Key actors in Agenda- Setting on LGBTQ rights: positive and negative role

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Abstract—

I.   INTRODUCTION

We are in an era that generally accepts that every human being is born free and deserves equal rights to live their lives as they wish with freedom. But this is an almost unrealistic dream for LGBTQ groups all over the world. This is because LGBTQ rights are still not sufficiently addressed within the international human rights agenda.

In the last few decades, international customary law concepts such as non-discrimination and freedom have become more prominent and visible in the international human rights agenda. This environment has motivated civil society actors, international organizations and states, to respect and ensure human rights, and they have also engaged in the process setting the international human rights agenda. This paper discusses the role of the key actors that propel the process of inclusion of LGBTQ rights in the international agenda.

Objectives of the Study

This research paper has two main objectives:

(1). To examine the role of relevant actors in international agenda setting process vis-a-vis LGBTQ rights.

(2). To identify the challenges faced by advocates of LGBTQ rights in making these part of the international human rights agenda.

III. Methods and sources

Method of this research will be based on non-doctrinal legal research methods (socio- legal research). Non-doctrinal legal research method is basically analysis of the formation or setting of the law with regard to three factors.

These three factors are: "the legislative processes, inquiring into the initiation and formalization of law, the forces, factors or pressure groups that played significant role in its making and with what objectives" (Vibhute and Aynalem 2009 p.88). Indeed, socio legal approach mentions how social factors impact upon the formation of law and human rights.

I selected this method because, I also focus on the factors that keep sexual minority rights out of the international human rights agenda, and actors who play major role in agenda setting. This method is helps to understand how social factors affect agenda setting with regard to LGBTQ rights.

The primary sources that used for this study include international human rights documents such as Universal Declaration of Human Rights (UDHR), UN charter, other relevant UN resolutions, International Covenant on Civil and political Rights (ICCPR), Convention on the Elimination of All Forms Of Discrimination against Women(CEDAW), Yogyakarta principles, and advocacy and policy documents regarding LGBTQ rights. The secondary sources include books, journal articles, and research papers and write ups about LGBTQ rights.

IV.   Research Puzzle

My main research question is: Why have LGBTQ rights not featured adequately on the international human rights agenda? There are two hypotheses that are used in this research. The first one is that the lack of clarity about sexual minority rights has been a barrier to its inclusion in international human rights agenda. Second hypothesis is that contrary to the generally positive roles attributed to

civil society actors, anti- LGBTQ rights civil society organizations have negatively affected the inclusion of sexual minority rights in international human rights agenda.

V. Discussion

The global civil society plays a major role in shaping human rights agenda, because they are directly involved in framing issues and decision making processes. "According to Risse (2002) the fact that Non-Governmental Organizations are primarily active within the agenda formation of global politics is not surprising as they provide moral authority" (Lewin and Meyer 2002). International organizations have the main responsibility to develop international human rights policy and standards, which can also be used to monitor states. International Organizations such as the UN works as a platform for states to discuss international issues, but they can also be autonomous actors in pushing forward the human rights agenda. Furthermore, states are major actors who can translate the human rights agenda into reality through their positive behavior. But all these actors play both negative and positive roles in the agenda setting process because while some push LGBTQ rights into the human rights agenda, others block the same.

VI. Conclusion

Civil society actors tend to play more of a negative rather than positive role when it comes to international agenda setting in relation to LGBTQ rights. Usually, NGOs are seen to play a positive role regarding issues such as environment, health and human rights. They do a remarkable task in addressing problems in the world. In the case of LGBTQ rights, there are few actors such as Human Rights Watch and Amnesty international that play a crucial supportive role in agenda setting. But there are many other actors who, with their beliefs on religion, family, marriage and reproduction, block any progress in sexual minority rights. Even the UN does not provide enough space for LGBTQ advocates to negotiate the issues that should be addressed in the human rights agenda. In

certain instances, the UN has also cancelled some of LGBTQ organizations' UN consultative status.

I. INTRODUCTION

*"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible."- (*United Nations 2012).

