied Rainbow Communities International** and **International Commission of Jurists** called on the State to repeal criminalising laws on consensual same-sex relations which perpetuate homophobic and transphobic attitudes.

UNIVERSAL PERIODIC REVIEW – INDONESIA
UPR SOGIESC RECOMMENDATIONS

Date and time of the review: 3 May 2017, 9:00 – 12:30

Date and time of the adoption of the report: 5 May 2017, 9:00 – 12:30

During the 27th UPR Working Group Sessions, Indonesia received 12 SOGIESC recommendations. It supported 2 recommendations and noted 10 recommendations.

A. SOGIESC information:

- [National Report](#): None
- [Compilation of UN information](#):

17. The Committee on the Elimination of Discrimination against Women was deeply concerned about severely discriminatory by-laws, including those in Aceh, that restricted women's rights in the conduct of their daily life, imposed dress codes, restricted freedom of movement and severely penalized allegedly immoral relationships. The Committee on Economic, Social and Cultural Rights noted with concern that laws and by-laws were in force that discriminated against women, marginalized individuals and groups such as sex workers, and lesbian, gay, bisexual and transgender persons.

67. The Special Rapporteur on adequate housing also recommended that the Government: (a) bring its national and municipal legislation and regulations regarding forced evictions, land acquisition and land concessions in line with international human rights law and standards; (b) review and repeal national and regional laws, policies and practices that perpetuated discrimination by State and non-State entities in access to adequate housing of marginalized groups such as women, lesbian, gay, bisexual and transgender people, internal migrants and religious minorities; and (c) ensure that victims of domestic violence across the country had access to shelters that were easily accessible, with priority given to female heads of households and victims of domestic violence.

- [Summary of stakeholders' information](#):

6. Komnas HAM emphasized that throughout 2012–2016, human rights defenders across the country were under attack in various forms, including murder. It also noted that public anti-LGBT campaigns were increasing, encouraged by anti-LGBT public comments, including by ministry representatives and members of Parliament. It further highlighted that violence continued between religious groups in the form of arson and obstruction of religious observances of religious minorities. Police had been hesitant to interfere in violence between religious communities.

14. Amnesty International noted that in Aceh Province, the Aceh Islamic Criminal Code, which came into effect on 23 October 2015, criminalizes consensual sexual relations and same-sex relations and extends the use of caning as a form of punishment.

17. Joint Submission 14 (JS14)¹⁸ stated that state protection for the LGBTI community was too weak and the authorities did not actively prevent intolerance and discrimination against them

29. Human Rights Watch (HRW) emphasized that the Government fuelled an unprecedented attack against sexual and gender minorities in early 2016. Anti-LGBT statements by government officials created an environment of social sanction for harassment and violence against LGBT Indonesians that even led to death threats by militant Islamists.

¹⁸ Joint submission 14 submitted by: The Commission for the Disappeared and Victims of Violence (KontraS), Jakarta (Indonesia) and Democracy Education Association (P2D), Jakarta (Indonesia);

30. Joint Submission 6 (JS6)¹⁹ noted at least five alleged hate killings against transgender women in North Sulawesi between 2012–2016, and that arbitrary arrests and unlawful searches against LGBT individuals had been widely practiced by law enforcement personnel and public order officers.

31. Christian Solidarity Worldwide (CSW) noted the April 2016 decision to punish an elderly Christian woman and subject her to whipping for selling alcohol. Children under the age of 18 years could also be subjected to caning. S10 noted that legislation criminalizing same-sex relations in Aceh, a bylaw based on Sharia (Qanun Jinayat), was implemented at the end of 2015 that contains criminal offences such as liwath (anal sex between consenting men) or musahaqah (tribadism between two consenting women), which will be punished by a maximum of 100 lashes or 1,000 grams of gold fine or 100 months of imprisonment.

B. Remarks of the State Under Review (opening and closing speech): None

C. Recommendations for the Third Cycle (2017):²⁰

a) Remarks made by the Recommending State:

- **Slovenia:** We note with concern reports of alleged discrimination of persons belonging to minorities and indigenous communities, as well as LGBTI persons and urge Indonesia to continue its efforts to fight discrimination on any basis in law and in practice.
- **Sweden:** Although same-sex sexual relations are not criminalized in Indonesia, there are no national laws specifically protecting LGBTI persons against discrimination. Discriminatory provisions exist in, for example, the Anti-Pornography Law containing specific discriminatory language against homosexuality, as well as in local laws.

During 2016, the human rights situation for LGBTI groups in the country deteriorated after high-ranking Indonesian officials made inflammatory anti-LGBTI statements fueling increased hostilities towards LGBTI people, ranging from crackdown of LGBTI-friendly events to more subtle harassment and discrimination of LGBTI individuals.

Indonesia is party to several human rights treaties that includes obligations to protect against discrimination on the grounds of sexual orientation, such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights.

- **UK:** We are concerned of the deterioration of rights of the LGBT persons, including discriminatory statements made by government ministers.
- **Denmark:** Indonesia's ambitious decentralisation program that delegates legislative authority to the district and municipal levels has unfortunately coincided with an increase in the number of local laws and regulations that discriminates against and restricts access to basic rights for women and minorities.
- **Iceland:** Further, we are deeply troubled by the criminalization of consensual sexual relations and same-sex relations. We urge the government of Indonesia to fulfil its international obligations and ensure human rights for all its citizens homosexual and heterosexual alike.
- **Norway:** Norway also recommend that Indonesia review and repeal local bylaws that may limit rights guaranteed by the Constitution, especially as they relate to the rights of women, sexual minorities and religious minorities.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by Indonesia and have been supported by Indonesia:

- **7.56. Norway:** Take further steps to ensure a safe and enabling environment for all human rights defenders, including those representing the LGBT community and other communities
- **7.58. Ireland:** Ensure that existing legal and constitutional provisions protecting human rights in particular expression, association and assembly are fully implemented nationwide; repeal

¹⁹ Joint submission 6 submitted by: The LGBTIQ Forum of Indonesia, Jakarta (Indonesia);

²⁰ The following recommendations that **have already been accepted by Indonesia**, might be also used for advocacy purposes: 5.121. **Italy:** Strengthen efforts to prevent and combat all forms of discrimination and violence against women and children and **other vulnerable groups**, by adopting comprehensive legislation and launching awareness-raising campaigns. Ensure that women victims of violence receive appropriate help and perpetrators are brought to justice; 5.29. **Denmark:** Amends all local laws and regulations that discriminate against women and **marginalized groups**

discriminatory local by-laws contrary to Indonesia's own Constitution; prioritize progress on equality and non-discrimination, including in relation to LGBT persons; take action to prevent extremist groups from harassing, intimidating or persecuting religious and other minorities; and provide human rights training to officials in the legal and judicial system

c) The recommendations formulated during the interactive dialogue/listed below have been examined by Indonesia and have been noted by Indonesia:

- 7.26. **Norway:** Review and repeal local bylaws that may limit rights guaranteed by the Constitution, especially as they relate to the rights of women, sexual minorities and religious minorities
- 7.36. **Austria:** Work towards repealing regional or local bylaws discriminating persons based on their sexual orientation or gender identity
- 7.41. **Brazil:** Guarantee the rights of minority groups, particularly those of religious minorities and lesbian, gay, bisexual and transgender persons, through effective legal action against incitement to hatred and violent acts, as well as by revising legislation that can have discriminatory effects (Brazil);
- 7.42. **Czech Republic:** Review and amend the national legislation in order to reinforce the protection against discrimination, including based on religion, sexual orientation and gender identity, and introduce education programmes preventing such discrimination and stigmatization
- 7.43. **Spain:** Put in place a national policy to ensure the rights of LGTBI persons, and to punish cases of discrimination and those guilty of discrimination
- 7.44. **Sweden:** Ensure that national and regional laws and policies do not discriminate against any individuals in society, including LGBTI persons, and are in line with Indonesia's international obligations, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights
- 7.45. **Iceland:** Repeal or revise legislation, notably the relevant provisions of the Aceh Islamic Criminal Code, which criminalizes sexual relations among consenting adults of the same sex, as well as legislation, which discriminates on the basis of sexual orientation or gender identity
- 7.59. **Australia** Intensify all efforts to respect and uphold freedom of expression, assembly, and religion and belief, and to prevent discrimination on any grounds including sexual orientation and gender identity
- 7.66. **Argentina:** Take urgent measures to repeal norms and regulations that discriminate against women and lesbian, gay, bisexual, transgender persons, as well as to investigate and punish perpetrators of acts of discrimination and violence against them
- 7.71. **France:** Put an end to violence and discrimination in law and in practice against women, to violence and discrimination against homosexuals, and to female genital mutilation.

D. Recommendations for the Second Cycle (2012):

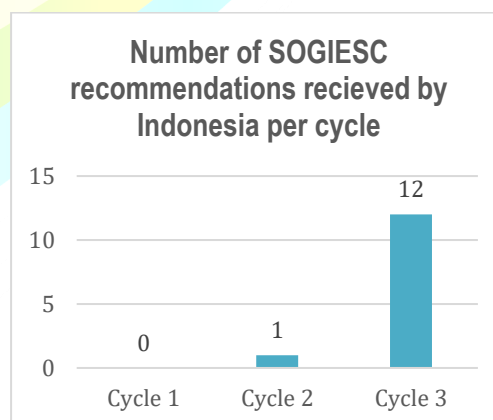
RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Eliminate the legislation which criminalizes sexual relations among persons of the same-sex, as well as all legislation which discriminates on the basis of sexual orientation, particularly in the Aceh province, where since the establishment of the Sharia Law in 2002 these kind of relations are not allowed	Spain	Noted

E. SOGIESC questions submitted in advance for Indonesia:

- **Slovenia:** How will Indonesia ensure that the amendments to its criminal code will not allow discrimination on any ground, including on sexual orientation and gender identity?
- **Sweden:** What steps is the Government of Indonesia taking to protect LGBT individuals from harassment and violence?
- **Switzerland:** How does the Government of Indonesia ensure the full respect of the right to freedom of opinion and expression, particularly in relation to religious and LGBT issues as well as in the application of its legislation on defamation and on electronic information and transactions?
- **Czechia:** What measures have been adopted in order to review national legislation so that it ensures protection against discrimination, including based on religion, sexual orientation and gender identity? Do they include public debate and awareness raising promoting tolerance and inclusiveness?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:**LGBTIQ Forum of Indonesia**

- Include the terms "sexual orientation" and "gender identity" in the existing constitutional clauses on equality and non-discrimination, as well as in the hate crimes legislation;
- Take all administrative measures, both on the national and local levels, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection of LGBT people in Indonesia;
- Reject any attempt to amend the criminal code that will lead to criminalization of people based on sexual orientation and gender identity;
- Call to legislate a comprehensive anti-discrimination law that includes the prohibition and prevention of discrimination on the basis of sexual orientation and gender identity, to provide effective protection of LGBT people in Indonesia;
- Conduct full and independent investigation into all allegations of harassment, violence, or abuse of LGBT individuals, and prosecute perpetrators;
- Conduct comprehensive human rights education towards all civil servants, including law enforcement officers, with an aim to promote gender sensitivity, inclusion and non-discrimination on the basis of sexual orientation, gender identity and expression;
- Repeal any laws and regulations that categorize gay, lesbian, bisexual and transgender people as deviance and illness, such as those that are written in the social ministry's regulation no. 8/2012 about people with social welfare problem

G. Graphic comparison between cycles (1-3)**H. Video of Indonesia's UPR Working Group Session**

I. **SOGIESC mentions during Indonesia's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017**

- During the UPR outcome of Indonesia, the **United Kingdom** said "We hope that Indonesia will extend the same rights and protections to all citizens; irrespective of their location, religious beliefs, or sexual orientation".
- **ILGA** and **COC Nederland** made a [joint statement](#) which expressed deep concern about discrimination and violence against LGBTI persons from State and non-State actors in Indonesia.
- They were joined by other NGOs who called out anti-LGBTI activity in Indonesia, including **Asian Forum for Human Rights and Development**, **British Humanist Association** and **International Federation for Human Rights Leagues**.

UNIVERSAL PERIODIC REVIEW – MOROCCO UPR SOGIESC RECOMMENDATIONS

Date and time of the review: 2 May 2017, 14:30 – 18:00

Date and time of the adoption of the report: 5 May 2017, 15:00-18:00

During the 27TH UPR Working Group Sessions, Morocco received 10 SOGIESC recommendations. It supported 3 recommendations, partially rejected 1 recommendation and rejected 6 recommendations.

A. SOGIESC information:

- [National Report](#): None
- [Compilation of UN information](#):

17. OHCHR reported that, in 2015, it had received information about four men who had been convicted of sodomy and sentenced for imprisonment after a trial that seemed to have been unfair. The media had reported the arrest of 20 individuals in 2015 because of sexual relations between persons of the same sex.

18. The Human Rights Committee recommended that Morocco decriminalize homosexuality, free anyone who is in detention solely for having had consensual sexual relations and put an end to the social stigmatization of homosexuality and incitement to hate directed at persons because of their sexual orientation or gender identity.

- [Summary of stakeholders' information](#):

15. Amnesty International indicated that Morocco continued to imprison people under laws criminalizing same-sex sexual relations between consenting adults. Between May and June 2015, five men were sentenced to prison by "indecentry"

16. JS5²¹ recommended criminalizing hate speech and violence on the basis of religion or sexual orientation

B. Remarks of the State Under Review: None

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Uruguay**: Finally, in line with the recommendation submitted by the Human Rights Committee with the aiming to end with the social stigmatization of homosexuality and discrimination and violence on the grounds of sexual orientation and gender.
- **Argentina**: Special attention has been given by Argentina to the discrimination suffered by LGBTI persons.
- **Chile**: However, our country continues to be concerned about the stigmatization, discrimination and violence faced by individuals based on their sexual orientation and gender identity, we urge Morocco to pay attention to this problem.
- **Iceland**: Further we are concerned about reports on discrimination against the LGBTI community.

