



Mobilising in Times of Gender Equality Backsliding: International Human Rights Responses to Anti-Gender Discourse

LOURDES PERONI 

ARTICLE



ABSTRACT

In recent years, anti-gender mobilisations have spanned regions, including Latin America and Europe, spurring a backlash against gender equality and creating hostile environments for advocates and scholars working in the field. While these movements have been intensely studied in the literature, the responses from international human rights bodies to counter these movements' anti-gender discourse remain little explored. This scant scholarly attention is surprising given that international human rights bodies have actively counteracted anti-gender discourse. This article discusses three types of counteractions identified in international human rights responses: assertive, defensive and offensive. It shows how assertive responses resist challenges by reaffirming the concept of gender disputed by anti-gender discourse; how defensive responses, rather than attacking anti-gender arguments, soothe and evade them by using a mix of reassuring and clarifying language; and how offensive responses confront anti-gender arguments by unveiling and condemning the social order that anti-gender discourse aims to preserve. The article further reflects on these counteractive responses based on insights from nine in-depth interviews with human rights/rule of law advocates and scholars working on LGBTQI rights and reproductive rights in two countries often identified as facing or having recently faced gender equality backsliding: Hungary and Poland.

CORRESPONDING AUTHOR:

Lourdes Peroni

Assistant Professor, Faculty of Sociology, University of Warsaw, Poland

m.peroni@uw.edu.pl

KEYWORDS:

advocacy; anti-gender discourse; backsliding; gender equality; human rights

TO CITE THIS ARTICLE:

Lourdes Peroni, 'Mobilising in Times of Gender Equality Backsliding: International Human Rights Responses to Anti-Gender Discourse' (2024) 20(3) Utrecht Law Review 42–55. DOI: <https://doi.org/10.36633/ulr.1080>

In recent years, anti-gender mobilisations have spanned regions, including Latin America and Europe, spurring a backlash against gender equality and creating hostile environments for advocates and scholars working in the field.¹ Though anti-gender mobilisations have become visible only recently, they had already started in the mid-2000s,² bringing together a variety of religious, civil society and government actors in ‘a loose and somewhat diffuse network’.³ While the triggers of these mobilisations vary from country to country, the mobilisations share a critique of gender.⁴ Usually termed ‘gender ideology’, the critique is deployed to oppose different issues, from LGBTQI rights, to reproductive rights, sex education in schools, gender studies as an academic discipline and the term gender itself.⁵

Even human rights seemingly ‘cemented in the law’, such as protection against gender-based violence,⁶ have become a central site of contestation, as opposition to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in some European states illustrates.⁷ Anti-Istanbul Convention campaigns have challenged its gender social transformative character while portraying it as a ‘foreign imposed threat’ to national traditional values.⁸ In this context, advocates and scholars of women’s rights and LGBTQI rights have often found themselves marginalised, exiled and defunded amidst persecution and stigmatisation in society.⁹

Anti-gender movements do not only share a critique of the concept of gender but also strategies and repertoires to combat it, including presenting themselves as defenders against a ‘neo-colonial Western project’ embodied in ‘gender ideology’.¹⁰ International and regional institutions like the United Nations and the European Union are generally viewed as part of this process.¹¹ Gender is in this way reconfigured as a ‘colonial imposition’ and anti-gender campaigns as ‘a form of resistance to colonialism’.¹²

1 E.g. K Bárcenas Barajas (coord.) *Movimientos Antigénero en América Latina: Cartografías del Neoconservadurismo* (Universidad Nacional Autónoma de México, Instituto de Investigaciones Sociales, 2022); E Lombardo et al, ‘De-democratization and Opposition to Gender Equality Politics in Europe’ (2021) 28 *Social Politics: International Studies in Gender, State & Society*, no. 3, 521–531; M Moragas, ‘The Case of The Organization of American States’ in S Corrêa (ed.) *Anti-gender Politics in Latin America: Summary of Country Case Studies* (Sexuality Policy Watch, 2021), 164–181; E Kováts & M Pöim (eds.) *Gender as Symbolic Glue: The Position and Role of Conservative and Far-Right Parties in the Anti-Gender Mobilizations in Europe* (Foundation for European Progressive Studies, 2015); C Roggeband & A Krizsán, ‘Democratic Backsliding and the Backlash against Women’s Rights: Understanding the Current Challenges for Feminist Politics,’ Discussion Paper no. 35 (UN Women, 2020); D Paternotte & R Kuhar, ‘Disentangling and Locating the “Global Right”: Anti-Gender Campaigns in Europe’ (2018) 6 *Politics and Governance*, no. 3, 6–19.

2 Paternotte & Kuhar (n 1), 7–8.

3 A Krizsán & C Roggeband, *Politicizing Gender and Democracy in the Context of the Istanbul Convention* (Palgrave Macmillan, 2021) 34. See also L Sosa, ‘Beyond Gender Equality? Anti-gender Campaigns and the Erosion of Human Rights and Democracy’ (2021) 39 *Netherlands Quarterly of Human Rights*, no.1, 7–8.

4 Paternotte & Kuhar (n 1), 8.

5 *ibid.* The Vatican and allies articulated the notion of ‘gender ideology’ to counter developments on sexual and reproductive rights at the United Nations Conference on Population and Development in Cairo in 1994 and at the United Nations Fourth World Conference on Women in Beijing in 1995. Paternotte & Kuhar (n 1), 11.

6 Sosa (n 3), 8.

7 Krizsán & Roggeband (n 3).

8 *ibid.*, 225–6.

9 E.g. Council of Europe Commissioner for Human Rights, Report following Visit to Hungary from 4 to 8 February 2019, CommDH(2019)13; Special Rapporteur on the Situation of Human Rights Defenders, Report on his Mission to Hungary, 19 January 2017, A/HRC/34/52/Add.2, paras 83–85; and Working Group on the Issue of Discrimination against Women in Law and in Practice, Visit to Poland, 25 June 2019, A/HRC/41/33/Add.2, paras 23–28.