Human Rights have give dignity, freedom, liberty and equality to every human being. Indeed, human rights are the values and norms which always protect human beings from severe political, social and economic trauma. The above mentioned UN definition also mentions that human rights are applicable for everyone without any discrimination. Sexuality and sexual orientation are a major part of human identity and play an important role in human identity and people's private lives. Therefore, sexual minorities should not be discriminated based on sexual orientation or gender identity. Indeed, international human rights agenda, which seeks to ensure everyone's human rights, should take this issue into account.

A. Conceptual Framework

1. *Understanding "LGBTQ"s*

There are essential terms with regard to LGBTQ rights, which should understood at the outset. According to the 2007 Yogyakarta Principles, Lesbian, Gay, Bisexual Transgender and Queer people are included in the category of "LGBTQ". Therefore, after this explanation I would be using the term "LGBTQ" for them.

Furthermore, LGBTQ community face discrimination which based on sexual orientation. Therefore understanding the difference between sex and sexual orientation is important. "Sex is the state of being male or

female" (Merriam Webster 2017). But "sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender" (Yogyakarta Principles 2007).

II. METHODOLOGY AND EXPERIMENTAL DESIGN

1. Agenda Setting

In this research, methodology and experimental design that I used to answer the research question is primarily based on agenda setting process, specifically John W. Kingdon's agenda setting model (1995). "Agenda setting results in a selection between diverse problems and issues. It is a process of structuring the policy issue regarding potential strategies and instruments that shape the development of a policy in the subsequent stage of a policy cycle"(Fischer and Miller et al. 2007, p. 62). I choose to use agenda setting because of three reasons. First, agenda setting mostly takes the issues which do not get enough attention in the public and private sphere, and discusses those problems. LGBTQ rights is also a hidden and invisible human rights issue which does not get enough attention in any sphere. Second reason is that it gives us insights into the role of relevant actors. Third reason is that it explains the agenda setting process.

There are several models for agenda setting, but I used John W. Kingdon's agenda setting model(1995) in this research because it explains how issues are brought in to the political agenda, and how solutions are developed to address identified issues (Furlong 2003). Kingdon suggests three most important streams for agenda setting. Those are: problem stream, policy stream and political stream (Swiebel 2009). The problem stream defines the issue that is to be placed on the agenda. It describes the salient and

unrevealed issues that need to be presented to the public. The policy stream is about developing policy which can address the issues and the solutions given by experts and policy makers. The political stream is "motivations and justifications for political action, following from political events, changes in political climate, etc." (Swiebel 2009 p21). Basically political stream includes the institutions, governments and policymakers and politicians which have responsibility for making policies.
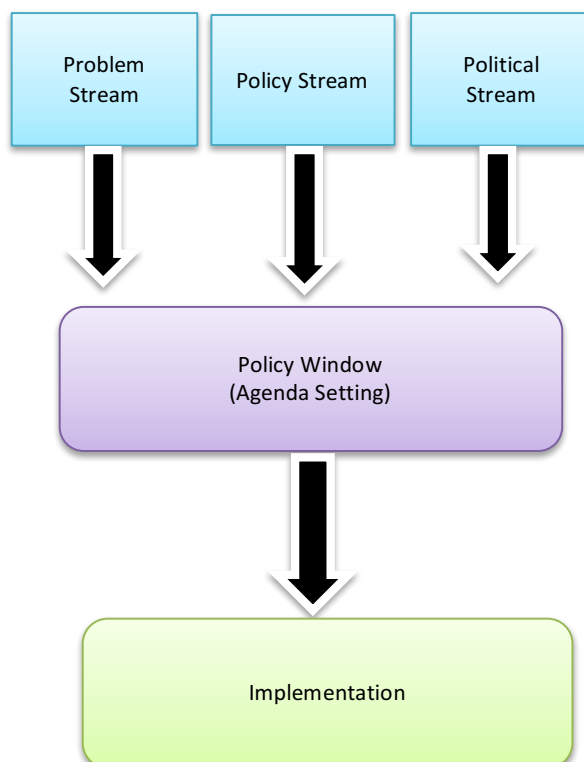

Figure 01- John W. Kingdon's agenda setting model

In this research, I used Kingdon's model for analysis of the LGBT rights agenda setting process. Specifically, I examined how key actors play both positive and negative roles with regard to problem, policy and political streams.

