

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas discrimination on the basis of race, religion and sex has resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has become the aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that his fundamental rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the people of the United Nations have reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

A guide to sexuality-based advocacy



Partners for Justice

Demanding credibility and sustaining activism

A guide to sexuality-based advocacy



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GLOBAL RIGHTS is a human rights advocacy group that partners with local activists to challenge injustice and amplify new voices within the global discourse. With offices in countries around the world, we help local activists create just societies through proven strategies for effecting change.

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Global Rights’ commitment to advance and defend sexual rights in general and, in particular, the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) communities and individuals, originated long before the launch of the LGBTI initiative, dating back to efforts to include language on “sexual orientation” in the 1995 Beijing Declaration and Platform for Action, the document arising out of the UN Fourth World Conference on Women. When in 2004 the discussion on the resolution on “Sexual orientation and human rights” inflamed the now defunct Commission on Human Rights, Global Rights stood with other international and national human rights organizations, advocating for the cause and giving voice to LGBTI activists who were systematically denied rights and opportunities to speak formally within the United Nations system.

Many things have changed since 2004. The Human Rights Council has replaced the Commission, and the judgment of human rights activists on the new organism is still pending. Just recently the new mechanism of the Universal Periodic Review has been implemented: activists throughout the world are engaging in the processes it has set up and are looking at its effectiveness with interest. The shift to the new Council has constituted a significant challenge, especially with reference to the role and the mandate of the Council’s Special Procedures, independent experts whose role has been pivotal to advancing sexual rights with reference to specific thematic areas and countries. A few LGBTI groups have now consultative status with the U.N. In the meanwhile, the process of the United Nations reform has also involved the so-called Gender Equality architecture. Important achievements and evolutions are happening also at regional level.

The discussion on the resolution on “Sexual orientation and human rights” re-shaped the commitment of human rights activists on sexual and LGBTI rights, who had a chance to re-think to their strategies as well as to produce new alliances and partnerships on global, cross-regional and regional levels.

Global Rights, like other international human rights organizations, chose to take on these new opportunities by launching its LGBTI initiative.

For the organization, developing this new initiative did not only generate the challenges arising from the inauguration of any new program. Because of the very nature of Global Rights, the LGBTI initiative constituted an internal challenge too. Discussing sexual and LGBTI rights with our staff and partners worldwide has constituted its own opportunity and challenge. It often raised questions for staff and partners about existing tensions between the common values that we share as part of the human rights community and inherent social, cultural, religious values that these same activists bear, as active members of their own communities.

This challenge, however, represents the strength of Global Rights' unique contribution to the advancement of LGBTI human rights. By bringing on the surface these contradictions, dilemmas and tensions, we hope to offer a contribution for our colleagues to appreciate the human rights implications of sexual and LGBTI rights and, in many cases, to raise awareness of sexual and gender diversity in their own communities and societies.

Through this work, we are proud of some achievement from the ground. For instance, after one workshop in Nigeria, one participant wrote:

My participation (...) was a great remarkable for me and experience gain from the discussion was also great. I did sort of step-down group discussion with my organisation yesterday, though some staff was against it while some gain alot from the discussion... I want to assure you that consistence training will bring about understanding and will pave-way for this movement to work in this part of the world.

This Guide leads its readers by capturing different examples and different stories. To do so effectively, it is based on case studies developed by some of our partners in diverse regions of the world. It also aims at being a tool to “guide” human rights activists through some of the tensions and challenges of human rights principles and practices, culture and society, when it comes to discussions on non normative sexualities and genders.

It is firmly rooted in the basic human rights principles of universality, indivisibility and interdependence of human rights. As a result, we adapted our five core tools to sexuality-related human rights work and explored the ways sexual and gender diversity intersect with other forms of exposure to human rights abuses. In most of the countries we work, we have observed that sexual orientation, gender identity and gender expressions that do not conform to community norms become grounds for abuses in connection to other factors, as diverse as race, gender, economic conditions, ethnicity, language, education, disability, age, among other characteristics.