10 E Korolczuk & A Graff, ‘Gender as “Ebola from Brussels”: The Anticolonial Frame and the Rise of Illiberal Populism’ (2018) 43 *Signs: Journal of Women in Culture and Society*, no. 4, 797–821; Paternotte & Kuhar (n 1), 9.

11 Paternotte & Kuhar (n 1), 9. As one of the interviewees observes: ‘The governing majority attempts to steer it always to cultural issues and they include all this worldview of alien, Western values that are incompatible with traditionalist Polish values and these include LGBT rights, gender equality, also veganism, vegetarianism and all sorts of impositions from the European Union, from Brussels, on the Polish society’ (#3).

12 Korolczuk & Graff (n 10), 807.

The movements have been intensely studied in the scholarly literature.¹³ So has been the gender equality backsliding¹⁴ prompted by anti-gender movements in various countries.¹⁵ Less explored however in the literature are the responses from international human rights bodies to counter anti-gender discourse. This scant scholarly attention is surprising given that international human rights bodies have done more than merely calling on the human rights world to engage with gender equality critics.¹⁶ They have pushed back the gender pushbacks¹⁷ and actively responded to gender critiques themselves: from the Council of Europe Commissioner for Human Rights to the Expert Body Monitoring the Implementation of the Istanbul Convention (GREVIO), the Committee of Experts of the Follow-up Mechanism of the *Belém do Pará* Convention (MESECVI), the United Nations Working Group on Discrimination against Women and Girls (WGDAWG) and the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform).¹⁸

Mindful of the regression in gender equality and women's rights in the world and of the need to preserve 'hard-fought gains',¹⁹ these international human rights bodies have been far from silent in the (anti-)gender debates. Underlying their polyphonic responses there is a shared concern that anti-gender movements' discourse is not just mere rhetoric but an actual threat to human rights. Some of these bodies note that, at the national level, anti-gender campaigns are impeding constitutional and legislative changes and stalling ratification of human rights instruments like the Istanbul Convention,²⁰ as well as slowing down reforms to protect the human rights of trans people, including protection against hate crimes and speech.²¹ Others observe that, at the international level, these campaigns are seeking to water down existing commitments, to undermine institutions like the United Nations and to insert regressive language into human rights law, ultimately contributing to 'fragmenting and weakening the human rights system'.²²

This article discusses three types of responses identified in international human rights bodies' counteraction of anti-gender discourse: *assertive*, *defensive* and *offensive*. In reflecting on these counteractive responses, the article incorporates insights from nine interviews with human rights advocates and scholars working on LGBTQI rights and reproductive rights in

13 E.g. A Graff & E Korolczuk, *Anti-Gender Politics in the Populist Moment* (Routledge, 2022); E Corredor, 'Unpacking "Gender Ideology" and the Global Right's Antigender Countermovement' (2019) 44 *Signs: Journal of Women in Culture and Society*, no. 3, 613–638; A Graff et al, 'Introduction: Gender and the Rise of the Global Right' (2019) 44 *Signs: Journal of Women in Culture and Society*, no. 3, 541–560; Paternotte & Kuhar (n 1); A Pető & E Kováts, 'Anti-gender Movements in Hungary: A Discourse without a Movement?' in R Kuhar & D Paternotte (eds.) *Anti-Gender Campaigns in Europe: Mobilizing against Equality* (Rowman & Littlefield, 2017), 117–131.

14 For the purposes of this article, I follow Roggeband & Krizsán (n 1), 1, in understanding backsliding as 'States going back on previous commitments to gender equality norms as defined in their respective political contexts'.

15 E.g. J Takács et al., 'Resisting Genderphobia in Hungary' in M Bogaards & A Pető (eds.) 'Gender and Illiberalism in Post-Communist Europe' (2022) 10 *Politics and Governance*, no. 4, 38–48; M Szczygielska, "'Good Change" and Better Activism: Feminist Responses to Backsliding Gender Policies in Poland' in A Krizsán & C Roggeband (eds.) *Gendering Democratic Backsliding in Central and Eastern Europe: A Comparative Agenda* (CEU CPS, 2019), 120–160; W Grzebalska & A Pető, 'The Gendered Modus Operandi of the *Illiberal* Transformation in Hungary and Poland' (2018) 68 *Women's Studies International Forum*, no. 3, 164–172.

16 E.g. Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016, 16 November 2016, CommDH(2016)37, 22.

17 EDVAW Platform, Independent Women Human Rights Mechanisms are Part of the Solution to 'Push Back the Pushbacks and Keep Pushing Back', 20 March 2019.

18 The platform is composed of the UN Special Rapporteur on violence against women and girls (SRVAWG); the Committee on the Elimination of Discrimination against Women (CEDAW); UN Working Group on Discrimination against Women and Girls (WGDAWG); Committee of Experts of the Follow-up Mechanism to the *Belém do Pará* Convention (MESECVI); Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO); African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR); and Inter-American Commission on Human Rights Rapporteur on the Rights of Women (IA RWHR).

19 E.g. WGDAWG, Report, 14 May 2018, A/HRC/38/46, para 89; Inter-American Commission of Women (CIM), Inter-American Guidelines on Gender Equality for the Good of Humanity (2017), 9.

20 EDVAW Platform, 25 Years in Review of the Beijing Platform for Action, E-Booklet 2020 Contributions of the Platform towards its Implementation, 36.

21 Council of Europe Commissioner for Human Rights, Issue Paper 'Human Rights and Gender Identity and Expression' (2024), 100.

22 WGDAWG, Report, 14 May 2018 (n 19), paras 15 and 45.

two countries often identified as facing or having recently faced gender equality backsliding: Hungary and Poland.²³

The analysis draws primarily from a documentary dataset comprised of guidelines, public statements, thematic reports, briefs and brochures produced by international human rights bodies. The article analyses the responses from bodies with specific gender equality-related mandates like the WGDAGW, CEDAW, GREVIO, MESECVI, the EDVAW Platform and the United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (IE SOGI). It also looks at responses from bodies with broader human rights mandates but with active involvement in countering gender critiques (e.g. Council of Europe Commissioner for Human Rights and Inter-American Commission on Human Rights). The dataset has been selected from an online search of each of these bodies' websites and the criteria used in the selection have been the use of explicit anti-gender counteraction language. In other words, the analysis is limited to documents in which these bodies expressly respond to anti-gender arguments. Though by no means exhaustive, the documentary data is of a considerable extent to allow for meaningful analysis. It is difficult to conclusively associate a certain type of response with a certain human rights body, as one human rights body may sometimes mix the three types of responses – assertive, defensive and offensive – even in the same document. Moreover, the three kinds of responses identified are illustrative rather than comprehensive. For the purposes of this article, the term offensive is used to mean confronting or combating.

