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Title: The effectiveness of the Universal Periodic Review in advancing the rights of intersex persons

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INTRODUCTION:

The United Nations Human Rights Council brings all 193 UN Members States together periodically to mutually assess their human rights records against the benchmark of The Universal Declaration of Human Rights (1948) and its core human rights treaties. The Universal Periodic Review (UPR) started in 2008 and is organised in cycles of four and a half years, generating more than 81,000 UPR recommendations addressed to the States under Review by their peers. As new rights emerge and human rights are no longer limited to women and men, our interpretation of rights should apply to persons of diverse sexual orientation and gender identity (SOGI). Notwithstanding this ideal universal fundamental principle, the rights of intersex persons are often still not recognised, respected, protected and realised in all regions. Intersex is a blanket term¹ that refers to various innate bodily sex characteristics.² Intersex persons can be defined as persons that are ‘born with sex characteristics that do not meet medical and social norms for female or male bodies’.³ The world population counts up to 1.7% of intersex persons.⁴ The first time that the UPR recommendations referred to “intersex” was in 2011, with only one mention from the United States of America addressed to Nepal, who supported the received recommendation 106.5 ‘Enact legislation to ensure members of the lesbian, gay bisexual, transgender and intersex (LGBTI) community citizenship rights, consistent with the equal rights

¹ Alice Dreger, ‘Twenty Years of Working toward Intersex Rights’, *Bioethics in Action* (Cambridge University Press 2018), 55.

² OHCHR, ‘Background Note on Human Rights Violations against Intersex People’, 2.

³ OHCHR, ‘Free & Equal Campaign Fact Sheet: Intersex’ (2015), 1.

⁴ Morgan Carpenter, ‘The human rights of intersex people : addressing harmful practices and rhetoric of change’ *Reproductive Health Matters* 2016, 24(47), 74.

enumerated in the Nepali Supreme Court's 2008 decision'. Currently, around 500 recommendations address the rights of intersex persons; the study questions whether the UPR addresses these rights effectively.

AIM:

This study provides a qualitative analysis of the UPR recommendations up to May 2021, with a specific focus on intersex children and adults, providing a critical analysis of the increase in recommendations formulated in this regard. It aims at identifying the UPR-recommendations that are more likely to be accepted by the State under Review, promoting as such the rights of intersex persons. The analysis therefore focuses on; the nature; the content; and the provenance and destination of the recommendations.

MATERIALS AND METHODS:

This study conducts critical discourse analysis on a set of 500 Intersex-related UPR recommendations archived in the UN Human Rights Index⁵ generated since 2008.

RESULTS:

The study finds that among the SOGI-related recommendations, only a limited number address the rights of intersex adults and children. It highlights that using the abbreviation 'LGBTI', instead of explicitly mentioning the target group of intersex persons renders the rights of the latter less visible. The analysis shows that the acceptance of UPR-recommendations by the State under Review differs according to their content. The rights of intersex persons are more often approached from a legal than from a medical perspective, and related UPR-recommendations are more likely to be accepted when drafted in general terms rather than in more specific terms. These findings impact the outputs of the UPR as a socialising environment, enabling the implementation of a long term mission of progressive countries to enhance the rights of intersex persons universally.

CONCLUSIONS:

This study suggests that formulating intersex-related UPR recommendations in specific terms does not enhance sufficiently the rights of intersex persons in the near future, since these are more likely to be rejected by the State under Review. It also argues that addressing the rights of intersex persons separately rather than under the umbrella of the LGBTI community, increases their visibility. The study concludes that to be effective, UPR recommendations related to intersex, should be formulated in general terms and addressed to intersex persons explicitly.

KEYWORDS:

Human rights, sexual orientation and gender identity, Universal Periodic Review;

BIOGRAPHY:

Dr. Saskia Ravesloot, is a respected thought leader with expertise in guiding staff and teams in diverse cultural settings, managing political and policy dialogue, programming, design,

⁵ <https://uhri.ohchr.org/en/search-human-rights-recommendations>

implementation, monitoring and evaluation of projects and programmes, as well as evidence-based advocacy, capacity building and training, especially on the gender-responsive rights-based approach. Dr Ravesloot works for bilateral and multilateral organizations (such as: European Union, UNDP, UN Women, GIZ, LuxDev), in more than 30 countries, mostly in Africa, but also Asia and Latin-America. She is passionate and integrity-driven about sharing her experiences with students and young colleagues from all over the world. Dr. Ravesloot is a PSIA (Paris School of International Affairs) faculty member since 2016 and teaches two courses in the Spring Semester on gender and sexual orientation and gender identity in development cooperation (one for first-year students and another, more advanced, for second-year students) preparing students to be active actors towards achieving gender equality in international cooperation.