III. DISCUSSION

As mentioned in the part II, I used John W. Kingdon's agenda setting model for analysis of the role of key actors in problem stream, policy stream and political stream of LGBTQ rights agenda setting. I will now apply the Klingdon's agenda-setting model on the subject of LGBTQ rights.

A. Role of Civil Society Actors and International organization in the Problem Stream

Civil society actors as well as international organizations play major role in problem stream agenda setting. Some play a positive role by seeking human rights for LGBTQ while others play a negative role by blocking the promotion of LGBT rights, roles.
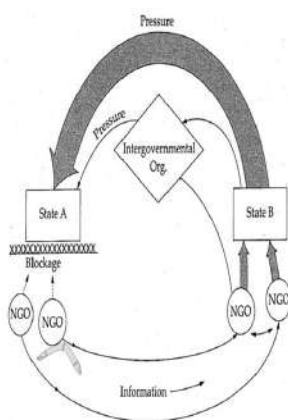
NGOs raise the issue that international organizations (IO) should take into their mandate and, after such motivation IOs contributing to setting the global agenda (Joachim 2007 p 7). Keck and Sikkink (1998) present the 'boomerang model' whereby when states block domestic NGOs access to policy settings, those NGOs provide information about the situation to international NGOs, other states and IGOs who then put pressure on the original state regarding that particular policy. Therefore, the support of civil society actors like NGOs and IGOs is essential for problem stream of agenda setting.

Figure 02- Keck and Sikkink's 'Boomerang model' (1998)

In the problem stream, civil society actors and IOs frame the issue area. First, they investigate the current situation of LGBTQ's human rights violations and collect the relevant data. As a second step, they issue reports regarding the current issues. These reports raise awareness of the global community by highlighting the essential need for a stable LGBTQ rights agenda. Further, they organize international conferences as a third step of this problem stream, and discuss how to push the international agenda for LGBT rights.

Under the first step, international NGOs such as Amnesty International (AI), Human Rights Watch (HRW) ,Actionaid individually collect the data about LGBTQ violations. Indeed, they first try to include LGBTQ issue into their own agenda. For example, "In 1991, Amnesty International (AI) became the first mainstream human rights organization to include sexual minorities in its definition of political prisoners" (Narayan 2012, p29). Then they prepare reports using the data they collect. For example, AI issued a report "Crimes of Hate, Conspiracy of Silence" which highlights the hate crimes and discrimination against LGBTQ people (Lewin and Meyer 2002). In 2013, HRW issued a world report on tortures of sexual minorities in the world. This report revealed the discriminatory practices against homosexuals all over the world, and it strongly recommended to responsible international organizations like the UN to take essential monitoring actions to ensure LGBTQ rights (Human Rights Watch 2013). These reports are important to identify the crucial issue areas as well as to raise the awareness of international policymakers regarding LGBTQ issues.

These reports highlight the need for global negotiations to discuss these issues, and at this stage also NGOs and IOs are involved. For example, the World Conference on Human Rights in Vienna (1993), the International Conference on Population and Development in Cairo (1994) and the World Conference on Women in Beijing (1995) were very important to LGBT civil society activists because these raised international awareness regarding LGBTQ rights (Mertus 2007). Specific to the LGBTQ agenda, the UN called a landmark ministers' meeting on LGBTQ rights in September 2013 where they discussed how to combat discrimination against LGBTQs. HRW, International Gay and Lesbian Human Rights Commission,

and a large number of cross regional groups from Argentina, European Union, New Zealand, France, Israel, and Japan contributed to these discussions (Human Rights Watch 2013). Earlier, in 2001, the General Assembly Special Session on HIV/AIDS also talked about sexual orientation with regard to gay people. These types of negotiations gave directions to policymakers to set the sexual minority rights agenda (UNHCR 1993).

B. Negative role of civil society actors.

There are two sets of actors who play the negative role with regard to LGBT agenda. One group is based on social, cultural and moral values related to religious beliefs, and the other group is based on traditional values of family, marriage and reproduction.