The study also draws on insights shared during nine in-depth interviews conducted in person and online in March/April 2023 in Hungary (five) and Poland (four). Various scholars have pointed to the ways in which sexual and reproductive rights as well as LGBTQI rights have been curtailed in both countries amidst anti-gender discourse,²⁴ although some have deemed Polish courts sometimes protective of LGBTQI rights.²⁵ As the literature also points out, anti-gender opposition to the Istanbul Convention has been vocal both in Poland and in Hungary.²⁶

Participants were selected by way of a purposive sampling and included legally trained scholars/advocates who have actively advocated for the rule of law, reproductive rights, LGBTQI rights and gender equality at the national and/or regional European level either individually or as part of civil society organisations. While some participants are part of large human rights organisations, others work for smaller ones specifically devoted to reproductive rights and LGBTQI rights. Though the limited number of interviews does not allow for conclusive findings, participants' reflections do serve to illuminate certain aspects of the analysis, including some of the challenges inherent in countering anti-gender discourse.

The article first shows how *assertive* responses resist challenges by reaffirming the concept of gender disputed by anti-gender discourse. It then shows how *defensive* responses, rather than attacking anti-gender arguments, soothe them and ultimately evade them by using a mix of reassuring and clarifying language. It finally explains how *offensive* responses confront anti-gender arguments upfront by unveiling and calling out the social order that anti-gender discourse aims to preserve.

²³ E.g. C Roggeband & A Krizsán, 'Reversing Gender Policy Progress: Patterns of Backsliding in Central and Eastern European New Democracies' (2018) 1 *European Journal of Gender and Politics*, no. 3, 367–385.

²⁴ E.g. B Grabowska-Moroz & A Wojcik, 'Reframing LGBT Rights Advocacy in the Context of the Rule of Law Backsliding: The Case of Poland' (2022) 7 *Intersections East European Journal of Society and Politics*, no. 4, 85–103; Takács et al., (n 15). Curtailment of access to abortion is a case in point. In 2020, the Polish Constitutional Tribunal restricted access to abortion by removing the previously existing legal ground of severe fetal impairment. See e.g. A Bień-Kacala & T Drinóczi, 'Abortion Law and Illiberal Courts: Spotlight on Poland and Hungary' in M Ziegler (ed.) *Research Handbook on International Abortion Law* (Elgar Publishing, 2023), 263–282. In Hungary, Lidia Balogh notes: 'from September 2022, by decree, women seeking an abortion must be presented with evidence of the fetus' vital functions (in the form of cardiac activity or an ultrasound image)'. L Balogh, 'Reproductive Rights in Danger? Reflections from the Semi-Periphery' in E Kováts (ed.) *Culture Wars in Europe* (The George Washington University, 2023), 194.

²⁵ E.g. Grabowska-Moroz & Wójcik (n 24); J Urbanik & P Marcisz, 'Juristocracy Rainbow-Tested: The Case of Poland' in J Urbanik & A Bodnar (eds.) *Law in a Time of Constitutional Crisis: Studies Offered to Mirosław Wyrzykowski* (CH BECK, 2021), 705–741.

²⁶ E.g. K Sękowska-Kozłowska, 'The Istanbul Convention in Poland: Between the "War on Gender" and Legal Reform' in J Niemi et al. (eds.) *International Law and Violence against Women: Europe and the Istanbul Convention* (Routledge, 2020), 42–60. For a timeline of Istanbul Convention opposition in Poland and Hungary, see Krizsán & Roggeband (n 3), 57 and 68.

The concept of gender, an emancipatory concept that challenges the primordality and biological foundations of social hierarchies, has been at the heart of anti-gender campaigns. These campaigns have taken issue with understanding gender as socially constructed rather than as naturally given. International human rights bodies have confronted this criticism, arguing that the concept has been misunderstood and misused to erode the struggle for gender equality, oppose the Istanbul Convention ratification, resist the application of non-discrimination standards, undermine women's rights achievements,²⁷ misinform and confuse society²⁸ and hamper substantive equality.²⁹

Amidst misunderstandings, distortions and stigmatisation of the concept,³⁰ calls have been made on 'the human rights world' to 'debunk myths, distortions and fears' through 'evidence and scholarly research'.³¹ In an attempt to set the concept straight, international human rights bodies have not only made substantial efforts to clarify what gender *is not*; most fundamentally, they have gone to great lengths to outline what gender *actually is*. For instance, MESECVI notes that gender *is not* an ideology; it *is* an analytical category, a methodological tool useful for exposing unequal power relations between women and men.³² The Inter-American Commission on Human Rights also rejects that gender is a theory, let alone an ideology, and similarly recalls its methodological and analytical value.³³

Reaffirming the social constructionist character of gender has been a key part of the conceptualising efforts made by international human rights bodies. To counter anti-gender attacks on the Istanbul Convention, GREVIO reasserts the definition given by the Convention,³⁴ the first international human rights instrument to offer a definition of the term: 'the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men'.³⁵ The social constructionist understanding of gender included in the Istanbul Convention has been described as one of 'the primal points of contestations by the anti-gender movements'³⁶ and one of the 'defining moments in the development of the "gender ideology" discourse and anti-gender movements in the 2010s'.³⁷ GREVIO clarifies that the term seeks 'to emphasise how much inequalities, stereotypes and – consequently – violence do not originate from biological differences, but rather from a social construct, namely from attitudes and perceptions of how women and men are and should be in society'.³⁸

At the same time, and recognising that gender has taken 'different meanings depending on the context', the Council of Europe Commissioner for Human Rights spells out a 'mainstream understanding' of gender, which also emphasises its socially constructed character: 'gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society

²⁷ E.g. WGDAGW, Report (n 19), para 14.