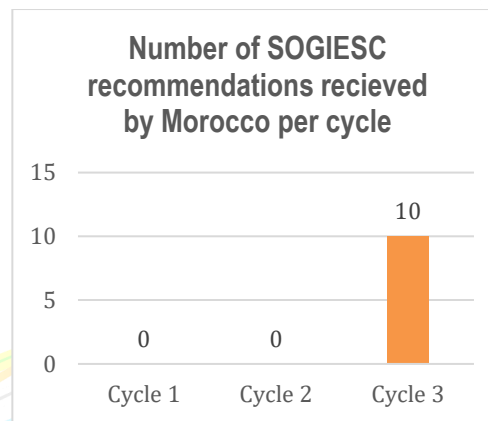
b) The recommendations formulated during the interactive dialogue and listed below **have been examined by Morocco and have been supported as fully implemented by Morocco**:

- 6.72. **Canada**: Prohibit discrimination and criminalize violence against persons on the basis of their sexual orientation or gender identity

²¹ Joint submission 5 submitted by: Civil Coalition of Moroccan Youth Organization: Prometheus Institute for Democracy and Human Rights, Youth forum for Democracy and Citizenship, Observatoire du RIF pour les Etudes et Recherche Sciences Sociales, L'Association Manar pour l'Incitation à la Citoyenneté Active et Locale A.M.I.C.A.L., Jeunes Femmes pour la Démocratie Casablanca, Forum d'Innovation des jeunes et des Etudiants de l'Université Hassan I Settat, Forum Beni Zoli pour le Développement et la Communication Fobdec- Zaragoza, Fondation Zaer pour les Etudes et la Recherche, Atlas Center for Diplomacy Studies, Association Thissaghinasse pour la Culture et le Développement (Asticude)- Nador, Association Tazghart, Association pour le Développement de l'Enfance et de la Jeunesse (42 section);

- 6.73. **France:** Put an end to discriminations (including legal ones) faced by Lesbian, Gay, Bisexual, Transgender and Intersex persons
- 6.79. **Argentina:** Take urgent measures to repeal the norms that criminalize and stigmatize LGBTI persons and investigate and punish the perpetrators of acts of discrimination and violence against them
- c) **The recommendations formulated during the interactive dialogue and listed below have been examined by the Morocco and have been partially rejected by Morocco:**
 - 6.75. **Spain:** Ensure the same rights to all citizens, including those of the LGBTI collective, decriminalizing same-sex relationships and eliminating all discriminatory legislation on the basis of sexual orientation²²
- d) **The recommendations formulated during the interactive dialogue and listed below have been examined by Morocco and have been rejected by Morocco:**
 - 6.32. **Ireland:** Revise the Penal Code and associated law for compliance with international standards, to guarantee equality between men and women, criminalise marital rape, de-criminalise sexual relations outside marriage, abolish discrimination against children born outside of marriage, increase the minimum age of marriage to 18; de-criminalise consensual same-sex relations and develop public awareness programmes to address stigmatisation of LGBTI persons
 - 6.70. **Uruguay:** Decriminalize consensual homosexual relations, and release those who were detained for that cause
 - 6.71. **Belgium:** Repeal article 490 of the Penal Code criminalizing sexual relationships outside marriage in order to eliminate risks associated with abandonment and institutional stigmatization of children born out of wedlock
 - 6.74. **Mexico:** Decriminalize consensual relations between same-sex adults
 - 6.77. **Netherlands:** Decriminalize consensual sexual relations, including by repealing penal code provisions in the Articles 489 to 493, prohibiting same-sex sexual relations, sexual relations outside marriage as well as adultery
 - 6.80. **Iceland:** Repeal legislation, in particular Article 489 of the Penal Code, criminalising consensual sexual conduct between same-sex adults
- D. **Recommendations for the Second Cycle (2012):** None
- E. **SOGIESC questions submitted in advance for Morocco:**
 - **Netherlands:** Welcoming the attention in the national report on the promotion and protection on the rights of specific groups, we would like to ask the government for an update on developments regarding the rights related to sexual orientation and gender identity: can the government report on societal, political or legal developments?
- F. **SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:** None
- G. **Graphic comparison between cycles (1-3)**

²² Morocco partially rejected this recommendation on the basis that its Constitution "enshrines the principle of equality of all citizens and national law criminalizes and punishes the perpetrators of acts of violence and discrimination" for whatever motive, however the decriminalization of same-sex relationships is inconsistent with the national framework.



H. [Video of Morocco's UPR Working Group Session](#)

I. SOGIESC mentions during Morocco's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of Morocco, **Belgium** said "Belgium takes note with regret that its two other recommendations have not been accepted by Morocco, the first concerning the repeal of Article 490 of the Criminal Code criminalizing sexual relations outside marriage".
- **Amnesty International** and **Human Rights Watch** expressed regret that Morocco noted recommendations to decriminalise consensual same-sex relations.

UNIVERSAL PERIODIC REVIEW - NETHERLANDS

Date and time of the review: 10 May 2017, 9:00 – 12:30

Date and time of the adoption of the report: 12 May 2017, 17:00 – 18:00

During the 27th UPR Working Group Sessions, Netherlands received 5 SOGIESC recommendations. It accepted 3 recommendations and noted 2 recommendations.

A. SOGIESC information:- National Report:

20. Many municipalities work on the promotion and protection of human rights. Some notable examples of human rights actions at the local level are:

The 44 so-called “Rainbow Cities”, which have signed the Rainbow Cities Covenant, in which they declare to improve the social acceptance, safety and emancipation of LGBTIs;

26. The Dutch Government presented a new National Action Programme to combat discrimination in all its forms on 22 January 2016. This programme provides a boost and brings coherence to the government’s policies in this area, and articulates the government’s vision of how to combat discrimination and xenophobia in the coming years. The programme includes both the general antidiscrimination approach, and measures focused specifically on various target groups, among which people who are discriminated against on the grounds of descent, skin colour, religion, sexual orientation, gender, age and handicap or chronic illness. The parliament will be informed annually on the progress made in this respect.

LGBTI

Combating transgender discrimination and stimulating their employment

38. The Netherlands supports the national expertise and lobbying group Transgender Network Netherlands (TNN), in areas such as building up networks for transgender individuals, increasing sensitivity among employers, and sharing best practices to promote the participation of transgender people. It also supports a project to help transgender people to (re-)enter the labour market, through coaching, job application training, and in some cases supervision in the workplace. To improve the rights of transgender people within Europe, the Netherlands supports the work of Transgender Europe.

Intersex people

39. The Netherlands supports the advancement of the rights of intersex people both nationally and internationally. Themes discussed nationally include promoting and protecting health, medical ethics policy, research on the specific problems of intersex children, and the promotion of expertise among medical professionals. To further these goals, an expert meeting was held with all the relevant parties and experts in November 2016 to chart the issues that may be at stake, to identify the specific problems experienced by intersex people, and to define what the role of the Dutch government and of other stakeholders could be in tackling these problems. In the first half of 2017, a follow-up meeting will be organised to discuss the results of some of the thematic working groups. In addition, a preliminary investigation was conducted in 2016 on the question of whether the prohibition of discrimination on the grounds of gender identity and gender expression could be made explicit in the Equal Treatment Act, including references to physical sexual characteristics. On 16 January 2017, a draft bill was submitted by parliament to clarify discrimination on the grounds of gender in the Equal Treatment Act, so it would thereafter include physical sexual characteristics, gender identity and gender expression. Furthermore, the possibility is being explored of devising a specific ‘product’ for use in information

sessions at schools on intersex or sexual variations. Finally, on 26 October 2016 (Intersex Awareness Day), the guide “10 Q&As about intersex” for local professionals was published, with financial support from the government.

Safety of LGBTIs

40. LGBTIs are more likely to feel unsafe in their local neighbourhood than heterosexuals. A large proportion of incidents of bullying and/or violence are not reported to the police, and those that are reported are not always dealt with properly. Combating discrimination and hate crimes against LGBTIs is rarely incorporated into the safety policies drawn up by municipal councils. However, the police have taken up the subject, for instance through the ‘Pink in Blue’ organisation, which is an LGBTI network within the police. The antidiscrimination bureaus also take an active role in improving the efforts to stamp out violence and discrimination targeting LGBTIs, from identifying and reporting to taking effective action, aftercare, and prevention.

41. Since 2011, NGOs, knowledge institutes, and others including the police have been cooperating in a national gay-straight alliance called Natuurlijk Samen. This has heightened awareness of the problem, but the approach still tends to be ad hoc: action is only taken in response to specific incidents. Over the next years, greater effort will be made to build up partnerships with municipal organisations and those involved in safety issues. In addition, LGBTI discrimination will be linked more strongly to discrimination on other grounds, such as ethnicity, which is also a key factor in numerous incidents in local neighbourhoods and asks for a similar, more effective, approach.

Same-sex unions in Aruba

42. With the parliamentary adoption of an amendment to the Civil Code concerning the law of persons and family in September 2016, registered partnerships have been made possible for civil unions between both same-sex and heterosexual couples.

71. One element of the Netherlands’ integration policy is the self-determination programme. Self-determination is about the ability and freedom to make one’s own choices about matters such as education, training, recreational activities, choice of life partner, living alone, getting a divorce, and religion, without any pressure or coercion. The Netherlands is a democracy governed by the rule of law, in which everyone has the same rights and obligations, and self-determination is generally taken for granted. In some communities, however, honour and group pressure play a role. Violations of someone’s right to self-determination occur primarily in relationships of dependency and inequality between a man and a woman. Examples include forced marriage, marital captivity, child marriage, abandonment, honour-related violence, a life of enforced isolation, and the non-acceptance of homosexuality.

104. The freedom of expression applies to every citizen, including politicians. It is, however, limited by articles 137c and 137d of the Penal Code, which prohibit intentional insult of, or incitement to hate, discrimination or violence against a group of persons because of their race, religion or belief, sex, sexual orientation or handicap. In 2014, the Public Prosecution Office prosecuted 134 cases on the basis of these provisions. In 2017, a covenant will be concluded between the Public Prosecution Office, the police and antidiscrimination organisations to promote cooperation in this area.

- [Compilation of UN information:](#)

20. The Committee on the Rights of the Child was concerned that refugee children, asylum-seeking children, undocumented children, children belonging to ethnic minorities, children with disabilities, chronically ill children and lesbian, gay, bisexual, transgender and intersex children continued to face discrimination.

73. The Committee on the Elimination of Racial Discrimination was concerned about domestic violence not being recognized as a ground for asylum and about reports of cases of refoulement of asylum seekers fearing persecution because of their sexual orientation.

- Summary of stakeholders' information:

22. Muslims for Progressive Values (MPV) stated that discrimination on the grounds of race, ethnicity, nationality, religion, gender, sexual orientation, gender identity and gender expression persisted within public and private spheres.

36. JS2²³ noted existing discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons as well as hate crimes, including violence committed against LGBTI persons and a law introduced in the parliament with the aim of abolishing three articles in the penal Code (137 c-e) that protected against discrimination based on amongst other things sexual orientation. If the law were to be adopted, inciting hatred and insulting people on the grounds of their sexual orientation would no longer be punishable. JS2 recommended upholding existing anti-discrimination paragraphs of the Penal Code.

37. Regarding recommendation no. 98.44 to combat discrimination in the labour market, in particular targeting transgender people, JS2 reported on a lack of adequate legal protection against discrimination against transgender and intersex people in the labour market. It recommended amending Equal Treatment Act to include explicit prohibition of discrimination on trans and intersex people.

38. JS2 stated that transgender persons under the age of 16 had no access to legal gender recognition. Intersex persons needed a judicial approval and transgender people aged 16 and older needed a letter from a doctor or psychologist to get access to legal gender recognition.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks:

- **Minister of Aruba:** Much needed progress has been made through legislative changes to our Civil Code. With the parliamentary adoption of an amendment to the Civil Code concerning the law of persons and family in September 2016, registered partnership has been made possible for same sex and heterosexual couples civil unions to be legally recognized.
- **Curaçao's speech:** As awareness on human rights is essential to reach a better compliance of Curaçao to these treaties, both governmental and non-governmental organizations organized and participated together at human rights sessions. The topics for these sessions varied but are all known challenges for Curaçao. Some of the topics were:
 - domestic or relational violence;
 - discrimination based on gender, race or belonging to the LGBTI-community, but also
 - the establishment of a Human Rights Institute for Curaçao.

Closing Remarks:

- (...) Brazil, Belgium and Ireland have asked about legal education with respect to sexuality and sexual diversity, we are currently doing that, several measures have been taken and would be taken also, in the area of secondary and high education studies, several developments are ongoing in order to improve attention to sexual orientation, for sexuality and sexual diversity. One of these is to start this year to include sexual diversity in the curriculum of secondary and high education studies, and since we have diversity of schooling system itself this is to ensure that we more or less are automatic in some schools, but it is also a bit of a taboo in others, and we are trying to break that taboo where we can.
- Ireland and Israel have raised the issue of transgenders and their rights, and it was also mentioned by several other delegations. Discrimination of transgenders based on their gender is prohibited in the Netherlands in both article 1 of our constitution and also in the equal treatment act. The protection of these articles does not extend to people who are comfortable with a binary male

²³ Joint submission 2 submitted by: Federatie van Nederlandse Verenigingen tot Integratie van Homoseksualiteit – COC Nederland; Nederlands Netwerk voor Intersekse/DSD – NNID; and Transgender Netwerk Nederland – TNN (Netherlands);

female or those situations, but also to people who do not feel comfortable with that and are for example in the categories of trans or intersex, and obvious that is not automatic and is not on the view of everybody, so it needs work, and we will continue doing that.

