

RIGHTS at RISK

Time for Action

Observatory on the Universality of Rights Trends Report

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Chapter 1: Advancing Feminist Agendas: Key Progressions on Gender and Sexuality

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Progress in national, regional, and international policy spaces is always driven by feminist and human rights movements. These progressive movements have adopted multi-pronged strategies to combat discriminatory laws related to gender and sexuality, while leveraging the affirmative potential of the law to claim rights and create an enabling environment for social change. But legal reform is a complex and iterative process and is only one of many strategies employed towards the transformation of our societies.

**FEMINIST MOVEMENTS
CONTINUE TO PERSEVERE
AND CELEBRATE GAINS
ALL OVER THE WORLD**

In their everyday lives, feminists challenge fundamentalisms and fascisms, and advocate for changes in laws and legal frameworks, as well as in social norms and cultural practices. Their resilient advocacy promotes discourses, norms, and systems that reflect the lived realities of women, LGBTQI people and historically oppressed communities. While fundamentalisms, fascisms and other systems of oppression shapeshift and find new tactics and strategies to consolidate power and influence, **feminist movements continue to persevere and celebrate gains all over the world:**

- Laws prohibiting consensual same-sex activity were repealed in Seychelles in 2016¹¹ and in Botswana in 2019.¹²
- In 2018, a referendum in Ireland repealed a constitutional provision that prohibited abortion in almost all circumstances,¹³ and in January 2019, abortion services opened up in the country.
- In 2020, Argentina's congress legalized abortions up to 14 weeks, after decades of feminist struggle.¹⁴
- Malta passed a law that permits legal gender recognition based on self-determination and prohibits surgical interventions in intersex infants – an intrusive procedure that stigmatizes and undermines intersex persons' rights to bodily integrity and health.¹⁵
- Brazil, Colombia, Mexico, Nepal, Bolivia, Ireland, and Norway have also taken up policies which support legal gender recognition based on self-identification.¹⁶
- In Portugal, a new law was approved in 2018 granting the right to gender identity without the need for medical diagnosis or intervention, and prohibiting genital surgeries in intersex children.¹⁷
- In 2016, Belize activists were successful in repealing the nation's law against same-sex sexual activity,¹⁸ as were those in Angola in 2019.¹⁹
- The Comprehensive Trans Act was approved in Uruguay in 2018, including

reparations for trans people persecuted during the military dictatorship.²⁰

- From June 2019, contraceptives and reproductive health consultations became free of charge in Burkina Faso.²¹
- In 2019, the High Court in Kenya ruled that rape survivors have the right to legal abortion.²²
- Legislation passed in May 2019 in Mexico grants domestic workers labour rights such as limited work hours and paid time off.²³

The early 1990s saw a proliferation of international feminist networks coming together to strategize, build alliances, debate, confront governments, and hash out critical disagreements amongst themselves. As many governments were making commitments in the international arena, feminists and progressive movements recognized the potential of international policy forums as a space to influence and lobby for state accountability for human rights violations – especially in national contexts where such advocacy might prove too risky.

In a globalized world where fundamentalisms and fascisms are increasingly consolidating institutional power, the international human rights system has become another space in which our bodies, rights, and freedoms are used as pawns. However, feminist and progressive movements have been using their creativity, resilience, and organizing skill

to resist this backlash, influence decision-makers and hold states accountable.

IN 2019 THE UN FIRST RECOGNIZED THE RIGHT TO BODILY INTEGRITY AND AUTONOMY

Feminist movements continue demanding sexual and reproductive health and rights, as well as broader socio-political transformation as they challenge traditional models of “women in development” and propose alternative frameworks based on Global South perspectives.

Global Spaces

Feminists have shaped international law and contributed to progressions in human rights standards, norms, and instruments at the UN Human Rights Council (HRC),²⁴ affiliated UN Special Procedures, UN treaty monitoring bodies, and at the International Labour Organization (ILO).