²⁸ *ibid*, para 90(f). See also MESECVI, *Declaración sobre la Igualdad de Género y el Empoderamiento de las Mujeres como Bien de la Humanidad*, 28 November 2017, 7.

²⁹ E.g. MESECVI (n 28), 9.

³⁰ E.g. WGDAGW, Report (n 19), para 14; Inter-American Commission on Human Rights, Press Release 'La CIDH llama a los Estados de la región a aplicar el enfoque de género como herramienta para combatir la discriminación estructural en contra de las mujeres y personas LGBTI', 29 July 2021, <<https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2021/198.asp>> (last visited 6 October 2024); GREVIO, Statement on the Occasion of International Women's Day, 'Making women safe from fear, safe from violence – how the Istanbul Convention is helping to achieve full gender equality', 8 March 2017, <<https://www.coe.int/en/web/istanbul-convention/-/making-women-safe-from-fear-safe-from-violence-how-the-istanbul-convention-is-helping-to-achieve-full-gender-equality>> (last visited 6 October 2024).

³¹ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 22.

³² MESECVI, (n 28), 10.

³³ Inter-American Commission on Human Rights, *Avances y Desafíos hacia el Reconocimiento de los Derechos de las Personas LGTBI en las Américas*, 7 December 2018, OAS/Ser.L/V/II.170 Doc. 184, paras 63 and 66.

³⁴ GREVIO, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and Answers, 6.

³⁵ Istanbul Convention Art 3(c).

³⁶ WGDAGW (2020) Gender Equality and Gender Backlash, 4.

³⁷ M Antić & I Radačić, 'The Evolving Understanding of Gender in International Law and "Gender Ideology" Pushback 25 Years since the Beijing Conference on Women' (2020) 83 *Women's Studies International Forum*, no. 102421, 1.

³⁸ GREVIO (n 34).

considers appropriate for women and men'.³⁹ One of the most ambitious and comprehensive attempts to conceptualise gender in similar terms is that of the WGDAGW. To 'counter the anti-gender attacks, and to clarify the use of the concept in relation to its mandate',⁴⁰ the WGDAGW defines gender as 'a system of hierarchy, which uses socialisation to construct human beings according to what the culture prescribes for different sexes'.⁴¹ In outlining this understanding, the WGDAGW emphasises the role of social norms in shaping gender: '[w]hile the WGDAGW understands "gender identity" in its accepted meaning as deeply felt internal and individual experience of gender, it emphasises that it is not (per)formed independently of the gendered social structures and norms'.⁴²

Another notable attempt to conceptualise and re-affirm the value of gender comes from the IE SOGI when trying to distinguish sex from gender: '[g]ender describes a sociocultural construct that ascribes certain roles, behaviours, forms of expression, activities and attributes determined to be appropriate according to the meaning given to biological sex characteristics'.⁴³

In fact, the IE SOGI argues that gender is 'enshrined in international human rights'⁴⁴ and recommends that states should resist attempts to eliminate the concept from international human rights instruments:

[T]he Independent Expert recommends that States redouble their resolve to resist attempts to eliminate the concept of gender from the language in global and regional treaties and other international instruments, on the clear understanding that gender frameworks, gender-based approaches and intersectionality provide a powerful lens for analysing the root causes of violence and discrimination based on sexual orientation, gender identity, and gender expression.⁴⁵

While the gender conceptualisations outlined above may not be exactly the same, they all seem to reaffirm the usefulness of gender as socially constructed in order to render visible certain inequalities in society. In stressing that gender inequalities are shaped by power relations between women and men, by societal perceptions of men's and women's proper roles or by cultural prescriptions for different sexes, the concepts are ultimately underscoring how societies construe inequalities around perceived differences among people. By reasserting this approach, international human rights bodies may be signalling that they are not backing down in the face of what is precisely one of the central targets of anti-gender discourse: the social constructionist understanding of gender.

Yet, and even when the need for conceptual clarity may be necessary to avoid 'counterproductive confusion',⁴⁶ attempting to conceptualise gender and explain its meaning may be fraught with difficulties, as several testimonies in the conducted interviews illustrate. To start with, such conceptualisations and explanations may become too theoretical or too generic to resonate with everyday realities. In the words of one of the interview participants: 'I'm trying to present this through using more everyday life arguments, because honestly speaking I don't feel myself that comfortable in all these gender concepts ... and how to say... I don't like the argument of "gender" since it is too theoretical' (#4). The generic and faceless character of the concept may actually turn it into a 'useful monster', another interviewee suggests (#2). Referring to the terms gender and LGBT, this interviewee explains:

³⁹ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 20.

⁴⁰ WGDAGW (2020) (n 36), 1.

⁴¹ *ibid.*, 7.

⁴² *ibid.*, 6.

⁴³ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Report 'The Law of Inclusion', 3 June 2021, para 79.

⁴⁴ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Report, 'Practices of Exclusion', 15 July 2021, para 74. See also European Commission for Democracy through Law (Venice Commission), Opinion on the Constitutional Implications of the Ratification of the Istanbul Convention by Armenia (adopted at its 120th Plenary Session on 11–12 October 2019), 14 October 2019, CDL-AD(2019)018, Opinion No. 961/2019, para 24: 'the term gender as well as the harm generated by gender stereotypes has been addressed by a number of UN treaty bodies as well as by the ECtHR'.

⁴⁵ Independent Expert, Report, 'Practices of Exclusion' (n 44), para 83.

⁴⁶ *ibid.*, para 49.

They're extremely useful, because they have no faces, it's very easy to hate something that you do not personalize. Once gender would not have a face, but once the LGBT community becomes individuals, like the judge in the Gliwice judgment said ... to the, to the lawyer representing the community that it was all about ideology, not about the people, so it should not really be tried in the court (#2).