C. Remarks made by Recommending States:

- **US:** The United States commends the Netherlands' longstanding commitment to the promotion of human rights, highlighting the co-founding of the Equal Rights Coalition and the National Action Program to Combat Discrimination.
- **Australia:** We commend the Netherlands' strong reputation on LGBT+ rights and note the Government is working on the advancement of intersex rights.
- **Brazil:** Brazil welcomes the recent achievements on the fight against LGBTI discrimination, just as the adoption of the lesbian parenthood bill and the transgender rights bill.
- **Israel:** Israel takes note of the important measures taken by the Netherlands since its last UPR, such as the establishment of a National Action Plan on Human Rights, the "Rainbow Cities" initiative, and Sexual Violence Centers, as well as the many policies adopted to fight human trafficking and sexual exploitation.
- **Sweden:** Individuals with "non-western" background, women, and LGBTI-persons experience most discrimination in the Dutch labor market. Many LGBTI-persons in the Netherlands encounter hate crimes but very few cases result in prosecution and, or, conviction of the offender.
- **Ireland:** Finally, we urge the Netherlands take further efforts to protect LGBTI persons from violence and discrimination including through increasing protection from and appropriate prosecution of hate crime; and to consider moving to a system of self-declaration of gender identity in the process of recognition of the gender of transsexual persons.

a) The recommendations formulated during the interactive dialogue/listed below have been examined by the Netherlands and have been accepted by the Netherlands:

- 5.98. **France:** Continue its efforts aiming at eliminating all forms of discrimination, notably against LGBTI persons and against women in the labour market
- 5.136. **Belgium:** Ensure comprehensive sexuality education is integrated into the national school curriculum, including on topics such as sexual diversity, sexual rights and gender equality
- 5.138. **Slovenia:** Integrate human rights education into the national school curriculum, provide sufficient resources to human rights education and training of teachers and ensure that they receive training in topics such as sexual diversity, sexual rights, resilience, gender equality and consent

b) The recommendations formulated during the interactive dialogue/listed below have been examined by the Netherlands and have been noted by the Netherlands:

- 5.99. **Australia:** Implement measures to protect intersex persons from discrimination
- 5.100. **Israel:** Guarantee access to legal gender recognition for both intersex and transgender people of all ages, without legal, administrative or financial barriers

A) Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Take further measures to combat discrimination on the labour market and combat in particular discrimination based on ethnic origin and discrimination targeting transgender people	France	Accepted

B) SOGIESC questions submitted in advance for Netherlands:

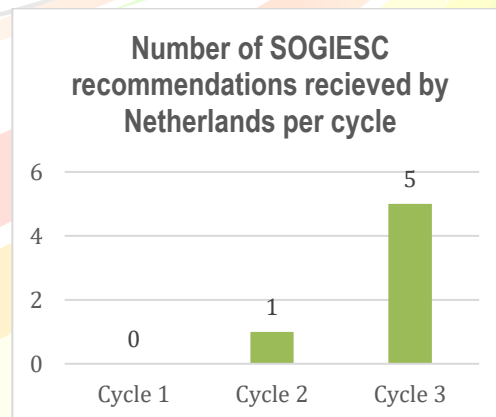
- [Mexico](#): What measures has the Netherlands taken in order to eradicate discrimination in the labor market, mainly on the grounds of ethnic origin and sexual orientation and gender identity?

C) SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

[Federatie van Nederlandse Verenigingen tot integratie van Homoseksualiteit – COC Nederland and Nederlands Netwerk voor Intersekse/DSD – NNID](#)

- Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent
- Implement mechanisms to protect intersex children against experimental medical treatments
- Guarantee access to legal gender recognition for both intersex and transgender children and adults, without obstacles infringing the individual's right to self-determination (i.e. expert letter or lawsuit) and financial barriers
- Enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered
- Enable parents of a new-born not to assign a gender at birth, to guarantee self-determination of the child at a later age
- Remove gender markers from ID documents
- Optimize law, policy and practice to lower hate crime rates and promote a higher percentage of perpetrators being prosecuted and convicted
- Issue an action program for countering hate crime against LGBTI, including indicators for success
- Make an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI

D) Graphic comparison between cycles (1-3)



E) [Video of Netherland's UPR Working Group Session](#)

F) SOGIESC mentions during Netherland's UPR outcome, Item 6 of the agenda of the Human Rights Council, 22 September 2017

- During the UPR outcome of the Netherlands, no States made SOGIESC mentions.
- However, **COC Nederland** said that there was much room for improvement in terms of LGBTI rights, including improving hate crime laws, ensuring full access to legal gender recognition, devising comprehensive education on sexual and gender diversity, and ending torture of intersex persons in healthcare settings.

**UNIVERSAL PERIODIC REVIEW – PHILIPPINES
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 8 May 2017, 9:00-12:30

Date and time of the adoption of the report: 11 May 2017, 16:30 – 18:00

During the 27th UPR Working Group Sessions, Philippines received 2 SOGIESC recommendations. It supported 1 recommendation and noted 1 recommendation.

A. SOGIESC information:

- [National Report:](#)

Lesbian, Gay, Bisexual, Transgender (LGBT)

Recommendation 131.30

96. GPH has anti-discrimination laws and policies protecting all sectors, including the LGBT. The MCW provides for equal treatment of every individual regardless of ethnicity, gender, age, language, sexual orientation or other status as established by human rights standards. In 2016, Representative Geraldine Roman of Bataan became the country's first transgender elected to Congress.

97. Civil Service Commission (CSC) Memorandum Circular (MC) No. 29-2010 prohibits discrimination against LGBTs applying for civil service examinations. In addition, the CSC's Revised Policies on Merit and Promotion plan include a provision that inhibits discrimination in the selection of employees based on various criteria including gender.

98. The bill prohibiting discrimination on the basis of Sexual Orientation and Gender Identity and Expression (SOGIE), aimed to ensure equal treatment in the workplace, schools, commercial establishments, and government offices is currently pending in Congress. In the meantime, 19 LGU have enacted their own Anti-Discrimination ordinances. DSWD also issued a memorandum respecting the right of LGBT personnel to wear uniforms based on their preferred SOGIE.

- [Compilation of UN information:](#)

13. The Committee on Economic, Social and Cultural Rights expressed concern at the delay in adopting a comprehensive anti-discrimination law, as proposed in Senate bill No. 2475. It was also concerned at the discriminatory provisions in the existing laws, including section 29 (a) of the Immigration Act and sections 269 and 272 (b) of the Labour Code, as well as at the discriminatory application of laws, such as article 200 of the Revised Penal Code, against lesbian, gay, bisexual, transgender and intersex persons.

14. The Human Rights Committee expressed concern at the prevalence of stereotypes and prejudices against lesbian, gay, bisexual and transgender persons in the military, the police and society at large, and recommended adopting a comprehensive anti- discrimination law that prohibited discrimination on the basis of sexual orientation and gender identity.

70. Referring to the relevant supported recommendations, the United Nations country team stated that Muslim women, indigenous women, women with disabilities, women who were migrant workers, internally displaced women and lesbian, bisexual, transgender and intersex women faced a heightened risk of violence, exploitation and abuse, as well as discrimination in political and public life, marriage and family relations, employment, education, access to justice and health care.

- Summary of stakeholders' information:

20. JS4²⁴ recommended strengthening the role of CHRP to include investigating human rights violations based on sexual orientation and gender identity.

22. JS4 stated that the 1987 Constitution did not explicitly mention sexual orientation and gender identity as grounds for protection, making subsequent policies and programmes non-responsive to the various forms of discrimination against LGBTIQ persons.

23. JS13 stated that transgender persons will continue to suffer discrimination as long as there was no law or policy enabling them to change their name and civil status.

24. JS4 stated that the Reproductive Health Law and its corresponding programmes did not cater for the reproductive health needs of lesbian, transgender and intersex persons, who experienced discrimination due to the non-recognition of same-sex partnerships.

25. JS11²⁵ stated that there had been a rise in the on-line abuse of the LGBTIQ community which had taken the form of hate speech, harassment and bullying. S4 stated that hate crimes had been treated as "ordinary" crimes and recommended the adoption of legislation specifically criminalizing hate crimes based on sexual stated that bullying of children were on the rise.

26. JS13²⁶ called for the prosecution of alleged violations of the rights of LGBT persons, which were fuels by conservative religious beliefs.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks:

- (...) Philippines run for the rule of law, for equality for respect f human rights of all Filipinos regardless of their faith, social status, whether they are rich or poor, middle class or upper class, their sexual orientation, their age(...)
- (...) The new administration has committed to protect all sectors, including but not limited to: indigenous people, children, women, migrant workers, elderly, domestic workers, farmers and members of the LGBTI community.

Intervention made by Philippines after 46 interventions:

- **Carlos Abad Santos – Assistant Secretary – National Economic de:** On issues of none discrimination on the basis of sexual orientation and gender identity while there is currently no law specific to anti-discrimination on the basis of sexual orientation, there are existing statues, local government ordinances and even jurisprudence that address discrimination and hate crimes against people with diverse sexual orientation and gender identity and ensure their access to basic social services.
- **Closing remarks:** (...) Fact No. 4 Since the second cycle review in 2012 the Philippines has made significant strides towards the further promotion of the human rights of the vulnerable sectors of Philippines society, the members of our delegation have reported what their agencies have done to protect and advance on the rights of women and children, migrant workers, indigenous people,

²⁴ ASEAN Sexual Orientation, Gender Identity and Expression (SOGIE) Caucus, Association of Transgender People of the Philippines, Babaylanes, Inc, GALANG Philippines, LGBTS Christian Church Inc, Metropolitan Community Church of Marikina City, Metro Manila Pride, MUJER-LGBT Organization, PDR/ Deaf Resources Philippines, SHINE SOCCSKSARGEN Inc., Side B Philippines, The Philippine LGBT Chamber of Commerce, TLF Share, Quezon City, the Philippines (Joint Submission 4);

²⁵ Foundation for Media Alternatives, Association for Progressive Communications and Women's Legal and human Rights Bureau, Quezon City, Philippines (Joint Submission 11);

²⁶ Sexual Rights Network comprising of Family Planning Organization of the Philippines and EnGendeRights, Inc., London United Kingdom of Great Britain and Northern Ireland (Joint Submission 13);

older people, domestic workers and the LGBT community among others, in response to recommendations made by our fellow member states in the last review.

C. Recommendations for the Third Cycle (2017)²⁷:

a) Remarks made by the Recommending State:

- **Brazil:** We welcome efforts implemented by local governments to forbid discrimination based on sexual orientation, gender identity and gender expression.
- **Uruguay:** We applaud the important progress achieved when it comes to combatting discrimination and violence on the grounds of sexual identity, orientation and gender and we encourage you to pursue this path

b) The recommendations formulated during the interactive dialogue and listed below have been examined by the Philippines and enjoy the support of the Philippines:²⁸

- 6.126. **Mexico:** Take action to eradicate violence and discrimination against women and LGBTI persons, primarily in educational institutions

c) The recommendations formulated during the interactive dialogue and listed below have been examined by the Philippines and have been noted by the Philippines:

- 6.63. **Australia:** Consolidate its recent progress through implementation of comprehensive anti-discrimination legislation covering sex and sexual orientation, gender identity and intersex status

D. Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Consider establishing a comprehensive legislation to combat discrimination faced by LGBT people	Argentina	Noted

E. SOGIESC questions submitted in advance for Philippines:

- **Slovenia:** Referring to the recommendation of the Human Rights Committee to adopt a comprehensive anti-discrimination law prohibiting discrimination on the basis of sexual orientation and gender identity, we would be interested to hear, if the government has already taken any steps to adopt a comprehensive anti-discrimination law that would cover all forms of discrimination?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

ASEAN SOGIE Caucus and Side B

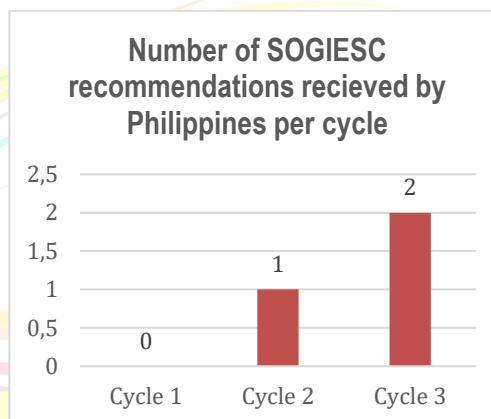
- Undertake efforts to pass anti-discrimination legislation protecting people from all forms of discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).
- Adopt a national labor policy that includes prohibitions on employment discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), and require LGBTIQ-affirmative programs in workplaces.
- Strengthen existing social protection and social service programs to make them more inclusive of LGBTIQ people, such as by extending social security, health and housing benefits to a person's same-sex partner.
- Strengthen the role of the Philippine Commission on Human Rights and community-based redress systems, such as the Barangay Justice System and the Barangay Council for the Protection of Children, to investigate and respond to human rights violations related to sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

²⁷ Philippines received also an openly or obliquely hostile recommendation to LGBTI persons and their right to found a family: 6.201. **Holy See:** Sustain and promote the family, based on marriage between a man and a woman, as the natural and fundamental unit of society. Philippines supported this recommendation.

²⁸ The following recommendations that **will be examined by the Philippines** might be also used for advocacy purposes: 6.61. **Georgia:** Speed up the process for the **adoption of the non-discrimination law**; 6.62. **Honduras** Adopt a comprehensive **law against discrimination** that is coherent with its social inclusion programs

- Ensure that school policies and curricula promote the rights of LGBTIQ persons, such as by removing all discriminatory content in all learning materials, providing LGBTIQ-inclusive counseling services, and providing access to gender-neutral restrooms in all educational facilities.

