

The Universal Periodic Review beyond the binary Can recommendations of the Universal Periodic Review advance the rights of persons of diverse sexual orientation and gender identity?

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INTRODUCTION

The United Nations (UN) Human Rights Council brings all 193 UN Member States together periodically to mutually assess human rights records. The Universal Periodic Review (UPR) started in 2008 and is organised in cycles of four and a half years generating more than 77,000 UPR recommendations addressed to the States under Review. The UPR is first and foremost a universal instrument, assessing all rights for all people, by all countries. The Universal Declaration of Human Rights and its core human rights treaties are the benchmark. What was considered a human right in 1948 is still valid today. However, new rights emerge and human rights are not limited to women and men in a binary setting, since today rights should also apply to persons of diverse sexual orientation and gender identity (SOGI).

AIM:

Notwithstanding this ideal universal fundamental principle, rights of lesbians, gay, bisexuals, transgender, queer and intersex persons (LGBTQI) are still not recognised, respected, protected and realised in all regions. Some countries lag behind. While in 2020, six countries still sanction consensual same-sex acts with the death penalty, countries like Costa Rica, celebrate the first same-sex marriages via television. The UPR is believed to advance human rights worldwide but its efficacy is also criticised. Multiple commentators scrutinise quantitatively the UPR and argue that through the interactive dialogue, which is the centrepiece of the UPR, States interact through a cooperative way, as an alternative for 'naming and shaming' to advance human rights.

MATERIALS AND METHODS:

Instead of concentrating on the polarisation highlighted in quantitative studies, this study provides a qualitative analysis of the UPR recommendations up to 2020. It provides a critical analysis of why SOGI-related recommendations are made and by whom during this dialogic process. This study conducts critical discourse analysis on a set of 2,343 SOGI-related UPR recommendations archived in the UN Human Rights Index generated since 2008. The study focuses on; the nature; the content; and the provenance and destination of the recommendations, and focuses on the power relations between polarised regional groups that shape their interaction.

RESULTS:

This thesis argues that specific recommendations have the potential to become evidence of emerging *opinion juris* and that other recommendations have the potential to strengthen 'the organisational capacity of the UPR process to act as an enforcement mechanism'. It considers the UPR as a socialising environment enabling the implementation of a long term mission of progressive countries to enhance the rights of the LGBTQI community universally.

CONCLUSIONS:

This study suggests that formulating SOGI-related recommendations in specific terms does not enhance sufficiently the rights of persons of diverse SOGI in the near future, since these are likely to be rejected. It is suggested that formulating general recommendations related to political measures have a higher potential of promoting these rights. Nevertheless, caution should be raised, since these political general measures will still leave space for cultural perspectives to orient the measures in a binary, conventional direction. As such some features of a potential pathway appears for those countries who are willing to promote the rights of persons of diverse SOGI.

KEYWORDS: Human rights, women's 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, 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.