UN Human Rights Council

The HRC’s annual resolutions on discrimination against women and girls (DAWG)²⁵ have been key to progressions in rights relating to gender and sexuality from 2018 through 2020. At the 38th session of the HRC in June and July 2018,²⁶ the annual resolution included **the first reference to bodily autonomy in a UN resolution**, calling

on states to ensure the development and enforcement of policies, good practices, and legal frameworks that respect bodily autonomy.²⁷ This was a significant step towards recognition by a political body of the feminist principle of “the right to self-governance over one’s own body without coercion or external pressure.”²⁸

Feminist groups organized to ensure²⁹ that bodily autonomy was again reinforced as a norm in the 39th session of the HRC in September 2018. The resolution on preventable maternal mortality and morbidity and human rights in humanitarian settings³⁰ calls on states to eliminate maternal mortality and to bring their laws and policies concerning sexual and reproductive health in line with international human rights laws to respect women’s bodily autonomy and privacy. In 2019, the DAWG resolution also called for full respect for the dignity, integrity and bodily autonomy of the person.³¹ Another significant step was taken in 2019 at the 40th session of the HRC – as **the UN first recognized the right to bodily integrity and autonomy.**³²

The right to sexual and reproductive health has also been developed and repeatedly affirmed and embedded at the Human Rights Council over the past few years. The DAWG resolution at the 38th session of the HRC in 2018 recognized the right to sexual and reproductive health for the first time ever in a politically negotiated UN document. The resolution made critical connections between economic empowerment and women’s and

girls' sexual and reproductive health rights and bodily autonomy, thus reaffirming the landmark General Comment on the right to sexual and reproductive health from the UN Committee on Economic, Social and Cultural Rights.³³ The HRC has gone on to uphold this right multiple times from 2018 to 2020, including in the resolution on the elimination of discrimination against women and girls in sport,³⁴ and the DAWG resolutions of 2019 and 2020.³⁵

There is now more comprehensive recognition of intersecting and systemic discrimination in law and practice at the Council. The DAWG resolution at the 44th session in 2020, for example, focused on this theme and **urged states to recognize and address its compounded impact on women and girls.** It also called on states to review legislation using an intersectional approach, asking states to acknowledge that multiple and intersecting forms of discrimination perpetuate damaging stereotypes. It also urged states to include this understanding in any gender bias training for government officials, and to modify any social and cultural patterns of conduct which might underlie or perpetuate intersectional discrimination.

Resolutions at the HRC have also called out and expressed concern regarding anti-rights backlash and tactics in recent years. **Several resolutions on DAWG at the Council recognize that backlash is linked to retrogressive lobbies, ideological views or misuse of culture or religion to oppose women's and girls' equal rights.**³⁶

SEVERAL RESOLUTIONS AT THE COUNCIL RECOGNIZE THAT BACKLASH IS LINKED TO RETROGRESSIVE LOBBIES, IDEOLOGICAL VIEWS, OR MISUSE OF CULTURE OR RELIGION

The 2019 resolution reaffirmed the human rights of women and girls to have control over and decide freely on matters related to their sexuality. Access to comprehensive sexuality education (CSE) has also been reinforced at the Council in recent years. **Language on CSE is now widely considered “agreed language.”** The DAWG resolution in 2018 included unqualified and strong language on CSE, as did resolutions in 2019 and 2020.

Feminist progressions in this space are notable. Hostile amendments (amendments aimed at undermining the resolution and its purpose) to omit access to CSE as a part of state obligations were proposed by states such as the Russian Federation, Egypt, Pakistan, and Saudi Arabia. **They have all been defeated³⁷ – and the numbers of state support and state sponsors of these resolutions have also been increasing over this period.**

UN Special Procedures

We can see a number of feminist progressions in the recent work of UN Special Procedures – independent officials with mandates to advise and report on human rights from a thematic or country perspective.³⁸

In its reports and statements, the UN Working Group on discrimination against women and girls (WGDAW) has highlighted the ways in which the cultural construction of gender determines the role of women and girls within the family. It also reaffirmed the diversity of families worldwide and the obligation of states to combat discrimination in cultural and family life.³⁹ WGDAW has also called for states to apply the principles of equality to all forms of family law in all systems.⁴⁰