G. Graphic comparison between cycles (1-3)



H. [Video of Philippines's UPR Working Group Session](#)

I. SOGIESC mentions during Philippine's UPR outcome, Item 6 of the agenda of the Human Rights Council, 22 September 2017

- During the UPR outcome of Philippines, the State Under Review said in its closing statement that "Philippines is committed to eventually implementing even those recommendations that were only noted at this stage, after the completion of the necessary legislative and other domestic processes. An example is one of the sexual orientation and gender-specific recommendations that we noted. I wish to also inform that just yesterday the Philippine House of Representatives passed on third and final reading the proposed Anti-LGBT Discrimination Bill".
- ILGA, in consultation with ASEAN SOGIE Caucus and more than 10 Filipino LGBTIQ groups, made a [statement](#) in which it welcomed many improvements in LGBTI rights in the Philippines yet expressed concern of the discrimination which persists in education, health, housing and other public settings.

**UNIVERSAL PERIODIC REVIEW – POLAND
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: 9 May 2017, 9:00 – 12:30

Date and time of the adoption of the report: 11 May 2017, 16:30 – 18:00

During the 27th UPR Working Group Sessions, Poland received 11 SOGIESC recommendations. It accepted 6 recommendations, partially accepted 4 recommendations, and did not accept 1 recommendation.

A. SOGIESC information:

- **National Report:**

Rights of sexual minorities

Combatting discrimination and violence on grounds of sexual orientation – recommendations 66, 68, 70, 71

85. The prohibition of discrimination in political, social and economic life on all grounds is part of the Polish legal system enshrined in Article 32 (2) of the Constitution. The Polish legal system, considered holistically, safeguards broad protection of the principle of equal treatment on many levels.

86. Protection against discrimination should be considered in the first place in the context of protection of personal rights safeguarded by civil law. In the current legal status quo, this matter is governed by Article 23 of the Civil Code. It defines personal rights by providing an open-ended list of designations including reputation, freedom of conscience, name and image.

87. The aforementioned provisions imply that protection of personal rights is comprehensive as it may be exercised in many ways using diverse remedies. It may be financial or non-financial in nature.

88. Further to the foregoing, it should be noted that the applicable legislation offers comprehensive protection of any person whose personal rights have been violated or put at risk. This includes two types of non-financial claims: to cease and desist, and to take measures necessary to eliminate the violation of personal rights. Furthermore, it provides that financial protection as compensation may be adjudicated in favour of the victim or a charity in each case of violation of (or risk to) personal rights, as well as damages where a financial loss is incurred due to the violation of personal rights.

89. According to Article 11.3 of the LC, any discrimination in employment, including on grounds of sexual orientation, either direct or indirect, is prohibited. Employees have equal rights for equal performance of the same obligations (recommendation 70). The provisions of the LC concerning compensation for a violation of the principle of equal treatment in employment apply in the event of damage caused by discrimination on grounds of sexual orientation. The Act of 3 December 2010 implementing certain EU legislation on equal treatment prohibits discrimination (among other things on grounds of sexual orientation) against individuals who work under civil law contracts

90. Protection against discrimination is safeguarded by the Act on Promotion of Employment and Labour Market Institutions. The Act on Promotion of Employment and Labour Market Institutions provides for criminal liability in the event of violation of the principle of equal treatment. Certain EU legislation on equal treatment applies in proceedings involving violation of the principle of equal treatment.

91. The National Labour Inspectorate takes three types of actions to enforce the legislation on equal treatment in employment: prevention, advisory, and monitoring of employers accused of discriminatory practice. Criminal law and labour law, as well as a range of specific statutes, include safeguards of the prohibition of discrimination.

- **Compilation of UN information:**

12. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights recommended that Poland amend the Act on Equal Treatment to prohibit discrimination comprehensively on all grounds prohibited under the International Covenant on Civil and Political

Rights and the International Covenant on Economic, Social and Cultural Rights, including sexual orientation, disability, religion, age and political opinion, and in all spheres and sectors, including education, health care, social protection and on the Rights of the Child made a similar recommendation.

13. The Human Rights Committee was concerned that the Criminal Code did not refer to disability, age, sexual orientation or gender identity as grounds for hate crimes. The Committee against Torture recommended that Poland amend the Code to punish hate crimes and acts of discrimination and violence based on sexual orientation, disability or age. The Committee on the Rights of the Child made a similar on the Elimination of Racial Discrimination recommended that Poland amend its Criminal Code to make any racial motivation of a crime an aggravating circumstance and to allow for enhanced punishment to combat the occurrence of such acts.

14. The Human Rights Committee was concerned about the reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents.

21. The Committee on the Elimination of Discrimination against Women pointed to the limited effectiveness, if any, of measures to counter negative stereotypes against Roma women, lesbian, bisexual, transgender and intersex women and women with disabilities.

22. The Human Rights Committee recommended that Poland review the legal status of same-sex couples and parents with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact.

- **Summary of stakeholders' information:**

6. Joint Submission 5 (JS5)²⁹, Polish Council of Youth Organizations (PROM) and AI expressed concern about the significant reduction of the budget for the Office of the Human Rights Commissioner (Office of the indicated that the budget cut posed a serious risk of a number of adverse consequences and was against recommendations 90.32, 90.34 and 90.35. JS5 and Joint Submission 6 (JS6) highlighted that the main argument for cutting its budget was the fact that it carried out anti-discrimination tasks, including gender equality and LGBT rights, and that the Commissioner for Human Rights had regularly been attacked by right-wing parties, including the ruling party. The Council of Europe Commissioner for Human Rights (CoE- Commissioner) strongly urged Poland to ensure that the Office of the Commissioner enjoy full independence through adequate resources.

11. AI, Fundacja Trans-Fuzja (TF), JS5, and the European Commission against Racism and Intolerance of the Council of Europe (CoE-ECRI) expressed concern that LGBTI persons and persons with disabilities had not been awarded greater protection in Poland's anti-discrimination law.

12. JS5 indicated that the Equal Treatment Act lacked holistic approach to the issue of discrimination and did not treat all marginalised groups equally. This resulted in hierarchy of protection, where the least protected grounds were sexual orientation, age, disability and religion. Prohibition of

²⁹ Joint submission 5 submitted by: The Polish Coalition for Equal Opportunities consisting of Polish Society of Anti-Discrimination Law, Warsaw (Poland); Anteris Fundacja Pomocy Prawnej; Centrum Wsparcia Imigrantów i Imigrantek; Federacja na rzecz Kobiet i Planowania Rodziny; FORUM 50+; Forum Żydów Polskich; Fundacja "PHAN BDE"; Fundacja "Pies Przewodnik"; Fundacja Autonomia; Fundacja Bez Dyskryminacji; Fundacja Centrum Praw Kobiet; Fundacja eKropka; Fundacja Europejskie Centrum Równości; Fundacja Feminoteka; Fundacja Generacja; Fundacja im. Izabeli Jarugi - Nowackiej; Fundacja Inicjatyw Społecznych "Się Zrobi!"; Fundacja Just Better; Fundacja Klinika Rządzenia; Fundacja Kultury Bez Granic; Fundacja MaMa; Fundacja My Pacjenci; Fundacja na Rzecz Różnorodności Polistrefa; Fundacja na Rzecz Równości i Emancypacji STER; Fundacja Nasza Przestrzeń; Fundacja Przestrzeń Kobiet; Fundacja Równości; Fundacja Trans-Fuzja; Fundacja TUS; Fundacja Wiedza Lokalna; Fundacja Wolontariat Równości; Fundacja Rodzici po Ludzku; Fundacja Strefa Kobiet; Fundacji Aktywności Lokalnej; Helsińska Fundacja Praw Człowieka; Instytut Podkarpacki; Kampania Przeciw Homofobii; Koalicja Karat; Lambda Bydgoszcz; Lambda Warszawa; Polski Instytut Praw Człowieka i Biznesu; Polskie Forum Osób Niepełnosprawnych; Stowarzyszenia Romów w Polsce; Stowarzyszenie "W stronę Dziewcząt"; Stowarzyszenie Aktywne Kobiety; Stowarzyszenie Dni Równości i Tolerancji; Stowarzyszenie Projekt: Polska; Stowarzyszenie Homo Faber; Stowarzyszenie Inicjatyw Niezależnych MIKUSZEWO; Stowarzyszenie Inicjatyw Kobietych; Stowarzyszenie Interwencji Prawnej; Stowarzyszenie Kobiet Konsola; Stowarzyszenie Miłośników Nie Wyklucza; Stowarzyszenie na Rzecz Kobiet "Victoria"; Stowarzyszenie Na Rzecz Lesbijek, Gejów, Osób Biseksualnych, Osób Transpłciowych oraz Osób Queer "Pracownia Różnorodności"; Stowarzyszenie na Rzecz Rozwoju Społeczeństwa Obywatelskiego PRO HUMANUM; Stowarzyszenie Naukowe Psychologia i Seksuologia LGBT; Stowarzyszenie Nigdy Więcej; Stowarzyszenie Otwarte Forum; Stowarzyszenie przeciw Antysemityzmowi i Ksenofobii „Otwarta Rzeczpospolita”; Towarzystwo Edukacji Antydyskryminacyjnej; Towarzystwo Przyjaciół Szalonego Woźkowicza; Związek Nauczycielstwa Polskiego; Żydowskie Stowarzyszenie Czulent.

discrimination based on sexual orientation had been implemented only in relation to the Labour Code, and to a limited extent, to the Equal Treatment Act. However, provisions included in the Act covered only the area of employment, excluding other areas, such as health care, education and access to goods and services. The Polish authorities still had not implemented any provisions prohibiting discrimination based on gender identity.

13. AI stated that the Criminal Code specifically provided for the investigation and prosecution of hate crimes motivated by race, ethnicity, nationality, religion and political affiliation. However, it did not establish that age, disability, gender, gender identity and expression, sexual orientation, and social or economic status were grounds to investigate and prosecute hate crimes. JS4³⁰, JS5, JS6³¹, TF³² and CoE-ECRI³³ raised similar concerns.

16. CoE-ECRI expressed concern about homophobic statements in political discourse, hate speech on the Internet against the Muslim community, and the existence of nationalist groups whose numbers were constantly increasing, and racism at sports events.

17. According to JS4, reasons of under-reporting of hate crime included low confidence in police, lack of knowledge of what constituted hate crime and reporting mechanisms, language and cultural barriers, as well as fear of homophobic reaction from the police.

18. Concerning the collection of data on and monitoring of hate crime and hate speech, JS4 stated that the system was fairly capable of capturing recorded incidents motivated by racism and xenophobia (bias motivations included in the Criminal Code), however, when it came to biases which were not mentioned in the Criminal Code, primarily sexual orientation, gender identity and disability, the numbers captured were still negligible.

21. Concerning recommendation 90.67 on guaranteeing the full enjoyment of the rights of the LGBT community, TF indicated that its implementation was a subject of debate, although it had been said to be “in the course of implementation”.

22. JS4 noted that Poland had not implemented recommendations 90.66, 90.68 and 90.94 on hate crimes against LGBT persons.

23. On recommendations 90.68 and 90.71, JS6 stated that LGBTI persons did not receive the full protection of the State for officially acknowledge attacks against them left LGBTI persons and other minority groups without adequate protection. AI noted that, in February and March 2016, the offices of two major LGBTI organizations in Warsaw, Campaign against Homophobia and Lambda, were attacked.

24. As for recommendation 90.70, TF stressed that transgender persons had still not been included in the anti-discrimination law. For recommendation 90.71, TF welcomed the introduction of partial funding of hormone in 2015 by the Ministry of Health. However, TF regretted a 2016 draft policy on diplomas and certificates of higher education, which required transgender people, who had received legal gender recognition, to return the original diploma and all of its official copies, in order to have a new diploma and certificate issued.

25. Concerning recommendation 90.94, TF noted an elevated interest of law enforcement in training on transgender issues between 2011 and 2014, however, according to TF, such an interest decreased significantly in late 2015 and throughout 2016.

26. Campaign against Homophobia (KPH) and JS5 stated that there were no policies and standards ensuring equal treatment and safety of LGBTI persons in schools. Many schools denied the existence of LGBTI students, who experienced homophobic behavior, not only from other students but also from teachers, educators, and especially priests and nuns conducting religion lessons. CoE-ECRI

³⁰ Joint submission 4 submitted by: Lambda Warsaw (Stowarzyszenie Lambda Warszawa, Warsaw (Poland); Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej), Warsaw (Poland); and The Diversity Workshop (Stowarzyszenie Pracownia Różnorodności), Warsaw (Poland);

³¹ Joint submission 6 submitted by: CIVICUS: World Alliance for Citizen Participation, Geneva (Switzerland); and Committee for Defence of Democracy (KOD), Warsaw (Poland).

³² Fundacja Trans-Fuzja, Warsaw (Poland);

³³ CoE-ECRI: European Commission against Racism and Intolerance, Report on Poland (fifth monitoring cycle) adopted on 20 March 2015/published on 9 June 2015;

recommended inclusion in the curricula of all branches of education a programme for raising awareness about, and combating, discrimination towards LGBT persons.

61. In reference to recommendations 90.69, 90.71, and 90.97, KPH indicated that the adoption of legislation enabling same-sex couples entering into civil union was still necessary. According to KPH, lack of recognition of same sex-couples led to discrimination of both same-sex couples and of trans persons in marriages, who needed to divorce in order to receive legal gender recognition. EU-FRA³⁴ raised similar concern. According to JS5, Polish citizens who intended to get a civil partnership or marriage with a same-sex partner were often refused the civil status certificates, due to the fact that the Constitution defined marriage as a relationship of a man and a woman.

63. CoE-ECRI recommended legislative changes to guarantee comprehensive protection on grounds of sexual orientation and gender identity, ensuring that the necessary administrative documents can be issued to persons wishing to enter into a same-sex marriage or partnership in another country, and facilitate changes of gender and name.