The first group includes actors such as the "Baptist-Burqa" network, which consists of anti-gay Muslim groups and anti-gay Christian groups that work against homosexuality. They have a consultative status with the UN, and in the 1994 Cairo conference they blocked the development of proposal that sought to give support to homosexuality (Bob 2011, p.41). Earlier, the World Council of Church put barriers to the negotiation of lesbian issues at the 1985 Nairobi conference (Bob 2011, p.41). The Alliance Defending Freedom (ADF) is also promoting homophobia in Europe, Canada, and Latin America, but was able to get special consultative status at the UN in 2010 (Southern Poverty Law Center 2013). It has argued that homosexuality negatively impacts on religious freedom and should, therefore, not be taken up in the UN agenda.

The second group includes actors like the Coalition for Women and the Family, which at the 1995 World Conference on Women, accused "lesbian delegates for their direct attack on the values, cultures, traditions and religious beliefs of the vast majority of the world's population"(Bob 2012 p 34). In September 2013, the World Congress of Families (WCF) organized a conference along with other anti-gay activists in Russia to give their support to Vladimir Putin's anti-gay activities (Tashan 2014). These groups believe in the traditional heterosexual notion of family and marriage, and therefore block the LGBT agenda.

C. Role of Civil Society Actors and International organization in the policy stream of agenda setting

International organizations and civil society actors together play the main role in the policy stream. They have the responsibility to evaluate human rights issues and produce the policy which can address the problematic situation.

The United Nations is the major international organization, which set the policy for international human rights agenda. We can see the gradual development of UN agenda with regards to LGBTQ rights. In 1993, the UNHRC gave equal refugee statue to LGBTQ people (UNHRC 1993). In 2007, United Nations Educational, Scientific and Cultural Organization (UNESCO) issued an important report about the UN's role in promoting LGBT rights. According to this report, in the last few years most UN agencies and their special rapporteurs have been concerned about discrimination against LGBTs and sexual minority rights (UNESCO 2007). It says, for example, "The Special Representative of the Secretary-General on the situation of human rights defenders has been assiduous in condemning the intimidations of and attacks on lesbian, gay, bisexual, transgender and intersex activists" (UNESCO 2007).

In 2006, for the first time in human rights agenda, the term "sexual minority" was defined in Yogyakarta Principles, which especially gives protection to LGBTs. In the year 2008, the UN General Assembly issued an important Statement on Human Rights, Sexual Orientation and Gender Identity (UNGM 2008). This statement mentioned that the principle of universality of human rights can apply to sexual minorities also without any discrimination. In March 2011, the UN Human Rights Council (UNHRC) issued a statement named "Ending Acts of Violence and Related Human Rights Violations Based on Sexual

Orientation and Gender Identity". This statement mentioned that states should not allow the spread of violence and discrimination based on sexual orientation and gender identity (UNHRC 2011). In June 2011, the UNHRC again issued a resolution about human rights violation based on sexual orientation and gender identity (UNHRC 2011).

However, we can also see some failures within the UN agenda setting process on sexual minority rights. For example, in 2003, Brazil tried to issue a resolution in the UN Human Rights Council on sexual minority rights. But African countries and OIC blocked this resolution (AWID 2013). Further, the UN sometimes does not give enough space to talk about LGBTQ issues within their human rights agenda. For example, in 2006 the UN Economic and Social Council (ECOSOC) refused to allow LGBTQ advocates such as ILGA(International Lesbian and Gay Association) and the Danish Association of Gays and Lesbians into joint discussion at the UN. (Mark 2006).

Some LGBQT right organizations are able to engage with IO policy negotiations due to their UN consultative status. Therefore, they are directly involved in UN policy making processes on LGBTQ issues. For example, the International Gay and Lesbian Human Rights Commission (IGLHRC), International Lesbian and Gay Association (ILGA), International have the consultative status, and through their suggestions and recommendations, they push the sexual minority rights agenda. For example, ARC International they gave their suggestions and recommendations to produce the Yogyakarta principles, and continue to give their support to UN to protect LGBT rights all over the world (ARC International 2013). Indeed, ARC successfully works with LGBT NGOs to bring international support for LGBT agenda setting process.

D. Political stream of agenda setting and the role of States and International Organizations

In the political stream of agenda setting, states and IOs play the major role. States can support as well as oppose LGBTQ rights processes within the international agenda. Powerful IOs such as the UN and the European Union can address LGBTQ issues within their mandate, and they can influence their member states to sign and ratify the human rights treaty bodies with regards to human rights. But it is to be notes that in the case of LGBTQ rights, there is no human rights mechanism as yet with enforcement power.