Even when there may be some basic understanding of gender in society, the concept may still not have much emotional resonance among people:

We understand the concept of gender, we kind, as the society, kind of familiar with this concept. Yeah, what it means, that ... that is about saying that women should act like that and men like that. You can do it because you are man or woman, but you cannot and so on. But in fact it doesn't ... um ... it doesn't touch upon Polish people's emotions (#1).

In fact, there may be a risk that, regardless of the level of theorisation or abstraction, simply fixating on the concept of gender may make it difficult for key human rights messages to get through. As the fifth interviewee highlights:

So anti-gender is very visible when it comes to why the Hungarian government are not ratifying the Istanbul Convention, they say it out loud, so they put it in your face that because of gender, because this 'gender ideology' as they call it. And if you ask anyone from the government, they wouldn't know what the gender ideology is, so they are simply referring to that, although the Istanbul Convention mentions gender only a few times. But we – especially the women's rights organisations – couldn't get the message through, that it is about protecting women against domestic violence (#5).

The same may apply to the anti-gender category. In reality, it may not be helpful in everyday advocacy work, according to one participant:

I don't think in these categories, I don't care if it's anti-gender, anti-abortion, for me it's anti-what ... it's against human rights [...] So these are the categories I think about. That is individual woman, woman's dignity, is, is attacked in this situation. The state is attacking its own citizen or resident. But if it's anti-gender, anti ... this is the meta, meta language. And in fact, a lot of publications were written about it. And it doesn't help in our everyday fight (#1).

Responding to critiques of the concept of gender may thus involve conceptual, practical and strategic challenges, among others. As the reflections shared during the interviews exemplify, responses may not be easily understood, may not resonate locally or may unintentionally end up obscuring fundamental human rights messages. However, as shown in the next two Sections, countering anti-gender discourse may involve responding to alleged gender threats without necessarily having to engage in conceptual and theoretical debates on gender.

2. DEFENSIVE RESPONSES: EVADING IN THE FACE OF ANTI-GENDER CHALLENGES

International human rights bodies have not just resisted conceptual attacks on gender by reaffirming its socially constructed character. They have also tried to address some of the claims commonly made against gender by anti-gender campaigns, including that gender erases biological differences between the sexes, pushes for recognising other identities beyond the male/female binary, threatens the traditional roles of men and women and endangers the notion of traditional family. In replying to such claims, these human rights bodies have at times counteracted defensively, as examples in this Section illustrate. Several of these examples come from GREVIO, which is probably unsurprising given that anti-gender arguments have been part of the anti-Istanbul Convention discourse,⁴⁷ the Convention being accused of crystallising all such 'evils'.⁴⁸

⁴⁷ Krizsán & Roggeband (n 3).

⁴⁸ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 21.

At the heart of these defensive responses appears to be an effort to appease anti-gender arguments, usually by a mix of reassuring and clarifying language. The Istanbul Convention, according to GREVIO, ‘does not seek to “abolish differences” between women and men’, to ‘promote a particular type of family setting’, or to affect children ‘in their sexual orientation or gender identity’.⁴⁹ Nor does the Convention seek to overturn ‘all tradition and customs’.⁵⁰ This soothing language tends to go hand in hand with wording that strives to clarify what the Convention *is* actually about and what it actually *does* say. Thus, what the Convention does require is countering ‘the idea that women are inferior to men’, ensuring the safety of victims threatened by family members, spouses or intimate partners, and teaching children values like ‘gender equality, mutual respect and non-violence in interpersonal relationships’.⁵¹ The Convention, GREVIO notes, seeks to combat only those traditions that are ‘harmful to women and girls and may put them at risk of violence’ and to contest the stereotypes used to justify these traditions.⁵² After reassuring that the Convention is not the result of a hidden agenda but of long negotiations involving all Council of Europe Member States, GREVIO states:

[T]he Istanbul Convention is not pushing an agenda which would ‘jeopardise’ the social fabric and values of societies. Nor does it impose any life choices on women or men. Whether they want to be carers, parents or opt for a brilliant career, the convention does not oblige anyone to adopt a certain lifestyle.⁵³

Some of GREVIO’s defensive arguments speak to one of the central anti-gender challenges to the Istanbul Convention: its social transformative character. One of ‘the main bones of contention’, as Krizsán and Roggeband argue, are the provisions requiring states to promote social and cultural changes in women’s and men’s patterns of behaviour by means of education and public awareness-raising, among others.⁵⁴ These authors have found that, in various European countries, rejection of the Convention is focused on ‘the elements of the Convention that challenge the *status quo* and aim to eradicate gender inequality as root cause of violence’.⁵⁵ In their words, ‘[t]he transformative agenda of the IC is seen as a threat to patriarchal ideas about the traditional family and gender roles and of gender difference’.⁵⁶

The Istanbul Convention’s allegedly ‘unjustified focus on women’⁵⁷ as well as the inclusion of sexual orientation and gender identity as grounds of non-discrimination are also addressed by GREVIO rather defensively. GREVIO clarifies that the Convention applies ‘mostly to women’, given that the forms of violence covered by the Convention affect women because they are women or affect them more often than men.⁵⁸ At the same time, however, it concedes that men can also experience some of these forms of violence like domestic violence, rape and forced marriage, though less frequently or severely.⁵⁹ It notes that the Convention encourages states parties to apply its provisions ‘to all victims of domestic violence, including men, children and the elderly’.⁶⁰

As to the objections to the mentioning of gender identity and sexual orientation in the Convention text, GREVIO responds that the Istanbul Convention is not in fact setting new standards in this respect, including on ‘legal recognition of same-sex couples’, but rather

⁴⁹ GREVIO (n 34), 6–8. Another instance of defensive response to the alleged family threat can be found in Venice Commission (n 44), para 67: ‘The Istanbul Convention, however, does not contain any definition of the family nor of partner or same-sex relationships for that matter, nor does it promote any particular form of such relationships’.

⁵⁰ GREVIO (n 34), 9.

⁵¹ *ibid.*, 6–8.

⁵² *ibid.*, 9.

⁵³ *ibid.*, 10.

⁵⁴ Krizsán & Roggeband (n 3) 2 (referring to Arts 12–16 of the Istanbul Convention).