68. EU-FRA noted that those engaged in education and healthcare had very little knowledge of LGBT issues. LGB identifies were either overlooked in medical school or presented as a mental illness or sexual behaviour also noted that LGBTI patients faced barriers in access to health services, partially due to the lack of curricula regarding LGBTI issues in medical universities. A large proportion of medical practitioners saw homosexuality as a pathological problem, which required psychiatric treatment.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks by Ms. Renata Szczech Under-secretary of State at the Ministry of Foreign Affairs of the Republic of Poland: I am well aware that the issue of criminalising gender identity-, sexual orientation-, and disability-related hate speech mentioned in the Swedish question triggers considerable interest. I would like to assure you that in the Polish legal system, courts, when determining the type and level of penalty, are always obliged to take into account the perpetrator's motivation. Pursuant to Article 53 § 2 of the Criminal Code, this includes gender identity, sexual orientation and disabilities.

Article 53 is applicable to all acts criminalised under the Code, such as causing bodily harm or defamation. The provision in question is of a general nature and does not limit the type of motivation that has to be taken into account by the courts. Further provisions are stated in Article 212 of the Code, which criminalizes the slander of a person (or a group of persons) in relation to conduct or traits that may discredit him/her/them in the face of public opinion, or result in a loss of confidence necessary to engage in certain activities (e.g. professional). This provision is also applicable to slander on the grounds of gender identity, sexual orientation and disabilities.

Intervention made by Poland after 28 interventions:

- (...) Firstly, I would like to address concerns pertaining to the level of protection granted by the Polish anti-discrimination law to vulnerable groups with a special emphasis of the LGBTI persons and persons with disabilities. It is worth emphasizing that anti-discrimination provisions in Polish law should be considered as a system. Relevant provisions of the civil code guarantee a broad protection of groups, we have measures to protect those groups in penal code and other regulations, and also the act of implementation of certain regulations of EU, regarding equal treatment, defines various forms of discrimination, such as direct and indirect discrimination, harassment, sexual harassment and unequal treatment. Article 13 of the act also explicitly sustains that everyone against whom the principle of the equal treatment has been violated is entitled to damages. While the issues related to the violations of equal treatment shall be covered with the provision of the civil code. The act was adopted with the aim to implement EU anti-discrimination directives, which contained laws that catalogued on the ground of discrimination.

³⁴ European Union Agency for Fundamental Rights, Vienna (Austria).

- (...) Referring to the question about LGBT on discrimination and intolerance, I would like to say that Polish government undertakes diverse actions counteracting hate crime, as a consequence, Polish Minister of Interior and administration collects data on hate crimes cases, including data on hate crimes based on LGBT persons. In 2015, the new hate crime coded system was introduced, the reason for this was to have the complete pictures of hate crimes and cases in Poland, and would be able to analyze diverse approaches. The system refers to all hate crimes in Poland by the police and it includes the investigations when the crime was motivated by sexual orientation or gender identity (...)
- (...) referring to the questions allowing the same-sex couples the rights to register the relationships, it should be indicated that according to the Polish legislation, including both the constitution and the family law, such partnership could not be entered into the territory of the Republic of Poland and in consequence could not be registered in the Polish system of records when they were entered into abroad. The regulations on marital status for registration, do not allow to register a civil partnership, which means that they do not have legal effects on the territory of the Republic of Poland. That position is well established and perpetual confirmed in the court judgments.

C. Recommendations for the Third Cycle (2017)³⁵:

a) Remarks made by the Recommending State:

- **US:** We commend the progress made by Poland in addressing our 2012 UPR recommendation to institute law enforcement outreach to LGBTI communities and to increase hate crimes reporting.
- **Austria:** Austria remains concerned however that little progress has been made to prevent discrimination and hate crimes on the basis of ethnicity, religion, disability, gender identity and sexual orientation and therefore repeats its call for strong and effective anti-discrimination and hate speech legislation.
- **US:** We commend the progress made by Poland in addressing our 2012 UPR recommendation to institute law enforcement outreach to LGBTI communities and to increase hate crimes reporting. We also commend senior government officials for recent statements condemning anti-Semitism.
- **Canada:** As recommended during Poland's last UPR, Canada urges the Government of Poland to take further measures to enhance the scope of protection of lesbian, gay, bisexual, transgender, and intersex persons and to prevent acts of discrimination.
- **Iceland:** In particular, we regret that the LGBTI are still not sufficiently protected in the national law.
- **Ireland:** Ireland is pleased to note that Polish law prohibits discrimination in political, social and economic life, and that the Labour Code prohibits any discrimination in employment, including on grounds of sexual orientation, either direct or indirect.
- **Slovenia:** However, Slovenia expresses its concern regarding the weak response in combatting discrimination and violence on grounds of the sexual orientation and gender identity and would like to encourage Poland to broaden the anti-discrimination legislation in that regard.
- **Mexico:** Apreciamos los progresos relacionados con la eliminación de todos los tipos de discriminación, como el establecimiento de un Equipo de vigilancia del racismo y la xenofobia, con el fin de garantizar la aplicación efectiva de la igualdad de trato para todos los grupos étnicos, y la capacitación a fiscales encargados de combatir la discriminación por motivos de raza, origen étnico, religión, edad u orientación sexual.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by Poland and have been accepted by Poland:³⁶

- 6.46. **Brazil:** Improve further its non-discrimination legislation by criminalizing hate crimes on the grounds of age, disability, sexual orientation and gender identity, while taking the necessary

³⁵ The following recommendations that **will be examined by Poland** might be also used for advocacy purposes: rec 6.48 **Honduras:** Harmonize the Act on Equal Treatment with the international human rights instruments ratified by Poland

³⁶ Poland received also an openly/obliquely hostile recommendation to LGBTI persons and their right to found a family: 6.124. **Holy See:** Sustain and promote the family, based on marriage between a man and a woman, as the natural and fundamental unit of society. Poland accepted this recommendation and stated "a group of experts to promote the participation of families in public life and to counteract their discrimination has been working since November 2016".

measures to combat discrimination based on race, sex, nationality, ethnicity, religion or any other grounds

- 6.47 **Norway:** Amend the penal code to provide that crimes motivated by discrimination on any grounds, including disability, gender identity and expression and sexual orientation, are included in the code and therefore can be investigated and prosecuted as hate crimes
 - 6.72. **Belgium:** Amend the Criminal Code to provide that crimes motivated by discrimination on grounds of sexual orientation or gender identity are investigated and prosecuted as hate crimes
 - 6.73. **Iceland** Amend the Penal Code to provide that crimes motivated by discrimination on any grounds, gender identity and expression and sexual orientation, are investigated and prosecuted as hate crimes
 - 6.74. **Canada:** Amend the Penal Code to ensure that lesbian, gay, bisexual, transgender, and intersex persons are fully protected against discrimination, hate speech, and hate crimes based on sexual orientation and gender identity
- c) **The recommendations formulated during the interactive dialogue/listed below have been examined by Poland and have been accepted and considered under implementation by Poland:**
- 6.71. **US:** Combat violence and discrimination against LGBTI persons
- d) **The recommendations formulated during the interactive dialogue/listed below have been examined by Poland and have been partially accepted and considered under implementation by Poland:**
- 6.49. **Mexico:** Amend the Act on Equal Treatment in order to prohibit discrimination, in a comprehensive manner, including on the basis of sexual orientation and gender identity, in all areas and sectors, in particular, taking into account access to education, health, social protection and housing
 - 6.50. **UK:** Extend its anti-discrimination laws and hate crime legislation, to ensure equal treatment and broad protection for all from discrimination, regardless of sexual orientation and gender identity³⁷
- e) **The recommendations formulated during the interactive dialogue/listed below have been examined by Poland and have been partially accepted by Poland:**
- 6.76. **Czechia:** Strengthen protection of individuals against discrimination, including based on sexual orientation or gender identity, *inter alia*, through allowing the legal status of same-sex couples and, in this regard, pass a law on civil union or registered partnership³⁸
 - 6.77. **Ireland:** Strengthen efforts to protect LGBTI persons against violence and discrimination, including through the inclusion of sexual orientation and gender identity in hate speech provisions, making provision in law for same-sex civil partnership or marriage; and further making arrangements for provision to Polish citizens wishing to marry or otherwise register a same-sex relationship abroad of all necessary documentation by the relevant Polish authorities³⁹
- f) **The recommendations formulated during the interactive dialogue/listed below have been examined by Poland and have not been accepted by Poland:**
- 6.75. **Spain:** Recognise civil unions between same-sex persons

D. Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Include sexual orientation and gender identity in the hate speech		

³⁷ Poland partially accepted recommendations 49 (Mexico) and 50 (UK) as it considered them already under implementation and also on the basis that the "prohibition of discrimination in political, social and economic life on all grounds is enshrined in Article 32(2) of the Constitution".

³⁸ Poland partially accepted this recommendation because it considers "preventing and combating all forms of discrimination as an ongoing task of public authorities" yet has "no immediate plans to introduce new regulations on partnerships".

³⁹ Poland partially accepted this recommendation because it considers "preventing and combating all forms of discrimination as an ongoing task of public authorities" yet "Polish law defines marriage as a union between a woman and a man [and] to enter into marriage abroad, Polish citizens are issued certificates to the effect that they are allowed to do so under Polish laws".

provisions of the national Criminal Code, and adopt appropriate legal measures making sexual orientation and gender identity as possible discrimination grounds in any context	Slovenia	Accepted
Guarantee the full enjoyment of the rights of the LGBT community	UK	Accepted
Recognize gender identity as possible ground for discrimination and gender identity and sexual orientation as an aggravating circumstance for hate crime	UK	Accepted
Adopt regulations recognizing the rights of same-sex couples and of self-defined gender or transgender persons	Australia	Noted
Strengthen anti-discrimination laws with regard to a better protection of LGBT persons and persons with disabilities	Austria	Accepted
The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation	Brazil	Accepted
Institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes	United States	Accepted
Pass legislation giving same-sex couples the possibility to enter into a civil union contract	France	Noted

E. SOGIESC questions submitted in advance for Poland:

- **Netherlands:** Hate crime: How is the Polish Government responding to specific support and protection needs of victims of hate crime and how much public funding is available to support services trained to respond to specific protection needs of victims of racist or anti-LGBT violence?
- **Norway:** The European Commission on Racism and Intolerance (ECRI) has recommended that Polish authorities should “conduct surveys and collect data on LGBT persons in Poland and on the discrimination and intolerance of which they are victims». How is Poland progressing in following up on this recommendation?
- **Sweden:** Could the Government of Poland please elaborate on why it has not included sexual orientation and disabilities among the listed criteria in the law on anti-discrimination in other areas than the labour market? Why has Poland not listed gender identity as a criterion for discrimination? And why has it not included gender identity, sexual orientation and disabilities among the listed criteria for hate crimes in the criminal code?
- **Slovenia:** What is your view on the expressed concern that so far, LGBTI persons and persons with disabilities had not been granted greater protection in the Polish anti-discrimination law?

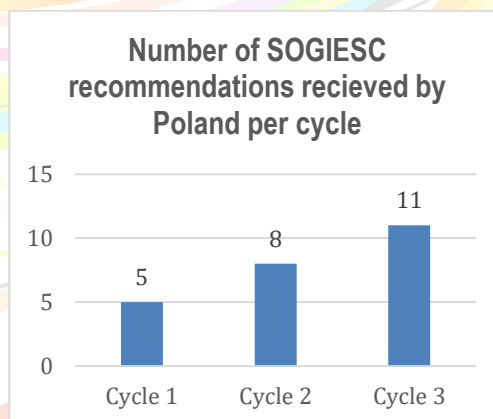
F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

[Campaign Against Homophobia](#)

- To adopt legislation enabling same-sex couples to enter into a civil union contract.

- To ensure that all children with foreign birth certificates can access to a polish citizenship, including those born abroad from same-sex families.
- To modify article 119, 256 and 257 of the polish criminal code and to add sexual orientation and gender identity as a protected ground.
- To establish quick, transparent and accessible procedures defined within a legal framework that effectively distinguish between the legal and medical process of transition, leaving medical aspects between individuals and their healthcare providers, and ensure that no medical interventions are required to access legal gender recognition.
- To amend the Act on Equal Treatment to prohibit discrimination comprehensively including sexual orientation and gender identity in all spheres and sectors, including education, health care, social protection and housing.
- To ensure non biased curriculum on sexual orientation and gender identity issues in formal education system by introducing antidiscrimination standards obligatory for school textbooks.
- To implement non biased scientific knowledge about SOGISC in medical curriculum in higher education system for future medical staff and provide measures enabling increasing competences among medical practitioners regarding taking care of LGBTI patients.

G. Graphic comparison between cycles (1-3)



H. Video of Poland's UPR Working Group Session

I. SOGIESC mentions during Poland's UPR outcome, Item 6 of the agenda of the Human Rights Council, 22 September 2017

- During the UPR outcome of Poland, no States made SOGIESC mentions.
- However, **ILGA Europe**, in consultation with Campaign Against Homophobia, made a [statement](#) in which it welcomed the acceptance of recommendations to improve hate crime laws yet expressed concern over the ongoing lack of recognition of same-sex partnerships.

UNIVERSAL PERIODIC REVIEW – SOUTH AFRICA
UPR SOGIESC RECOMMENDATIONS

Date and time of the review: 10 May 2017, 14:30 – 18:00

Date and time of the adoption of the report: 12 May 2017, 17:00 – 18:00

During the 27th UPR Working Group Sessions, South Africa received 7 SOGIESC recommendations. It accepted all 7 recommendations.