Although this Guide is the result of an internal working and conceptual process, it is not only an internal tool for our staff and partners worldwide. It is a human

rights tool that we hope it will be useful for any human rights activist who wants to explore sexual and LGBTI rights from a human rights perspective, as well as for sexual and LGBTI rights activists who might be interested in considering examples and strategies implemented in other countries and regions, as well as in linking with other movements and organizations.

Finally, this Guide is conceived as a work in progress. We hope to get feedback and to hear experiences from our readers to make it more and more effective and useful. From the ground up, as we say.

Stefano Fabeni

Susana T. Fried

Introduction: Global Rights and its LGBTI Initiative

What is Global Rights?

The work of Global Rights is anchored in the conviction that human rights cultures are built from the ground up and that sustainable societal change can come only from within a country. Based on this, we work together with organizations worldwide to establish long-term partnerships and strategic alliances. We assist our partners in identifying problems and obstacles to the protection of human rights in their communities and jointly analyze and implement potential tactics and human rights strategies. We serve as facilitators, trainers, mentors and strategic partners to help reach shared objectives.

Our work emphasizes the implementation of human rights protections for all people. We work with women and men in countries where fundamental rights (civil, political, economic, social and cultural) are denied or severely compromised. We work in countries in transition where the protection of women's rights meets with resistance in the name of cultural or religious extremism, and countries where combating racism remains a central struggle. Within this context, the expansion of our work in 2005 to include a new program focusing on human rights within lesbian, gay, bisexual, transgender and intersex (LGBTI) communities was both a logical and a long-overdue addition.

Our approach focuses on building the skills of activists to pursue the protection and promotion of their own rights and the rights of others in their countries and communities, while working with partners to set a bold and forward-looking human rights agenda. Over the years we have developed and tested five core tools that we believe are essential to addressing human rights concerns and promoting justice:

- ◆ Exposure of human rights violations
- ◆ Community mobilization
- ◆ Human rights lawyering and access to justice
- ◆ Advocacy for law and policy reform at the national level
- ◆ International advocacy

With a headquarters office in Washington, D.C., the bulk of our work takes place in human rights support offices around the world in order to bolster the efforts of local activists to create just societies through proven strategies for change. For example, we are working with partners on the ground in post-conflict Afghanistan, standing side by side with women to document cases of domestic violence and abuse. In Burundi and in the Democratic Republic of Congo (DRC), we support local human rights activists as they rebuild their legal systems and seek peace, truth and reconciliation after long and violent conflicts. We assist grassroots women's groups throughout the Maghreb region of North Africa. In Morocco, Bosnia-Herzegovina and India we are raising awareness and advocating for women's legal rights and their access to justice. In Nigeria and Nepal, we defend vibrant coalitions of activists who are promoting new rights-based legal and constitutional standards. Since 1998, Global Rights has partnered with organizations and governments to ensure that all responses to the trafficking of people into forced labor, slavery and servitude are based upon internationally recognized human rights standards. Global Rights is also a founder and coordinator of the U.S.-based Freedom Network (USA) and is helping to build regional networks of activists and lawyers based in Central America, the Caribbean and Mexico, and West Africa.

We are also assisting advocates throughout the Americas, in places where racism assaults the dignity and the traditional lands of indigenous and Afro-Latino communities. And in the United States, in collaboration with other organizations, we are holding the U.S. government accountable for its international legal obligations in the "war on terror." Our work continues to expand and our partnerships continue to grow.

Why an LGBTI initiative?

The question of discrimination on the grounds of sexual orientation and gender identity became a *cause célèbre* at the UN in 2003, when Brazil presented a draft resolution on "Human Rights and Sexual Orientation" at the UN Commission on Human Rights. The same resolution was considered again in 2004 and 2005. Though its text was remarkably simple, the resolution shocked some UN Member States, and their reaction, in turn, startled many human rights activists. The text of the resolution—which never passed—simply reaffirmed the basic application of human rights principles, calling on States and the United Nations to "promote and protect the human rights of all persons regardless of their sexual orientation"¹: to the protection of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