A large number of states in the world do not recognize LGBTQ rights. Homosexuality is a crime in seventy six countries and is penalized by death sentence in countries like Iran and Saudi Arabia (United Nations 2011). Very few states such as South Africa, France, Nepal, the United Kingdom and some states in the USA respect homosexuality. Most of the Muslim countries are practicing Sharia law, which criminalizes homosexual behavior. Christian countries like the Vatican also block LGBT rights agenda. The Vatican has a "permanent observer" status at the UN, and they block the promotion of international sexual minority rights agenda in the UN (The Atlantic 2014). Most of the African countries also oppose LGBT rights. Moreover, "dominant regional groups and political blocs use their collective weight to promote common objectives" (Freedman 2013). For example, the organizations of Islamic Cooperation (OIC), most of Asian and Middle East countries have shared objectives, which oppose LGBT rights.

Mostly, it is states that can contribute to the political agenda setting, by using their UN general Assembly vote with regard to adoption of resolutions and declarations on LGBT rights. But they have not been very supportive. A report by Ella J.J. Weggen's research (2009) suggests that countries generally do not contribute positively to the political agenda of LGBT rights. According to this report, in

2003, most European member countries supported the Brazilian resolution about LGBTQ rights at UNHRC, mentioned earlier, but Pakistan opposed it saying that this was an insult to Muslims. In 2007, 66 countries signed the Yogyakarta Principles but there are many countries that are yet to sign this document. In 2008, the UN General Assembly issued a declaration supporting LGBTs but, most African, Islamic and Latin American countries did not support to it.

E. Lack of clarity regarding LGBTQ rights as human rights

In the last few decades, there have been controversial debates on LGBTQ rights in the international human rights agenda. Mostly, these debates relate to the recognition of LGBTQ rights as human rights. For example, there is a debate between those who argue that there is an essential need to separate and specify human rights for sexual minorities and those who claim that there is no need for separate human rights for sexual minorities since they are covered by existing human rights mechanisms. Due to such debates, discussed below, we see the lack of clarity and limited progress regarding LGBTQ rights on international human rights agenda.

1. Heterenormativity of the international human rights agenda

The main international treaty bodies in the human rights regime do not mention the rights of sexual minorities, and present heterosexual relations as the norm. For example, article 16 of the 1948 UDHR makes the following reference to the right of marriage and right to have a family, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." Article 16 promotes only heterosexual marriage and traditional family because limitations due to sexual orientation are not mentioned. Therefore, international human rights mechanisms are predominantly heteronomative

because these promote heterosexual notion of family and marriage rights only.

2. Definitional debates and lack of clarity regarding the concepts relevant to LGBTQ rights

One major problem which has affected discussions on LGBTQ rights in the international human rights agenda is definitional debates on LGBTQ rights. LGBTQ rights are based on "sexual orientation" and "gender identity", but until recently we do not see any formal efforts to define LGBTQ rights within the international human rights agenda. In 2007, for the first time in the history of international human rights, the Yogyakarta principles defined the rights of LGBTQs' based on sexual orientation and gender identity. But Yogyakarta principles also do not clearly define these sexual minorities. For example, it simply defines LGBT groups as sexual minorities. But it does not clearly mention the difference between the Lesbian, Gay, Bisexual and Transgender people. Further, the Yogyakarta principles do not consider intersex people and asexual people (people who are not attracted to any gender) as sexual minorities.

Further, international human rights mechanisms have not also clearly described the issues of sexual minorities. The focus has been limited to issues regarding sexual relationships only. But in reality, lesbian, gay, bisexual or transgender people do not only struggle due to sexual relationship with same sex person, but also have to struggle in their everyday lives. There should be greater understanding of "gender identity" as well as "sexual identity". For example, the "sexual identity" of transgender people, who are not identified as being of "male" or "female" gender by birth, and have been described as the "Third Gender" (Stryker and Whittle et al. 2006 p 666). In a society that generally identifies only two genders, transgender people suffer a lot of difficulties. For example, in public places, boys are expected to go to "male" washrooms and girls to "female" washrooms. Each and everything is socially constructed. Indeed, most

official documents ask for information on biological gender, but the forms have only two gender categories – male and female, neither of which applies to transgender people.