A. SOGIESC information:

- National Report:

67. The Government, working with relevant stakeholders, developed a strategy to address gender-based and sexual orientation-based violence against lesbian, gay, bisexual, transgender and intersex people in South Africa. A **National Task Team (NTT)** was re-established in 2013, with the Government together with representatives from Chapter 9 institutions and civil society organisations working in partnership to achieve a number of formidable tasks. These include, amongst others, the development of a National Intervention Strategy to respond to, and prevent, gender and sexual orientation-based violent crimes perpetrated against LGBTI persons and the development of an Inter-sectoral Implementation Plan which would link parallel and complementary initiatives. The NTT also undertook to strengthen the Government's ability to respond to LGBTI needs and to strengthen the capacity of civil society organisations to deliver related services. The Government sets out to improve linkages amongst Government Departments, to undertake programmes such as the Access to Justice and the Promotion of Constitutional Rights Programme and the National Action Plan (NAP), as well as working closely with relevant human rights institutions - such as the Human Rights Commission and the Commission for Gender Equality – to combat racism, xenophobia and related intolerance and in that manner address the impact of different forms of discrimination targeting LGBTI persons. It seeks to improve the management of cases by relevant role-players in the criminal justice system, including the SAPS, the NPA, the DSD, the DoH and the Department of Correctional Services (DCS).

68. South Africa has taken significant steps to improve coordination between Government and civil society in combatting violence (including rape and murder) against LGBTI persons

69. The Government is making strides to ensure that LGBTI persons are treated as equal citizens and ensure that any challenges to fulfil the rights of the LGBTI community are dealt with. The Government does not allow any discriminatory practices in respect of the marriage of same-sex couples, or any form of degrading and harmful treatment of transgender persons. The Government's commitment to protect the rights of LGBTI persons in South Africa was recently exemplified by action by the Minister of Home Affairs, who denied a visa application by a cleric well known for preaching homophobia from the pulpit. The Minister of Home Affairs has established a task team to deal with similar cases in the future.⁴⁰

82. The Government always aims to include civil society role-players as much as possible in processes to provide input on Government programmes, draft legislation and policy as well as in general consultation. There has also been meaningful engagement on this issue with various court cases affirming the obligation of Parliament to facilitate public participation in legislative processes at all levels. Some examples of successful civil society involvement include the National Task Team on LGBTI Rights, the draft National Action Plan

⁴⁰ The task team was, amongst others, tasked to address issues of strengthening legislation, processes, SOP, identifying areas of weaknesses which may prejudice the treatment of LGBTI, devising strategies for training on attitude and sensitivity, identifying and addressing challenges in dealing with issues of same sex marriages. Processes relating to gender change were also revised to ensure improved turnaround time, changes in gender status and newly assumed identity documents. A circular instructing every DHA official around dealings with LGBTI persons was also issued through internal communication. On a regular basis, the Minister holds meetings and media briefings to sensitise people about a myriad of issues (including LGBTI), the human rights issues of LGBTI persons. The DHA is working around the clock to ensure the changing sex of transgender people are reflected in their ID documents; the registration of adoptions by same-sex couples; and the treatment of asylum seekers on the basis of sexual orientation. The DHA compiled and distributed a list of Home Affairs branches that offer same-sex marriage services, to avoid unnecessary inconvenience. The list was published on the departmental website. The Minister had set up a task team, consisting of departmental officials and LGBTI groups, to review legislation, clarify those areas in law that are not clear, and to standardise operations at Home Affairs. Such meetings are chaired by a DDG who reports progress to DG and Minister. Recommendations on the way forward and a timeline to resolve issues shall be tabled to the Minister in the not too distant future.

against Racism, Xenophobia and Related Intolerance, a Reference Group on the Traditional Courts Bill and various programmes to increase constitutional rights awareness and education.

- **Compilation of UN information:**

13. The Committee on the Elimination of Racial Discrimination welcomed the Prevention and Combating of Hate Crimes and Hate Speech Bill. It encouraged South Africa to ensure that the bill was in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and recommended that South Africa expedite its enactment. UNHCR and the country team recommended ensuring that the draft bill was the subject of broad consultations, contemplated the development of guidelines for investigators, prosecutors and on violence against women and the country team recommended that South Africa consider enacting hate crime legislation that addressed both the hate dimension of crimes and the sexual orientation of lesbian, gay, bisexual, transgender and intersex victims of gender-based violence.

16. The Human Rights Committee expressed concern about the persistence of stigma against persons based on their real or perceived sexual or gender orientation, gender identity or physical diversity and about the fact that such persons were subject to harassment, acts of discrimination, and sexual and physical violence. It recommended that South Africa eradicate such discrimination and violence. The country team recommended that South Africa promote nationwide school policies and guidelines that explicitly promoted sexual diversity and tolerance for different gender identities.

31. The Human Rights Committee was concerned about reports of threats, intimidation, harassment, excessive use of force and physical attacks by private individuals and police forces against human rights defenders, in particular those working on corporate accountability, land rights and transparency issues, against lesbian, gay, bisexual, transgender and intersex persons and against HIV activists. It also noted with concern reports that law enforcement officers were not demonstrating due diligence in their efforts to ensure accountability for such violations and recommended that South Africa take all measures necessary to protect the rights of human rights defenders and ensure that police officials received adequate training to protect such defenders.

58. The Committee on the Rights of the Child was concerned at the high prevalence of harmful practices, including virginity testing, witchcraft, female genital mutilation, violent or harmful initiation rites and intersex genital mutilation. It urged South Africa to ensure that its legislation prohibited all forms of harmful and adopt an effective Rights Committee recommended that South Africa amend the Children's Act with the aim of prohibiting virginity tests on children, irrespective of their age.

- **Summary of stakeholders' information:**

26. JS3⁴¹ noted that violence against transgender and intersex persons was underpinned by societal stigma; and that they faced obstacles and discrimination when attempting to alter their legal sex description. Human rights violations experienced by intersex children due to non-consensual treatments were highlighted. JS3 recommended public condemnation of all forms of transphobic and intersexphobic violence; and the enactment of protective legislation, regulations and policies in the spheres of crime prevention, education and access to healthcare.

61. JS3 noted that intersex and transgender persons had to navigate a healthcare system that is discriminatory and unresponsive to their healthcare needs.

68. ERI⁴² stated that South Africa not only had extremely high rates of rape, but was also known for reports of 'corrective rape', especially against lesbian women. However, as these hate crimes were not yet recognized as unique crimes under the law, there were no reliable figures about the extent of this issue. JS5 noted that many

⁴¹ Joint submission 3 submitted by: Transgender & Intersex Coalition-South Africa- Legal Resources Centre (LRC)Gender DynamiX (GDx)Iranti-org Aids and Rights Alliance for Southern Africa (ARASA), Cape Town, South Africa;

⁴² Edmund Rice International, Geneva, Switzerland;

lesbians and bisexual women experienced physical, sexual and social violence and discrimination in multiple spaces.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks:

- With regards the recommendations of the criminalization of hate speech and in relation to hate crimes, in line with the provision of the international convention of all forms of racial discrimination and the ICCPR, cabinet has approved the publication of public comment of the prevention and combat of hate crimes and hate speech in October of last year. There has been an intense public participation process and considerable debate on the bill. (...) The prejudice bias can be caused by one or more of the following: race, gender, sex, ethnic or social origin, color, sexual orientation, religion, belief, culture, language birth, HIV status, nationality, gender identity, intersex, albinism and occupation status. Nationality, gender identity, intersex and albinism are not mentioned in section 93 of our constitution but it has been argued that it should be included in the bill, because of the hate crimes that are being committed on the basis of these grounds.
- (...) A national task team or NTT was established to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community. The task for the NTT, which is comprised of government and civil society representatives, is to develop a National Intervention Strategy to respond and prevent gender and sexual orientation based violent crimes perpetrated against LGBTI persons and to develop and intersectoral implementation plan. The NTT took the understrength government ability to respond to LGBTI needs and to strengthen the capacity of civil society organizations and to deliver related services
- (...) we are building a South Africa where no one is discriminated against because of their color of their skin, their gender, their sexual orientation, their religion nor they are discriminated against the provision services and opportunities by both public and private sectors.

Intervention made by South Africa after 69 interventions:

- (...) On the issue of LGBTI maybe just stress that any form of discrimination in South Africa is not allowed and we have equality courts, which were established in terms of prevention or promotion of equality and prevention of unfair discrimination act, there are several courts, not criminals and if you feel that you have been discriminated against on the basis of a whole range of criteria including, race, gender, sexual orientation you can go there and take your case to an equality court and have an order basically made if the court agrees with you that your rights have been violated and corrective action needs to be taken. On the issue of LGBTI specifically, we are engaged as I already mention, with an NTT with civil society until the hate crimes and hate speech bill becomes a law, we don't... the police and the prosecutors don't record specific hate crimes against any particular sector, but once it becomes a law they will. But we do have a what is called a rapid response team, at the national level, and the prevention levels to monitor cases involving LGBTI people. The number is not too high but, just to make sure that they are given proper attention by the criminal justice system in case of prejudices on the possible part of investigators or the prosecutors. The general prejudice against LGBTI persons in society that is a broader problem and will take longer, but we are together with civil society taking steps to explain and encourage tolerance.

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending State:

- **Israel:** Despite some efforts made since its last UPR, South Africa still needs to address many serious deficiencies that remain in the field of human rights, including rights in hate crimes and hate speech and situation of persons with albinism and situation of LGBTI people.
- **Netherlands:** We appreciate South Africa's progressive legislation which prohibits discrimination on the basis of sexual orientation and the government's continued engagement with civil society. However, we note that violence against the LGBTI community continues to be a big issue and discrimination and prejudice is still present.

- **Slovenia:** We are concerned about the reports on discrimination, xenophobia and racism against certain ethnic groups and non-citizens including refugees, asylum seekers, and migrants and hate crimes and hate speech including against LGBTI persons.
 - **Norway:** While South Africa has strong legal protection of LGBTI rights, the UN Special rapporteur on violence against women reports that lesbians and transgender persons in particular continue to be victims of violence.
 - **US:** Women and girls, migrants and the LGBTI individuals, however, continue to suffer from violence and societal prejudice. Efforts to counter this, like the prevention on combating on hate crimes and hate speech bill contain worries and curves on freedom of expression.
 - **UK:** We acknowledge South Africa's leading role internationally to end discrimination on the grounds of sexual orientation.
- b) The recommendations formulated during the interactive dialogue/listed below have been examined by South Africa and have been accepted by South Africa:**
- 6.97. **US:** Engage NGOs on the LGBTI Task Team and update and implement the national LGBTI strategy
 - 6.98. **Chile:** Develop policies, plans and information campaigns to eradicate at all levels the stereotypes and discrimination against people based on their sexual orientation or gender identity, focused particularly on public officials and those in charge of law enforcement
 - 6.99. **Belgium:** Strengthen the protection of LGBTI persons against stigmatization, harassment and discrimination by promoting tolerance for sexual diversity and different gender identities and by clearly classifying acts of violence against these persons as hate crimes
 - 6.100. **Argentina:** Take urgent measures for the investigation and effective punishment of perpetrators of discrimination and violence against LGBTI persons
 - 6.101. **Israel:** Take steps to ensure prevention, investigation and prosecution of cases of violence against persons based on sexual orientation and gender identity
 - 6.102. **Netherlands:** Strengthen its system for monitoring, reporting and analyzing crimes of violence and discrimination against individuals based on grounds of sexual orientation or gender identity
 - 6.215. **Sweden:** Undertake continued and enhanced efforts to protect and provide redress to women suffering from violence and to continue raising awareness, through training and other means, in the judicial system, including the police, of the necessity to act against all cases of sexual and gender-based violence, including on the grounds of real or perceived sexual orientation, gender identity or expression

D. Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Launch awareness campaigns against homophobia and discrimination on the basis of sexual orientation	Belgium	Accepted
Develop programs to prevent discrimination based on sexual orientation and gender identity, to punish violence of this kind and ensure that victims receive appropriate support	France	Accepted
Conduct comprehensive public awareness campaigns and enhance the investigation and prosecution of violent crimes perpetrated on grounds of ethnicity,	Slovenia	Noted

nationality, religion, sexual orientation and gender identity		
Establish national policies aimed at putting an end to violence and crimes motivated by race, nationality, religion ethnicity, sexual orientation or identity, through the approval of laws that explicitly criminalize violence against people or property	Uruguay	Accepted
Implement training programs for the security forces so that crimes motivated by race, nationality, religion, ethnicity, sexual orientation or identity, are adequately investigated	Uruguay	Accepted
Continue its efforts in the fight against violence and discrimination based on sexual orientation and gender identity	Argentina	Accepted
Ensure police and justice officials have appropriate training and direction to improve the investigation and prosecution of sexual violence including that based on sexual orientation or gender identity	New Zealand	Accepted
Ensure that law enforcement officials and other relevant actors adequately trained to investigate and prosecute hate crimes on the basis of sexual orientation and gender identity, including through the promotion of awareness-raising and sensitization campaigns	Denmark	Accepted
Develop monitoring capacity and legislation to enhance the prevention, investigation and prosecution of crimes of violence against individuals on the grounds of their sexual orientation or gender identity	Netherlands	Accepted
Enhance the prevention, investigation and prosecution of crimes of violence against individuals based on their gender or sexual orientation	UK	Accepted
Take steps to ensure targeted attacks against individuals based on their sexual orientation are thoroughly investigated and prosecuted, and strengthen mechanisms to prevent crimes of violence	Canada	Accepted

Publicly denounce crimes committed against LGBTs and to conduct thorough investigations into and prosecutions of these attacks	Austria	Accepted
Publicly denounce all violence based on sexual orientation or gender identity and adopt effective measures to raise public awareness concerning the constitutional protection of LGBT individuals	Finland	Accepted
Increase advocacy for freedom from discrimination based on sexual orientation and gender identity through public education and awareness building and address violence targeting LGBT persons through training for police, first responder and justice system officials	US	Accepted
In order to avoid the occurrence of impunity in cases of violence against LGBT persons, that all such cases be subject of credible investigations and the perpetrators prosecuted	Belgium	Accepted