THE WGDAW HAS EMPHASIZED THE OBLIGATION OF STATES TO COUNTER NARRATIVES AROUND GENDER IDEOLOGY

The Working Group has called out the instrumentalization of women's bodies in service of "a politicized patriarchal agenda," and called for the achievement of women's highest attainable standard of health, without discrimination.⁴¹ **WGDAW also has highlighted the need for states to counter the rise of fundamentalisms, racist and xenophobic forces, attacks on autonomous women's rights movements and women human rights defenders (WHRDs), and efforts to**

re-entrench patriarchal understandings of gender and family into law.⁴²

The Working Group has further called on states to **repeal all discriminatory laws and practices, including those that discriminate against women on traditional, cultural or religious grounds;** create an enabling environment for civil society to combat the backlash against women's human rights; and resist all anti-rights trends and movements with a response grounded in human rights obligations – with women's and girls' rights at the centre.⁴³ The WGDAW has also **emphasized the obligation of states to counter the narratives around gender ideology used by conservative lobbies to misinform and undermine the advancement of women's rights and gender equality.** And it has urged states to continue promoting the fundamental principles that all rights are universal, indivisible, interdependent, and interrelated, calling on countries to ensure a respect for women's rights to make decisions about their own bodies and to receive comprehensive sexuality education.⁴⁴

In other advances, **WGDAW has highlighted that freedom of religion or belief, or "protection of the family" cannot be used as justifications to discriminate against women.** It has also stated that **the right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the core of her rights to equality and privacy, and is a precondition for the enjoyment of other rights.**⁴⁵

THE SR IN THE FIELD OF CULTURAL RIGHTS HAS CALLED OUT ANTI-RIGHTS ACTORS' MISUSE OF REFERENCES TO "CULTURE" AS A GUISE FOR CULTURAL RELATIVISM

The UN's Special Rapporteurs are independent experts who act as watchdogs on human rights issues. The recent work of the Special Rapporteur (SR) on Cultural Rights has shone a light on the ways in which anti-rights actors attempt to twist and misuse language on culture, contrary to the real commitments under international cultural rights. **The SR has highlighted that cultural rights, rather than standing in opposition to women's rights, must be ensured for women on an equal basis. Women must have equal rights to access, participate in, and contribute to all aspects of cultural life without barriers.**⁴⁶ This includes women's rights to interpret cultural heritage and traditions, and to decide which practices, values or traditions are to be kept, reoriented, modified or discarded. The SR has also noted that the preservation of a specific cultural community should not be achieved to the detriment of any of its members, and calls on states and non-state actors to address community or religious norms that perpetuate women's subordination.⁴⁷

The SR on Cultural Rights has recently highlighted the issue of rising fundamentalisms across regions, and its impact on women's

cultural rights. She has called on states to recognize fundamentalisms as a threat to human rights which must be addressed through a human rights approach.⁴⁸ **The SR also has called out anti-rights tactics – flagging that women's cultural rights are a prime target for fundamentalists, who often claim to be defending culture, religion or tradition, but instead work to deny the rights of others in these regards.**⁴⁹ She highlights that ultra-nationalism, myths of a homogenous nation, and claims of ethnic or racial superiority or purity also undermine cultural rights.

The SR emphasizes that **respecting, protecting, and fulfilling women's rights is an essential part of the human rights response to fundamentalisms.** She has called for states and the international community to combat the root causes of fundamentalisms through implementation of economic, social, and cultural rights, and to recognize the warning signs of fundamentalisms uncovered by feminist movements and take preventive action to stop the rise of anti-rights movements.⁵⁰ We can see the advancement of feminist agendas in the work of the UN Special Rapporteur on Freedom of Assembly and Association – particularly in highlighting the impact of all forms of fundamentalisms, including religious, market, political and cultural, and nationalist fundamentalisms.⁵¹