Sexuality, sexual orientation and, to a lesser extent, gender identity were not new to international human rights debates, nor even to the United Nations and the UN Human Rights Commission. Indeed, solid and consistent advocacy had been on the international (and regional) advocacy agenda for some thirty-odd years. However, those discussions about sexual orientation at the UN had a significant impact and

reached an unprecedented level of public attention. They raised greater awareness and interest in LGBTI issues within the human rights movement and among donors. They mobilized broad support among some friendly governments and many non-governmental organizations; and they launched an ongoing campaign to build a diverse human rights coalition to defend sexuality-based rights. Major national and international NGOs, together with local, regional and international LGBTI groups and independent activists, have now built a network that links the many “sections” of the human rights community. This network includes organizations focusing on women’s rights, sexual health and rights, development and population, HIV&AIDS, trade unions and collective organizing, and religious tolerance.

Our LGBTI initiative is anchored in a commitment to securing sexuality-based human rights. We focus on contesting human rights violations targeted toward those individuals and groups whose sexual and gender identities, expressions and practices diverge from the social and cultural norms of their communities, thus putting them at risk of discrimination and persecution.

Same-sex desire, sex between persons of the same sex, and non-conforming gender identities and expression form a significant cause of human rights abuse. While all persons, including those who define themselves as lesbian, gay, bisexual, transgender and intersex, are entitled to all human rights, sexuality- and gender-related human rights violations are frequent and are met with impunity. People whose gender, sexuality and/or sexual practices do not conform to the social and cultural standards often face retribution—by the government, but also within their families and communities. Thus, while some of the human rights violations that are perpetrated against them are in the form of egregious and sensational violations that receive public attention, other forms of abuse they face are insidious and constant but take place below the radar of public attention—in all countries of the world. These violations—both the egregious and the insidious—and the individuals who experience and resist them are often still ignored or silenced within the prevailing human rights discourse.

Global Rights is proud to join an active international coalition of NGOs that is committed to breaking this silence and expanding the application of human rights norms. The Initiative stresses the basic application of existing human rights standards in all cases, regardless of the real or perceived sexual orientation, gender identity or gender expression of any person. Much of our global advocacy work has focused on the United Nations and its human rights mechanisms²—and some of the campaigns and the stories behind them are highlighted as case studies in this Guide—but attention is now also expanding to regional human rights institutions.

The discrimination and abuses faced by LGBTI individuals and communities—and all those whose gender and sexuality transgress social and cultural norms of “appropriate” femininity, masculinity and heterosexuality—must be a matter of priority for all human rights advocates. To ignore one set of human rights or one group who is targeted for abuse risks the human rights of all. Either human rights are for all

of us, or they protect none of us. Communities and legal institutions that encompass this basic principle are more likely to defend all of our rights, no matter the context.

Why now?

Extensive, readily available documentation shows conclusively that people are targeted for abuse and discrimination by public authorities and private individuals on a daily basis because of their sexual and gender identity and expression. The growing number of reports and calls to action illustrate the extent to which sexuality, gender roles and gender stereotypes are manipulated to define what is falsely portrayed as “natural.” Efforts to flatten a complex spectrum of sexual identity and expression are as popular among human rights detractors as they are damaging to both sexual rights advocacy and non-sexuality-related human rights claims.

An example of a typical case may be helpful in understanding why all human rights activists must stand up now for the rights of lesbian, gay, bisexual, transgender and intersex persons. While human rights abuses against LGBTI communities take many different forms, one very common pattern of direct persecution generally begins when someone within a government decides to round up suspected homosexuals, whether or not homosexuality is explicitly criminalized. Sometimes the police lead the round-up, while at other times officials need only “encourage” some shadowy “private” group to instigate a confrontation ending in mass detention. Time and again, these round-ups seem designed as media diversions, distracting communities from some other pressing political or economic crisis. Those who are detained are often tortured into offering false (or sometimes real) confessions, or subjected to painfully intrusive exams that have no credibility, nor any capacity to substantiate homosexual activity. The authorities always end up with their alleged evidence. Those arrested are often imprisoned in facilities where they are almost certain to face further torture, sexual abuse or death.