⁵⁵ *ibid.*, 104.

⁵⁶ *ibid.*

⁵⁷ GREVIO (2020), First General Report on GREVIO’s Activities Covering the Period from June 2015 to May 2019, para 72.

⁵⁸ *ibid.*, para 75.

⁵⁹ *ibid.* Echoing GREVIO, this kind of defensive language is endorsed by the Venice Commission (n 44), para 30.

⁶⁰ GREVIO (2020) (n 57), para 75.

building on obligations already originating from other legal instruments.⁶¹ What the Convention seeks, GREVIO explains, is to ensure that transgender persons are not denied support and protection in the face of forms of violence such as domestic violence, rape and forced marriage and that ‘all women, including lesbian, bisexual and transgender women’ as well as gay men, who are victims of domestic violence have, for example, access to shelters.⁶²

Defensive language can also be seen in the Venice Commission’s opinion on the constitutional implications of the ratification of the Istanbul Convention by Armenia. For example, the Venice Commission responds to the anti-gender argument that introducing the concept of gender in the Convention erases biological differences between men and women, by reassuring that gender does not replace sex:

The two authentic languages of the Istanbul Convention, English and French, however, both make the difference between sex/sexe and gender/genre. Whereas the former term relates to a biological reality, the latter [...] relates to the social expectations linked to this reality. This ‘social’ definition is by no means intended to replace the biological definition.⁶³

When denying allegations that the Istanbul Convention would interfere with the right of parents to educate their children based on their preferences, the Venice Commission replies that the matter in fact exceeds the scope of the Convention, ‘which merely encourages States to include teaching materials on issues mentioned in the provision in school curricula’.⁶⁴

Even when sometimes bodies may counteract anti-gender discourse assertively or offensively, they may respond defensively as well. The Council of Europe Commissioner for Human Rights, for example, does not completely escape defensive language in this statement:

[I]t is not human rights that are transforming people’s understanding of their identities – human rights law is slowly adapting to the reality on the ground and the practical needs of diverse individuals and rainbow families. This does not mean that men, women and traditional families are being displaced; they are only being complemented by a rich tapestry of individual identities and partnerships that have gone unrecognised for a very long time.⁶⁵

Defensive responses do not explicitly attack anti-gender arguments; in practice, they ultimately evade them. They tend to soothe these arguments by claiming that human rights do not challenge all cultural traditions, traditional family and sex differences but combat only discriminatory traditions, recognise the traditional family alongside other forms of family and tackle the social inequalities constructed around sex differences. In other words, they seek to remove the threatening character attributed to human rights, to the concept of gender and to certain human rights instruments by reassuring that traditional families and culture are safe; that the Istanbul Convention also applies to men; and that the Convention does not pursue recognition of same-sex partnerships.

To some extent, the evasive character implicit in defensive responses echoes the approach adopted in some strategies to counter anti-gender discourse shared by various interview participants. For example, one participant speaks of the effort to convey the message that gender is actually about protecting the family rather than about destroying it:

I also try to explain that this argument is not about the gender roles in terms of, you know, how we behave and so on, but to me and this is my personal opinion, this is really mostly about the very simple division of everyday work, it means who stays at home, who earns money, who is in the public sphere, who is in the private, who

⁶¹ GREVIO (n 34), 9 (referring to the European Convention on Human Rights (Article 14: prohibition of discrimination; Protocol No 12) and the case law of the European Court of Human Rights as well as Council of Europe Recommendation CM/Rec(2010)5). See also, Venice Commission (n 44), para 64: ‘in the Istanbul Convention, there is no definition of gender identity, which only appears once, in Article 4(3), which enshrines the non-discrimination clause’.

⁶² GREVIO (n 34), 9–10.

⁶³ Venice Commission (n 44), paras 57 and 58.

⁶⁴ *ibid*, para 110.

⁶⁵ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 22.

makes the dinner and who takes care of kids. So what I'm trying to show is that it's related to these family issues, because the argument of the conservatives is mostly about destroying families and danger for the families, so I'm trying to show that it's about making the family life better and not worse (#4).

Another interview participant gives as an example a family-framed strategy that, without asking people to take a stance on LGBTQI rights, can successfully show how anti-LGBTQI discourse can be unsafe for family members: 'You can have a family member who is affected, you can have your grandkid, your co-worker, I mean family in an extended form, like even to co-workers and friends to some extent [...]' (#8). Also referring to this successful LGBTQI rights campaign, the sixth interview participant points out how 'it's about our values and also it's about a vision for society that is more inclusive' (#6). According to this interviewee, this vision was:

compelling to many people and that kind of, because the other side is arguing that, well, this is threatening, this is dangerous, and we could argue that well, actually, this is about love and accepting each other for who we are and living together in a country (#6).

The appeal to nationally shared values such as safety and family to counter anti-LGBTQI discourse is confirmed by the eight interviewee according to whom: 'the narrative frame is more about [...] what kind of values we like to see in a society' (#8).

3. OFFENSIVE RESPONSES: DENOUNCING ANTI-GENDER ATTACKS

Unlike the soothing and reassuring nature of defensive responses, offensive ones call out anti-gender arguments upfront, usually without previous appeasing language. The offensive responses do not merely confront these arguments; they openly condemn anti-gender discourse for seeking to maintain gender unequal societies and expressly insist on the need to move towards more gender equal societies.