The SR in the field of Cultural Rights has also called out anti-rights actors' misuse of references to "culture" as a guise for cultural

relativism. She has stated that the resurgence of cultural relativism represents a particular threat to human rights, including women's rights, which must be countered.⁵² The SR has also highlighted that discourse around the “protection of the family” and “traditional values,” is being used to undermine women's rights to equality and non-discrimination, and notes that **the universality of rights and cultural diversity are two mutually reinforcing and interlocking human rights principles.**

THE SR ON FoRB HAS EMPHASIZED THAT RELIGIOUS BELIEFS CANNOT BE INVOKED AS A JUSTIFICATION FOR VIOLENCE OR DISCRIMINATION

Recent reports from the UN's Special Rapporteur on Freedom of Religion and Belief (FoRB) have also been important in countering misleading anti-rights attempts to appropriate discourse on religious freedom in an attempt to roll back human rights, particularly those related to gender and sexuality. The SR on FoRB has on many occasions **clarified that the right to freedom of religion pertains to believers, not beliefs, and has highlighted that freedom of religion and non-discrimination should function as mutually reinforcing rights.**⁵³ The SR has called on states to repeal gender-discriminatory laws supposedly grounded on religious beliefs and to address gender-based violence carried out in the name of religion by non-state actors.⁵⁴

The SR on FoRB has specifically emphasized that under human rights law, **religious beliefs cannot be invoked as a justification for violence or discrimination against women, girls or persons who are non-conforming in their gender or sexuality.**⁵⁵

Advances in human rights norms can also be seen in the recent work of the UN Independent Expert (IE) on Sexual Orientation and Gender Identity (SOGI). It is also notable that **the resolution to renew the mandate of the IE on SOGI in 2019 was successful,**⁵⁶ and that it had a greater number of cosponsors and votes than when the mandate was first established in 2016. The IE has recently **called on states to repeal laws that criminalize consensual same-sex relations, gender identity or expression, anti-LGBTQI “anti-propaganda” laws, and laws criminalizing sex work.**⁵⁷

He has recommended that states enact gender recognition laws, redress structural discrimination, and remedy the socioeconomic inequalities that contribute to the vulnerability of those sexually and gender non-conforming persons who are the most marginalized. The IE further called on states to ban so-called “conversion therapy,” non-consensual medical examinations and sterilizations, and other medical procedures that pathologize LGBTQI persons and force them to comply with heterosexual and cisgender norms.

The recent work of the UN Special Rapporteur on the Rights of Persons with Disabilities has also been important. For instance, the SR has called **for the recognition of the sexual and reproductive health and rights of girls and women with disabilities and for states to prohibit harmful practices, including forced contraception and sterilization.**⁵⁸

The recent work of the UN Special Rapporteur on Human Rights Defenders also supported the agendas of women human rights defenders, as shown in his 2019 report on the situation of WHRDs.⁵⁹

UN Treaty Monitoring Bodies

There have also been key advances through the UN treaty monitoring bodies in recent years. As mentioned above, the Committee on Economic, Social and Cultural Rights embedded a robust understanding of sexual and reproductive health and rights in its General Comment 22.⁶⁰ General Comment 36 of the Human Rights Committee⁶¹ on the right to life, which oversees state compliance with the International Covenant on Civil and Political Rights, is also noteworthy. Despite being the target of significant anti-rights organizing, **the Committee's General Comment affirms that the right to life begins at birth, that preventable maternal deaths are a violation of the right to life, and that access to safe, legal, and accessible abortion is essential to realize women's and girls' right to life.**

The CEDAW Committee made important advances in its General Recommendation 35 on gender-based violence against women.⁶² The recommendation **highlights that violations of women's rights related to sexuality and reproduction, such as forced sterilization, forced pregnancy, and the criminalization and denial of abortion or post-abortion care are forms of gender-based violence that may amount to torture or cruel, inhuman, or degrading treatment.** It also calls for states to respond to the erosion of legal and policy frameworks that seek to eliminate gender-based discrimination and violence. Such erosions are often justified in the name of tradition, culture, religion or fundamentalist ideology, or through reductions in public spending as part of "austerity measures."⁶³