E. SOGIESC questions submitted in advance for South Africa:

- **Mexico:** What steps have been taken to legally prohibit discrimination on the basis of gender, sexual orientation and gender identity?
- **Netherlands:** Which concrete steps has the government of South Africa taken to ensure the actual realisation of the rights concerning the prevention, investigation and prosecution of crimes of violence against individuals on the ground of their sexual orientation or gender identity?
- **Sweden:** would like to ask the Government of South Africa what measures it is taking to encourage attitudinal change and to ensure that all the legislation and policies relating to gender based violence are enacted – especially rape and other forms of sexual violence – including violence against individuals and groups with so called non-normative sexualities and gender expressions?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

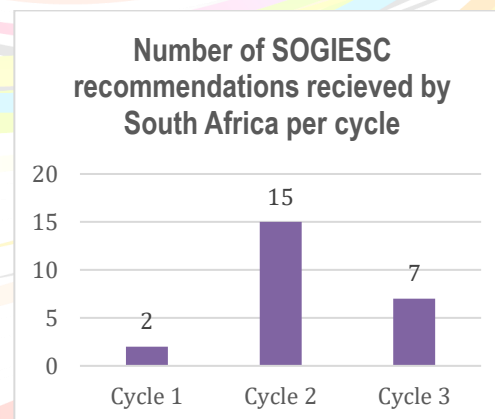
Gender Dynamix

- Ensure that such violence on the basis of Gender identity and expression is ended through enacting protective legislation, regulations, policies and practices in the spheres of crime prevention, education, access to healthcare
- Ensure that current criminal legislation is amended to mandate tougher prison sentences for crimes motivated by hatred and prejudice towards transgender and intersex persons.
- Ensure collection of information, including statistical and research data, on violence against transgender and intersex persons so as to enable policy formulation and implementation.
- Review and amend Act 49 using a self-identification model in accordance with the Yogyakarta Principles, international human rights principles and best practices – allowing all individuals to change their legal gender on demand without imposing discriminatory and invasive requirements such as reports on medical treatments, medical surgeries or adherence to a particular gender presentation
- Mandate training and education on informed consent, bodily diversity and the right to bodily integrity for all healthcare professionals in order to ensure that the medical information and healthcare services

they provide to intersex persons are balanced, accurate, evidence based and informed by human rights approaches.

- Conduct an investigation into the prevalence of non-consensual, medically unnecessary surgeries on intersex infants, children and adolescents in the South African public and private health sectors; ensure that such human rights violations are ceased and gender-related surgeries and hormonal treatments take place only where desired by the individual in question and under conditions of full, free and informed consent;
- Investigate and enact health legislative and policy measures which prohibit non-consensual, medically unnecessary treatments and surgeries on intersex children (intersex genital mutilation), and which take into consideration the best interests of the child in cases where medical treatment or surgery on intersex infants and adolescents may be contemplated for the preservation of physical health or life.
- Put in place policy directives for healthcare practitioners to aid in ensuring non-violent, non-stigmatising and non-discriminatory treatment of transgender and intersex persons.
- Require school-governing bodies and other stakeholders (teachers, unions, education bodies) to conceptualise and implement structures within schools to address and prevent discrimination against transgender and intersex youth.

G. Graphic comparison between cycles (1-3)



H. [Video of South Africa's UPR Working Group Session](#)

I. SOGIESC mentions during South Africa's UPR outcome, Item 6 of the agenda of the Human Rights Council, 22 September 2017

- During the UPR outcome of South Africa, the State Under Review said "Mr. Vice President, on the rights of LGBTI persons, we have reported to the UPR Working Group on the national task team and its work. We are pleased to inform the Council that we are beginning to see the fruits of this engagement between civil society, various government departments, as well as national human rights institutions".
- **Belgium** then said "My delegation also notes with appreciation that a recommendation made by Belgium has been accepted, namely the recommendation on strengthening the protection of LGBTI persons against stigma, harassment and discrimination, including by clearly classifying acts violence against them as hate crimes".
- **ILGA**, in consultation with Gender DynamiX, IRANTI.org, Legal Resource Centre and Aids Rights Alliance in Southern Africa, made a [statement](#) in which it expressed gratitude over the acceptance of all 7 SOGIESC recommendations yet urged the creation of public education campaigns to combat hate speech and social stigmatization of transgender and intersex people.
- **Amnesty International** voiced concern about brutal attacks on people due to their sexual orientation and gender identity.
- **Human Rights Watch** likewise called on South Africa to train law enforcement officers to deal with hate crime against LGBTI persons.

- **Rencontre africaine pour la defense des droits de l'homme** welcomed a multisectoral approach to fighting HIV/AIDs yet stated that LGBTI persons are still marginalized regarding access to health.
- **RFSU** welcomed South Africa's commitment to uphold human rights of all persons with diverse sexualities and genders yet urged the government to uphold the sexual and reproductive health of all.

UNIVERSAL PERIODIC REVIEW – TUNISIA UPR SOGIESC RECOMMENDATIONS

Date and time of the review: 2 May 2017, 9:00 – 12:30

Date and time of the adoption of the report: 5 May 2017, 15:00 – 18:00

During the 27th UPR Working Group Sessions, Tunisia received 22 SOGIESC recommendations. It accepted 2 and noted 20 recommendations.

A. SOGIESC information:

- [National Report](#): None
- [Compilation of UN information](#):

19. The country team reported that article 230 of the Criminal Code criminalized sexual relations between persons of the same sex. The lesbian, gay, bisexual and transgender community continued to be the target of verbal and physical attacks. The authorities did not take appropriate action in response to incitement to murder and hatred. The Committee on Economic, Social and Cultural similar remarks and recommended that Tunisia repeal article 230 of the Criminal Code.

- [Summary of stakeholders' information](#):

19. JS1⁴³ said that, under article 21 of the new Constitution of January 2014, men and women were equal before the law in rights and duties, without discrimination. Despite that, there was much discrimination against women, children, young people, persons with disabilities, lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) persons and persons living with HIV in both law and practice, which constituted an obstacle to the full enjoyment of sexual and reproductive rights. JS1 recommended the adoption of a law against all forms of discrimination in respect of sexual and reproductive rights and the establishment of a follow-up mechanism.

20. JS2⁴⁴ noted that LGBTQI people continued to endure every day all forms of stigma, discrimination and violence. JS2 recommended enacting a law criminalizing all forms of discrimination as well as incitement to hatred and violence against LGBTQI people; and recognizing hate crimes against LGBTQI people as aggravating circumstances for judgments. JS10 indicated that LGBTI organizations had been subject to various forms of harassment, including judicial harassment.

21. JS2 and HRW noted that Tunisia had not acceded to UPR, which requested the removal of laws that criminalize sexual activity between consenting adults of the same sex. The Tunisian Government mainly uses Article 230 of the Criminal Code condemning male and female homosexuality with a sentence of up to 3 years of imprisonment. AI, JS5⁴⁵, and Shams Association (SA) made similar remarks. JS2 recommended Tunisia to immediately repeal Article 230; harmonize the Criminal Code and the procedural penal code with the Constitution of 2014 and the various treaties and conventions ratified by Tunisia; grant all citizens access to justice without discrimination, including that based on sexual orientation and gender identity. HRW made a similar recommendation. AI recommended immediately and unconditionally release anyone detained because of their actual or perceived sexual orientation or gender identity. S6 recommended decriminalizing

⁴³ Joint submission 1 submitted by: 1.Association Tunisienne de la Santé et de la Reproduction (ATSR) 2.Amnesty International / Tunisie 3.DAMJ, l'Association Tunisienne pour la justice et l'égalité 4.Association Tunisienne de Prévention Positive (ATP+) 5.Association Tunisienne de Lutte contre les MST/SIDA (ATL) 6.Tunisian Forum for Youth Empowerment (TFYE) 7.Groupe de Plaidoyer des Droits des Personnes Handicapées GPDPH 8.Association Tunisienne des Compétences Féminines 9.Association Tunisienne des Sages-Femmes (ATSF);

⁴⁴ Joint submission 2 submitted by: Damj, l'association tunisienne pour la justice et l'égalité – L'initiative Mawjoudin pour l'égalité – L'association Shams – KELMTY – L'association Chouf – Réseau-Euro-Méditerranéen des Droits Humains – Association Tunisienne des Femmes Démocrates (ATFD) – Comité Pour le Respect des Libertés et des Droits de l'Homme en Tunisie (CRLDHT) - Association Beity - Association De Défense Des Libertés Individuelles (ADLI) – L'Organisation Tunisienne de la Justice Sociale et de la Solidarité (OTJUSS) – Association pour la promotion du Droit à la Différence (ADD) – L'organisation Kistas Pour Le Développement de la Démocratie et la Défense des Droits de l'Homme (KISTAS) – l'Association Tunisienne de Prévention Positive (ATP+) – Groupe De Plaidoyer Des Personnes Handicapées – Le groupe Tawhida Ben Cheikh – Réseau Dostourna – Coexistence with Alternative Language and Action Movement (CALAM) – Free Sight Association;

⁴⁵ Joint submission 5 submitted by: Coexistence Organisation, Ariana (Tunisia) Muslims for Progressive values, Los Angeles (United States of America);

homosexuality through amendments to Article 230 and other legislation that contradicts Articles 21, 23 and 24 of the Constitution, and introducing additional protections for LGBTI people from discrimination, violence, torture, and ill-treatment.

22. SA recommended the repeal of provisions criminalizing sex and prostitution and the halt to State interference in citizens' private life. JS7⁴⁶ recommended reviewing legislation relating to the sex trade; reducing the stigmatization of, discrimination against and harassment of female sex workers; and providing female sex workers with social security and the right to property and retirement.

60. JS1⁴⁷ said that the Tunisian Criminal Code criminalized all extramarital relations, characterizing them as crimes of adultery punishable by 5 years' imprisonment. Along the same lines, all sexual relations in private between consenting adults of the same sex were criminalized and punishable by a prison term of up to 3 years.

62. SA recommended guaranteeing the right to work and equality of all workers in the public sector, and ensuring human dignity for them, without any discrimination on sexual identity or gender.

B. Remarks of the State Under Review (opening and closing speech):

Closing remarks: Concerning discrimination on the basis of sexual orientation under the constitution, all forms of discrimination, hatred and incitement to hatred is unconstitutional and any person, of any sexual orientation has full rights as access to education and all other rights. Any aggression against any persons, on the basis of her or his sexual orientation is criminalized and is prosecutable.

Under article 230 of the Penal Code which dates back to 2013, the President of the Republic issued a law to guarantee fundamental rights in accordance to the constitution and called for the opening of a dialogue on article 230. As for this article, it is important to say that consent is important, I am talking about medical examinations, are contingent on the consent of the person concerned and in the presence of a medical expert

C. Recommendations for the Third Cycle (2017):

a) Remarks made by the Recommending States:

- **US:** Ongoing arrest of individuals for consensual of same-sex adult conduct are inconsistent with international human rights obligations, court ordered anal exams without consent are also troubling.
- **Argentina:** Argentina pays specific attention to the discrimination suffered by the LGBTI community.
- **Australia:** We are concerned by reports of discrimination and torture based on sexual orientation.
- **Sweden:** Despite the significant steps and positive legal changes that have taken place in Tunisia, human rights violations continue against the LGBT community, including legal discrimination. Article 230 of the Penal Code criminalizes same-sex sexual relations as punishable by up to three years in prison. LGBT persons are at risk of violence and other abuses by the police.
- **Belgium:** However, several challenges remain particularly in terms of discrimination against women and LGBTI.
- **Chile:** Chile regrets the fact, that despite the advances made on non-discrimination there is the on-going criminalization of consensual same-sex relations between same-sex adults.
- **Costa Rica:** However, my delegation is concerned that there is a criminalization of sexual relations between same-sex partners

⁴⁶ Joint submission 7 submitted by: Association Tunisienne des Villages d'Enfants SOS – Réseau Amen Enfance – Association Tunisienne de Prévention positive – Association Tunisienne de Lutte contre les Comportement à Risque;

⁴⁷ Joint submission 1 submitted by: 1.Association Tunisienne de la Santé et de la Reproduction (ATSR) 2.Amnesty International / Tunisie 3.DAMJ, l'Association Tunisienne pour la justice et l'égalité 4.Association Tunisienne de Prévention Positive (ATP+) 5.Association Tunisienne de Lutte contre les MST/SIDA (ATL) 6.Tunisian Forum for Youth Empowerment (TFYE) 7.Groupe de Plaidoyer des Droits des Personnes Handicapées GPDPH 8.Association Tunisienne des Compétences Féminines 9.Association Tunisienne des Sages- Femmes (ATSF);