In calling out anti-gender proponents for aiming to preserve an unequal social order, MESECVI, for instance, has condemned them for deepening *machismo* and misogyny and for perpetuating discriminatory gender stereotypes and a culture of intolerance.⁶⁶ Similarly, in responding to the claim that women and men (should) play different roles in society, the Council of Europe Commissioner for Human Rights has observed that 'some adherents of this vision of society justify limiting women to the stereotypical role of mothers, giving birth and staying at home to rear children'.⁶⁷ One problem with this 'traditionalist approach to society', according to the Commissioner, 'is that it is often used to justify sexism'.⁶⁸ Using similar language, EDVAW has joined forces against 'the pushbacks which are blocking and slowing down progress in the elimination of structural discrimination, gender based violence against women, harmful gender stereotypes and patriarchal norms based on historically unequal power relations between women and men'.⁶⁹

Some human rights responses specifically counteract the anti-gender arguments that appeal to notions of family/family protection. These responses push for applying the notion of family to same-sex couples and/or reject invoking family protection to deny rights to women. The Council of Europe Commissioner for Human Rights insists that legal recognition of same-sex couples has been progressively granted in Europe, refusing to go back in this respect: 'it seems that the human rights world and defenders of traditional family models will have to agree to disagree'.⁷⁰ The Commissioner also deems 'unacceptable' those views that rely on 'family protection' to 'justify or condone domestic violence', arguing that, to those who relabel domestic violence as a family dispute, 'there can be only one answer: it is not measures taken to prevent and combat domestic violence that destroy marriages and families, but domestic

⁶⁶ MESECVI (n 28), 9.

⁶⁷ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 20.

⁶⁸ *ibid.* See also Council of Europe Commissioner for Human Rights, Issue Paper 'Women's Sexual and Reproductive Health and Rights in Europe', 2017, 22.

⁶⁹ EDVAW (n 17).

⁷⁰ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 21.

violence itself'.⁷¹ The WGDAGW has also stressed that family protection 'cannot be used as a justification for laws, policies or practices that would deny women and girls their full and equal human rights'.⁷²

On the claims that human rights protection against gender-based violence excessively focusses on women, the Council of Europe Commissioner for Human Rights has offered a response, which contrasts with the above-discussed defensive reply given by GREVIO. Unlike GREVIO's recognition that certain forms of violence covered by the Istanbul Convention also affect men, the Commissioner responds:

Other critics try to claim that violence in the family affects men as much as women and that a focus on women victims is in some way misleading or 'discriminatory'. This flies in the face of data in every European country suggesting that women are the victims of family violence in the vast majority of cases.⁷³

The Council of Europe Commissioner for Human Rights has also rejected criticism of gender diversity in society, holding that those who invoke traditional values 'mistakenly reduce the world into men and women alone', ignoring those who do not fit into the male or female categories such as intersex persons.⁷⁴ The Commissioner challenges those who oppose recognising human rights for trans people, reminding of the trend towards increased social acceptance of trans people, as highlighted by the European Court of Human Rights.⁷⁵ The Inter-American Commission on Human Rights observes that the 'stigmatisation of the concept of gender' affects persons of diverse sexual orientations and gender identities, and urges states in the region to counter the tendencies that seek to limit LGBTQI rights as well as to implement policies that promote acceptance and inclusion of LGBTQI persons.⁷⁶

Most recently, the Council of Europe Commissioner for Human Rights has firmly condemned the jeopardising consequences of growing anti-gender discourse in Europe for trans people in various spheres, from sports, to employment and access to toilets.⁷⁷ The Commissioner also emphasises that anti-gender movements have fuelled 'in no small part' anti-trans violence and hatred⁷⁸ and rejects upfront 'claims that children may be unduly coerced or influenced by so-called "gender ideology"', observing that such claims 'deny the autonomy and agency of children and validate harmful practices of silence and invisibility' that hurt minors.⁷⁹ In fact, the 'particularly destructive' impact of anti-gender narratives on the rights of trans people is the backdrop against which the Commissioner found it 'timely and urgent' to update the Issue Paper on human rights and gender identity and expression.⁸⁰

Like the Council of Europe Commissioner for Human Rights, the IE SOGI has also recently taken firm issue with the 'practices of exclusion' that 'narratives of "gender ideology"' have engendered. The IE SOGI extensively rejects one by one the alleged gender threats to the nation, the family and tradition, women and children. The IE SOGI challenges the depiction of the 'patriarchal and heteronormative family' as the 'only model providing value to a country's national heritage'.⁸¹ Moreover, according to the IE SOGI, arguments against the legal recognition of trans and gender-diverse persons are based on 'deeply discriminatory stereotypes of trans

⁷¹ *ibid.*

⁷² WGDAGW, Report (n 19), para 28.

⁷³ Council of Europe Commissioner for Human Rights, 3rd Quarterly Activity Report 2016 (n 16), 21–22.

⁷⁴ *ibid.*, 21.

⁷⁵ *ibid.*

⁷⁶ Inter-American Commission on Human Rights, Press Release (n 30) and Inter-American Commission on Human Rights, *Reconocimiento de Derechos de Personas LGBTI*, 7 December 2018, para 66.

⁷⁷ Council of Europe Commissioner for Human Rights, Issue Paper 'Human Rights and Gender Identity and Expression' (2024), 70–78, 92.

⁷⁸ *ibid.*, 48.

⁷⁹ *ibid.*, 100.

⁸⁰ *ibid.*, 5.

⁸¹ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Reports on Gender: 'The Law of Inclusion & Practices of Exclusion' (2021), 5.

and gender diverse persons based on ideas of predatory determinism'.⁸² In countering the narrative against gender and sexuality education in schools for allegedly violating children's rights, the IE SOGI observes that this education is 'a fundamental tool to protect gender diverse youth from bullying and prevent them from dropping out of school'.⁸³

The responses discussed in this Section do not simply fault anti-gender discourse with sustaining sexism and misogyny, denying women's rights, constraining women to limited roles in society, jeopardising the human rights of trans people or contradicting gender diversity in society. The offensive responses explicitly push for legally recognising same-sex couples as families as well as gender beyond the male/female binary.

This kind of response may seemingly hold greater potential to expand equal human rights protection and promote social transformation at least by way of national legal changes, especially when accountability is mostly external. Yet actual changes may ultimately come from within societies, even when these international bodies may be well-known in a country⁸⁴ and their human rights work nationally impactful.⁸⁵ As the following testimony illustrates: 'changing the society and having a more open society, definitely will not come from the EU, from the UN or from the Council, that has to come from, from here.' (#8).⁸⁶

CONCLUSION

International human rights bodies have not remained silent in the face of anti-gender campaigns spanning the globe. Assertively, defensively or offensively, they have countered anti-gender discourse through public statements, position papers, reports and educational materials. In their assertive responses, they have largely backed an understanding of gender that has been at the heart of anti-gender contestation: a social constructive understanding of the concept. In so doing, they have reaffirmed the usefulness of gender in international human rights law, even though challenges may arise when engaging in conceptual debates to counter anti-gender discourse, as some opinions shared during the interviews suggest.