THE CEDAW COMMITTEE CALLS FOR STATES TO RESPOND TO THE EROSION OF LEGAL AND POLICY FRAMEWORKS THAT SEEK TO ELIMINATE GENDER-BASED DISCRIMINATION AND VIOLENCE



Yogyakarta + 10

Notably, on the 10-year anniversary of the (soft law) Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity,⁶⁴ activists came together to develop the Yogyakarta+10⁶⁵ (Y+10), a supplement of the principles. The Y+10 expands previous normative definitions in several ways, including by adding sexual characteristics as another critical dimension when addressing the violations of intersex persons.

The Y+10 also includes the right for all to obtain identity documents, and the right to legal recognition without requiring assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or sexual characteristics. The updated principles include the right to bodily and mental integrity, autonomy, and self-determination; the right to be free from torture and cruel, inhuman, and degrading treatment on the basis of sexual orientation, gender identity, gender expression and sex characteristics; and the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sexual characteristics.

International Labour Organization

A key progression for feminist and labour movements in recent years at the global level is the new International Labour Conference (ILC) Violence and Harassment Convention 190⁶⁶ and its accompanying Recommendation to combat violence and harassment in the world of work.⁶⁷ Thus far, the convention has been ratified by Uruguay and Fiji, which means that it will enter into force in June 2021.

The treaty applies to both formal and informal sectors, including domestic work and work from home, and is intended to account for

violence and harassment involving third parties, such as clients, customers or service providers. It also recognizes that groups in situations of vulnerability may be disproportionately affected by violence and harassment in the workplace and calls for states to ensure the right to equality and non-discrimination in employment and occupation. The treaty obligates governments to monitor the issue, provide measures to protect victims and whistleblowers from retaliation, and provide access to remedies through complaint mechanisms.

The convention also requires governments take measures to prevent and protect people from violence and harassment, and provide enforcement mechanisms and remedies for victims, including compensation. These include adopting legal prohibitions of violence and harassment at work and ensuring effective inspections, investigations, and protection from retaliation.

Exercise

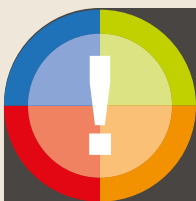
Let's map and celebrate our wins!

To Think Collectively

The advances mentioned in this chapter have been key at the international level and would not have been possible without the struggle of feminist movements. Highlighting our wins is essential, even if we still have a long road ahead of us to realize our vision. It is important because they give us strength, hope, and reasons to celebrate, and because they give us tools to hold institutions of power accountable, and foundations to build from.

We invite you to come together with your colleagues and reflect together on the following questions. You may want to set a time period to frame your discussion, such as the last 5 years, 10 years, etc.

- What advances have been achieved in your local, national, or regional context?
- Who was involved (movement, state, NGO, institutions etc.) and how did they work together in achieving these successes?
- What strategies did you use to achieve them? What helped and what were the obstacles you met?
- Have advances at the national, regional, and international levels reinforced each other? If so, how? If not, why?
- What new doors do these advances open? What new opportunities have they created?



We want to hear what you found out!

Please share your reflections with us at rightsatrisk@awid.org
or via OURs members' social media platforms using
#RightsAtRisk

Endnotes – Chapter 1: Advancing Feminist Agendas: Key Progressions on Gender and Sexuality

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- 64 The Yogyakarta Principles address a broad range of international human rights standards and their application to SOGI issues. On 10 November 2017, a panel of experts published additional principles expanding on the original document reflecting developments in international human rights law and practice since the 2006 Principles, The Yogyakarta Principles plus 10. The new document also contains 111 “additional state obligations,” related to areas such as torture, asylum, privacy, health, and the protection of human rights defenders. The full text of the Yogyakarta Principles and the Yogyakarta Principles plus 10 are available at: <https://yogyakartaprinciples.org/>
- 65 See full text: <https://yogyakartaprinciples.org/principles-en/yp10/>
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