3.Putting LGBTIQ people in to one Umbrella concept call "sexual minorities"

The sexual diversity of lesbian, gay, bisexual, transgender, intersex and queer people is also not explored in the international human rights agenda. The UN has simply incorporated all of them under one term "sexual minorities". According to Alice Miller, "this umbrella term has been used by UN experts and mechanisms to deal with issues of discrimination, exclusion and stigmatization, [but] it is unclear what groups are included as sexual minorities and how the statues is determined" (International Commission of Jurist 2009, p.22-23). Indeed, Miller mentioned that these types of ambiguous definitions are controversial when categorizing human rights abuses regarding sexual orientation and gender identity (International Commission of Jurist 2009, p.22-23). Some lesbian and gay rights movement and organizations do not like to give the membership to bisexual, intersex and transgender groups, because of this controversial debate. This also makes international human rights agenda weak regarding LGBT rights.

4. The debate about " Human Rights For All"

International human rights agenda mentions "human rights for all" (UN 1996). It is argued that sexual minorities are also included as human beings, and there is no need for separate human rights for them However, generally, international human rights treaty bodies have stable fixed standards based on "1950s and 1960s attitudes", when there were no active gay rights movement in the world (Donnely 1999 p20) Therefore, treaty bodies such as UDHR, ICCPR, ICESR do not address the issue of sexual minority rights that should be based on sexual orientation and gender identity. Article 2 of UDHR, ICCPR and ICESR mention that no one should be discriminated against

because of their "sex" but, as discussed in the first chapter, the notion of "sex" is different from the "sexual orientation". So, the problem is that general human rights treaty bodies do not mention "sexual orientation" as "prohibited ground" (Donnely 1999 p20).

5. Contestation between sexual minority rights, and rights of religious freedom and cultural rights

Finally, some anti- LGBT groups argue that sexual minority rights goes against rights of religious freedom and cultural rights. For example, ICCPR article 18(3) mentions that, "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others." This article can be used to argue that homosexual behavior negatively impacts upon 'public safety, health and moral values in the society'. Homosexuality has been connected to spread of HIV/AIDS and, as discussed earlier, critics see it to be against the religious beliefs and the moral values of society.

IV.   CONCLUSION

The main aim of this research was to examine the role of key actors in agenda setting on LGBTQ rights. In this respect, two hypotheses were examined. First hypothesis examined the positive and negative roles of civil society actors in relation to sexual minority rights in the international human rights regime. Second one analysed barriers such as the debate on whether sexual minorities are human rights. In conclusion, I summarize the key findings of and make some recommendations about pushing forward the agenda of LGBTQ rights.

Civil society actors, international organizations and states are the key players in sexual minority rights agenda setting. They can contribute to all three streams – problem, policy and political – of the agenda-setting model proposed by Klingdon. And, as discussed in this Paper, they play both positive and negative roles. Mostly, LGBTQ friendly NGOs create the issue frame and make the global community aware of the issues. Indeed, whenever states reject LGBTQ

rights, NGOs are give this information to international organizations, pushing them to handle the situation. On the other hand anti-LGBT NGOs put barriers to this process. International organizations mostly play a key role in the policy stream in agenda setting. But they do not address LGBTQ rights agenda sufficiently.

I found that civil society actors tend to play more of a negative rather than positive role when it comes to international agenda setting in relation to sexual minority rights. Usually, NGOs are seen to play a positive role regarding issues such as environment, health and human rights. They do a remarkable task in addressing problems in the world. In the case of sexual minority rights, there are few actors such as Human Rights Watch and Amnesty international that play a crucial supportive role in agenda setting. But there are many other actors who, with their beliefs on religion, family, marriage and reproduction, block any progress in sexual minority rights. Even the UN does not provide enough space for LGBT advocates to negotiate the issues that should be addressed in the human rights agenda. In certain instances, the UN has also cancelled some of LGBT organizations' UN consultative status.

Most of the international organizations do not include human rights with regard to sexual orientation in their agenda. States can make human rights agenda a success or a failure. They are directly involved in the political stream of the agenda setting process through their votes. In these various ways, the actions of all three set of actors impacts upon the agenda setting on LGBTQ rights.

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