In counteracting alleged gender threats, including threats to the traditional family and cultural values, approaches in the responses coming from international human rights bodies have diverged. On the one hand, defensive responses have focused on reassuring gender opponents that such values are not under threat. Underlying these responses seems to be a concern about human rights self-preservation and prevention of (further) human rights rollback. Offensive responses, on the other hand, have centred on denouncing what they view as sustained by anti-gender discourse: an unequal gendered society.

Ultimately, and regardless of the type of response, the fact that they come from international human rights bodies may pose one fundamental challenge: how to engage with anti-gender discourse without reinforcing the anti-gender narrative that gender is something foreign, imposed from abroad on national cultures or local realities. Here there may be a legitimising role for national gender equality advocates to play, including investing in communication

⁸² *ibid.*, 6.

⁸³ *ibid.*, 7.

⁸⁴ Some interviewees do not perceive certain bodies as visible enough in the country they work in. 'The same was with CEDAW, you know. It's still quite invisible in Poland, but I think it's not only about CEDAW but the whole UN system as such' (#4). Referring to the United Nations in the public discourse in Hungary, another interviewee notes: 'I think most people know that it exists and it does something, but usually when they hear about the UN it's mostly about the Security Council, you know doing this or that, wars and stuff like that, not around gender equality or not around LGBTI or economic and social issues' (#8).

⁸⁵ Society's or government's indifference to certain human rights bodies' work may limit the impact of their work. 'The UN treaty bodies keep saying Polish authorities, for instance with regard to reproductive rights, that they should do certain things, but honestly speaking I don't know if these messages are heard or even if they are heard, if something would be done about it' (#4). 'It's so much frustrating, because no one cares what the CEDAW Committee says. OK, we can use it in our advocacy, as our advocacy tool, but we need to touch the Polish citizens' heart', says another participant (#1). 'I don't think that the government could care less about what the CEDAW Committee says about Hungary. But although they don't comply with it, they participate in the sessions and they say that like yeah, we partially agree or we partially accept that recommendation. But even the recommendations they fully accept they don't follow up on' (#5).

⁸⁶ To some interviewees, the Council of Europe and the European Union – or at least some of their institutions like the European Court of Human Rights – are better known and may have stronger weight when it comes to advocating for at least some human rights like LGBTQI rights: 'it seems that there is an overarching agreement that if anything bad happens with the LGBTI community in the EU, there will be some kind of pushback from most of the Member States at least, or the most powerful Member States' (#8).

strategies to show that states have willingly joined these international human rights bodies and are therefore part of them. As one interview participant notes:

We have to invest much more into communication, because what we have to explain to the people in this context, it's not something foreign, it's not something, you know, out of, it's something that we signed up for, like, Hungary is a signatory, so we joined this community of countries, we signed this contract, so this is not something external, this is us (#9).⁸⁷

At the same time, and like national human rights organisations, international human rights bodies should not spare themselves in understanding the values of local communities while holding states accountable for human rights violations: In the words of another interview participant:

But at the same time again I don't think we can really spare the political work, which is understanding the values of the public, understanding where they're coming from, making sure that they get adequate information and that they participate. So I think those things should be interlinked: so there is a political community with shared values based on which they can, you know... hold other members of the political community accountable to, at the same time I think there are local realities, national realities that should be understood (#6).

LIST OF MENTIONED INTERNATIONAL HUMAN RIGHTS BODIES

- Committee of Experts of the Follow-up Mechanism of the *Belém do Pará* Convention (MESECVI)
- Council of Europe Commissioner for Human Rights
- Expert Body Monitoring the Implementation of the Istanbul Convention (GREVIO)
- Inter-American Commission on Human Rights
- Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform)
- United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (IE SOGI)
- United Nations Working Group on Discrimination against Women and Girls (WGDAGW)

ACKNOWLEDGEMENTS

I wish to express my gratitude to the nine human rights/rule of law scholars/advocates who have generously made time for the interviews and shared their valuable reflections on the topic addressed in this article. I am also grateful to Marta Bucholc and two anonymous reviewers for their comments on earlier versions of this article. My thanks go also to the organisers and participants of the Workshop 'Exploring Linkages between Rule of Law Backsliding and Human Rights' held on 26 September 2023 at Utrecht University where I presented a draft of the article.

FUNDING INFORMATION

The research for this article was funded by the Open Society University Network and the Central European University Foundation, Budapest (Academics Facing Autocracy Project). The views are mine only and do not necessarily reflect the views of the funding organisation. The article was written thanks to funding from the European Union (ERC Consolidator Abortion Figurations, 101044421). Views and opinions expressed are however mine only and do not necessarily reflect those of the European Union or the European Research Council Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

⁸⁷ See also #6: 'Hungarians and all the other countries, they willingly joined the EU for example, there was a referendum in Hungary about joining the EU and it got overwhelming support. So this is not something that is completely like independent from Hungary as a state or the Hungarian community. This is a political community that we wanted to join and after the change of the system this was the agreed priority, the broadly agreed priority of the country'.

COMPETING INTERESTS

The author has no competing interests to declare.

Peroni
Utrecht Law Review
DOI: 10.36633/ulr.1080

55

AUTHOR AFFILIATIONS

Lourdes Peroni  orcid.org/0000-0003-3982-1028
Assistant Professor, Faculty of Sociology, University of Warsaw, Poland

TO CITE THIS ARTICLE:

Lourdes Peroni, 'Mobilising in Times of Gender Equality Backsliding: International Human Rights Responses to Anti-Gender Discourse' (2024) 20(3) *Utrecht Law Review* 42–55. DOI: <https://doi.org/10.36633/ulr.1080>

Published: 18 November 2024

COPYRIGHT:

© 2024 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

Utrecht Law Review is a peer-reviewed open access journal published by Utrecht University School of Law.