- **Denmark:** Denmark notes with concern that LGBTI people in Tunisia continue to face everyday discrimination and violence. A key obstacle to equal treatment and protection of all irrespective of sexual orientation and gender identity in Tunisia is Article 230 of the Penal Code.
- **Iceland:** We note with regret however, that with regards to SOGI the Penal Code in Tunisia continues to punish consensual same-sex conduct. We further note that anal testing is used as the main evidence in order to convict men for homosexuality. We would like to take this opportunity to ask the government of Tunisia, how such a practice could be in line with international human rights standards.
- **Netherlands:** Article 230 of the penal code is in violation of article 21 of the constitution and international treaties to which Tunisia is party. In this regard we also feel the need to express concern on forced body cavity searches during the arrest of LGBTI persons, and the absence of a law criminalizing all forms of discrimination, incitement to hatred and violence based on sexual orientation and gender identity.
- b) **The recommendations formulated during the interactive dialogue/listed below have been examined by Tunisia and enjoy the support of Tunisia:**
 - 7.9. **Luxemburg:** Ensure the protection of LGBTQI persons from all forms of stigmatization, discrimination and violence and abstain from unlawful examinations
 - 6.48. **Ireland:** Immediately cease the practice of forced anal examinations of LGBTI persons, contrary to its obligations under the Convention Against torture
- c) **The recommendations formulated during the interactive dialogue/listed below have been examined by Tunisia and have been noted by Tunisia:**
 - 7.10. **Ireland:** Develop public awareness programmes to address stigmatisation of LGBTI persons
 - 8.31. **Denmark:** Decriminalize same-sex relations of consenting adults by repealing Article 230 of the Penal Code
 - 8.32. **Sweden:** Amend or repeal Article 230 of the Penal Code to end criminalization of same-sex sexual relations
 - 8.33. **US:** Amend Article 230 of the Penal Code to end criminalization of same sex sexual relations
 - 8.34. **Belgium:** Repeal article 230 of the Penal Code criminalizing same sex sexual relation
 - 8.35. **Netherlands:** Abolish article 230 of the penal code that criminalizes homosexuality
 - 8.36. **Canada:** Repeal article 230 of the Tunisian Penal Code and eliminate discriminatory practices based on sexual orientation and gender identity such as for example anal inspections
 - 8.37. **Germany:** Modify or repeal Article 230 of the Penal Code in order to decriminalize same-sex relations of consenting adults
 - 8.38. **France:** Repeal Articles 236 and 230 of the Penal Code to put an end to the criminalization of adultery and same-sex relationships, as well as to methods of collecting evidence that constitute a violation of the dignity and physical integrity of persons
 - 8.39. **Costa Rica:** Derogate article 230 of the Penal Code
 - 8.40. **Ireland:** Repeal article 230 of the Criminal Code
 - 8.41. **Norway:** Repeal Article 230 of the Penal Code, which criminalizes same-sex relations of consenting adults, and to discontinue the practice of forced anal exams to prove homosexual behaviour
 - 8.42. **Brazil:** Additional measures aiming at eliminating discrimination and violence based on sexual orientation
 - 8.43. **Spain:** Eliminate all legislation that penalises and criminalises same sex relationships as well as all discriminatory legislation as a result of sexual orientation

- 8.44. **Iceland:** Repeal legislation criminalising consensual sexual conduct between same-sex adults
- 8.45. **Iceland:** Take steps to prevent harassment or discrimination of LGBT persons, and prosecute those that do
- 8.46. **Ireland:** Take all necessary measures to prevent, investigate and prosecute violence against LGBTI persons
- 8.47. **Argentina:** Take immediate measures to derogate from norms that criminalize and stigmatize (LGBTI) and investigate and sanction the perpetrators of acts of discrimination and violence against them
- 8.48. **Australia:** Introduce legislation to protect against discrimination based on sexual orientation, gender identity and intersex status
- 8.49. **Chile:** Adopt legislative and political measures to combat discrimination based on sexual orientation and gender identity ⁴⁸

D. Recommendations for the Second Cycle (2012):

RECOMMENDATION	RECOMMENDING STATE	RESPONSE
Abolish legislation discriminating on the basis of sexual orientation, in order to guarantee the same rights to all citizens, including LGBT persons	Spain	Noted
Eliminate any legislation criminalizing same-sex relationships	Spain	Noted
Modify or repeal Article 230 of the Penal code in order to decriminalize same-sex relations of consenting adults	Austria	Noted

E. SOGIESC questions submitted in advance for Tunisia:

- **Belgium:** Quelles mesures le Gouvernement tunisien envisage afin de protéger les personnes lesbiennes, gays, bisexuelles, transgenres et intersexuées contre des actes de violence?
- **Netherlands:** Which steps has the government of Tunisia taken to stop all forms of discrimination against LGBTI persons and to ensure investigation into and prosecution of cases of violence against LGBTI persons?
- **Netherlands:** Does the government of Tunisia have any plans to abolish article 230 of the penal code (that criminalizes homosexuality) and bring an end to physical examinations during arrests of LGBTI persons?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva:

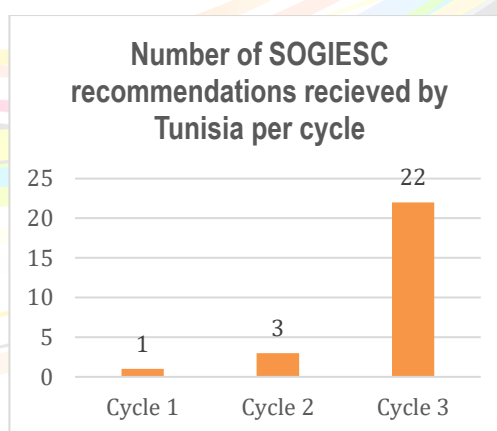
LGBT Tunisian Coalition

- To immediately repeal Article 230 of the Penal Code which condemns male and female homosexuality with a sentence of up to 3 years of imprisonment.
- To prohibit the practice of forced anal examinations as evidence of homosexual practices.
- Harmonize the penal code and the procedural penal code with the constitution of 2014 and the various treaties and conventions ratified by the Tunisian state.
- To allow transsexual and transgender people to be recognized in official documents relating to identity (National Identity Card, passport, birth certificate, etc).

⁴⁸ During the interactive dialogue, the recommendation was read as follows: Adopt legislative and political measures to combat gender discrimination, against children, persons with disabilities and discrimination based on sexual orientation and gender identity (Chile);

- To grant all citizens access to justice without discrimination, including that based on sexual orientation and gender identity.
- To enact a law criminalizing all forms of discrimination based on sexual orientation and gender identity as well as incitement to hatred and violence against LGBTI+ people.
- To recognize hate crimes against LGBTI+ people and consider these crimes as aggravating circumstances for judgments.
- To guarantee all citizens access to quality care and education services without any discrimination including that based on gender identity or sexual orientation.
- To introduce into the school curriculum inclusive sex education that promotes diversity and fights against all forms of discrimination, including the one based on sexual orientation and gender identity.
- To respect the freedom of association for LGBTI+ organizations and network and provide the necessary protection of LGBTI+ rights activists.

G. Graphic comparison between cycles (1-3)



H. [Video of Tunisia's UPR Working Group Session](#)

I. SOGIESC mentions during Tunisia's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017

- During the UPR outcome of Tunisia, **Germany** said "We reiterate our call to repeal Article 230 of the Tunisian Criminal Code and to eliminate discriminatory practices based on sexual orientation and gender identity, such as anal inspections". Tunisia then said in its closing statement that "Tunisia accepted the recommendation on non-discrimination between people based on their sexual orientation and to protect them from violence. The State is committed to protect them from violence and not to discriminate against them. They are equal citizens with all other citizens. However, the non-criminalization still needs further widespread dialogue in Tunisia as stipulated by the democratic process".
- **ILGA** and **COC Nederland**, on behalf of Tunisian Coalition for LGBTI+ Rights, made a [statement](#) which expressed concern about rising hate crimes from state actors and the criminalization of same-sex relations.
- There were multiple NGOs that welcomed the acceptance of the recommendation to end anal inspections yet expressed concern about the continued criminalisation of consensual same-sex relations, including **Amnesty International**, **Human Rights Watch** and **World Organisation Against Torture**.

**UNIVERSAL PERIODIC REVIEW – UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
UPR SOGIESC RECOMMENDATIONS**

Date and time of the review: May 4 2017, 9:00 – 12:30

Date and time of the adoption of the report: 9 May 2017, 16:30 – 18:00

During the 27th UPR Working Group Sessions, UK received 3 SOGIESC recommendations. It supported 1 recommendations and noted 2 recommendations.

A. SOGIESC information:

- [National Report:](#)

34. In November 2016, the UKG published the proposals “Prison Safety and Reform” setting out the steps that the UKG will take to make prisons a place of safety and reform, including by investing additional funding and changing ways of working by putting in place a new trigger for emergency intervention by the Justice Secretary, and by building new prisons. In November 2016, the UKG reviewed its policy on the care and management of transgender offenders and concluded that treating someone in the gender in which they identify, rather than their legally recognised gender, will be the safest and the most efficient approach to a range of decisions, including deciding initial location to male and female prisons. An independent review of BAME representation in the criminal justice system (the Lammy Review) has also been taking place since January 2016, with results expected in 2017.

94. Guernsey's equality and rights programme now includes a number of specific work streams, including on disability and inclusion, mental health, shared parental leave and ageing. A same-sex marriage law to give same-sex marriages in Guernsey the same rights and responsibilities as marriages between a man and a woman was introduced in 2016, as well as statutory maternity and adoption leave. In 2016, Sark introduced a new children's law which sets out the responsibilities of parents and others caring for children in line with the principles set out in the CRC.

96. In 2014, the CRC, CRC-OP-AC and CRC-OP-SC were extended to Jersey. The Government of Jersey has introduced the Discrimination (Jersey) Law 2013 which prohibits discrimination on the basis of certain protected characteristics, which to date include race, sex, sexual orientation, gender reassignment, and pregnancy and maternity. In 2015 the Jersey Police introduced a new 'Hate Crime Policy' which places an increased emphasis on all reported crimes that may be motivated by a hostility or prejudice based on a person's race, religion, sexual orientation, disability, or gender.

- [Compilation of UN information:](#)

13. The Special Rapporteur on violence against women, its causes and consequences was concerned that women from black and minority ethnic communities, women belonging to the lesbian, gay, bisexual, transgender, and intersex communities and women with disabilities were often linked to entrenched discriminatory practices in the political, social and economic spheres.

- [Summary of stakeholders' information:](#)

45. The young transgender centre of excellence (YTCE) referred to discrimination experienced by transgender people as a result of their gender identity, and recommended inter alia, that staff of public bodies receive relevant training called for a new approach to social security in order to protect and support people living with HIV in Scotland

46. British Humanist Association (BHA) stated that in Northern Ireland, same-sex marriages were not legal, and AI recommended that the Government end discrimination against these couples.

B. Remarks of the State Under Review (opening and closing speech):

Opening remarks: Finally, the US and the Netherlands asked about hate crime. The UK has a strong legislative framework in place to tackle hate crime, this includes criminal offenses on inciting hatred on the base of: race, religion and sexual orientation.

Intervention made by the UK after 29 interventions: On combating discrimination, article 14 of the chart prohibits discrimination on any grounds (...) The Equality Act 2010 consolidates anti-discrimination legislation and prohibits direct and indirect discrimination, harassment, victimization and other specified conducts with certain exceptions. It also protects people from discrimination in the nine characteristics: age, disability, gender reassignment, marriage, civil partnership, pregnancy and maternity rate, religion or belief, sex and sexual orientation.

Intervention made by the UK after 63 interventions: On hate crime if I may, which is obviously a great concern to many countries. It was raised by Japan and others, the UK provides a strong legal framework but we also try to protect the rights of freedom of speech, but our legal framework includes criminal offenses of incitement hatred on the grounds of: race, religion, sexual orientation, racially, nationality, religious aggravated circumstances (...)

C. Recommendations for the Third Cycle (2017):**a) Remarks made by the Recommending State:**

- **Montenegro:** Therefore, we call on the Government to enhance gender policies at all levels, with particular emphasize on women in black and minority ethnic communities, LGBTI women and women with disabilities.
- **Republic of Korea:** Amidst the challenges, changes and the required adjustments the world is facing, we look forward to UK's continued demonstration of an exemplary leadership against the human rights challenges we all confront, including in combating modern forms of slavery, hate crime, and sexual discrimination, and protecting human rights in anti-terrorism activities.

b) The recommendations formulated during the interactive dialogue/listed below have been examined by the UK and have been supported by the UK:⁴⁹

- 6.84. **Spain:** Dedicate more resources to fight against negative stereotypes in the media, against the most affected minority groups (LGBTI, Gypsies, Muslims, refugees and persons granted asylum

c) The recommendations formulated during the interactive dialogue/listed below have been examined by the UK and have been noted by the UK:

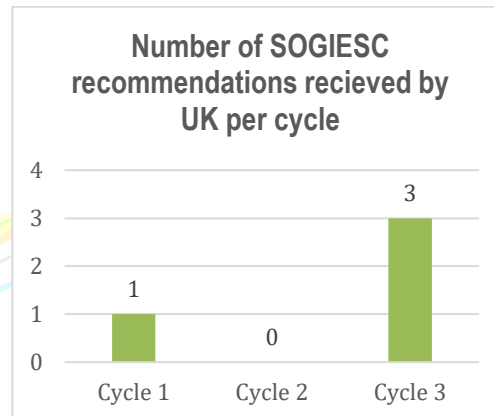
- 6.124. **Iceland:** End discrimination against same-sex couples in Northern Ireland by bringing the relevant law into line with other parts of the United Kingdom
- 6.125. **Australia:** Review its Equality Act in relation to gender identity and the rights of intersex persons in the context of rights to health services

D. Recommendations for the Second Cycle (2012): None**E. SOGIESC questions submitted in advance for the UK:**

- **Spain:** Despite de adoption of the 2010 Equality Act, one of the most comprehensive anti-discrimination legislation world-wide, inequalities regarding access to health, education and employment as well as gender income gaps, persist. Which causes are hampering governmental efforts to promote equality and non-discrimination? What aspects of the Act relating to gender identity are being reviewed?

F. SOGIESC recommendations shared by HRDs during ILGA's UPR advocacy week in Geneva: None

⁴⁹ The UK received also an openly/obliquely hostile recommendation to LGBTI persons and their right to found a family: 6.152. **Egypt:** Provide protection to the family as a natural and fundamental unit to the society. The UK supported this recommendation.

G. Graphic comparison between cycles (1-3)**H. [Video of UK's UPR Working Group Session](#)****I. SOGIESC mentions during UK's UPR outcome, Item 6 of the agenda of the Human Rights Council, 21 September 2017**

- During the UPR outcome of the United Kingdom, no States made SOGIESC mentions.
- However, **Allied Rainbow Communities International** called on the United Kingdom to apologize for its legacy of instigating criminalising laws in its ex-colonies.