A recent series of arrests in Cameroon is illustrative:

In late May 2005, a Cameroonian newspaper, *Mutations*, reported that on May 22, the *gendarmes* of the Nlongkak brigade raided *Victoire Bar* in Essos, a neighborhood of Yaoundé, the capital of Cameroon. The bar was known to be a meeting place for the city’s lesbian, gay, bisexual and transgender community. The *gendarmes* arrested more than 30 men and women on suspicion of homosexuality (after arrest, the women were released on bail and disappeared from public view). According to section 347 (bis) Ordinance No 72-16 of the 28th September 1972 penal code, homosexuality is an offense punishable by up to five years in prison.

The official television station, Cameroon Radio and Television (CRTV) and a private local station (Channel 2), broadcast images of the young men after

their arrest. After a few days, the men were sent to the notorious Kondengui Central prison. Those who had family support or some money were able to arrange to be released, but eleven of the detainees remained in the cells of the Nlongkak brigade.

On September 7, 2005, lawyer Alice Nkom learned that the prosecutor had commissioned Dr. Njocky, a medical doctor from the University of Yaoundé Teaching Hospital, to carry out “medical examinations” to determine whether the men had engaged in homosexual conduct.³ Such examinations constitute a serious violation of the human rights of the detainees under international law. In countries where they have been administered, the examinations have caused grave physical and psychological suffering to their victims. The proposed forensic examinations were never carried out, though it is unclear whether the government was acquiescing to international and local protest or whether they were unable to find a medical professional willing to undertake the exams.

In mid-March 2006, two of the men, Ndebe Didier and Zanga Eric Emerand, were inexplicably released. On March 17, 2006 a hearing was held for the remaining nine detainees. The prosecution seemed ill-prepared and had no witnesses to present. But the judge did not dismiss the case and instead postponed the trial until April 21, 2006. The April 21 hearing was held before Magistrate Tonye with no evidence given to prove that the nine men were gay. None of the witnesses due to appear in court that day showed up. Magistrate Toney found that the men had been booked under the wrong charges (“homosexuality”) and dismissed the case.

Yet, the prosecutor kept the men in jail and filed a new charge against them (“sodomy,” under Article 347 of the Cameroonian Penal Code). A new judge was assigned and the men were ordered to appear in court on May 17, almost a year after their arrest. The hearing was delayed yet again, but was finally held in early June. This time, barristers Alice Nkom and Duga Titanji appeared in court with two other supporting lawyers. One of the men, Christian Angoula, had suffered a homophobic attack by fellow prisoners the previous week and had to be carried into the courtroom. The men were called to the bar to respond to the charges of sodomy against them. Only one among them came out and said he was gay. Alice Nkom argued that the new Cameroonian Constitution defined the law as one that had been voted by a Parliament, to claim the illegality of the Art. 347, which had been put in place by presidential decree. At the end of arguments by both sets of lawyers, the judge stated that he would make a ruling on June 12.

Alim Mongoche, one of the men who'd been convicted, was gravely ill with AIDS-related complications and had received no medical care in prison.

Unable to walk, he arrived in court for the verdict on June 12, 2006, carried on the back of one of the other detainees. (Alim Mongoche passed away on June 21, 2006). The court ruled that seven of the nine men were guilty of “sodomy” and sentenced them to a ten-month jail term. Two of the men—Ayissi Francois and Lamba Marc Lambert—were acquitted of all charges. The reasons for this split in the courts decision are unclear. Since all of the men had been detained for more than one year they were released within a few days.

As human rights activists, we all have an obligation to denounce these and other similar abuses. Too often, we do not. And we can do more.

This Guide provides case studies that show how to strengthen our human rights campaign efforts. It demonstrates how we can mobilize communities to respond to these common abuses and prevent additional suffering or how we can bring strategic court cases to build a more solid legal foundation for the rights of LGBTI persons, while also creating alliances with other marginalized groups.

It shows how, when all else fails, we can take our human rights demands to the international community to seek support and recognition for our struggles. More importantly, it stresses that as human rights advocates we can define and shape our demands. To this extent, human rights constitute an *evolving framework* that activists have the responsibility and the duty to adapt in order to address issues of abuses and violations. Advocating for sexual and LGBTI rights is not different from what other groups or movements, such as women rights activists or minority rights groups have done in the past, making use of human rights principles and tools to advance new claims and to set new standards of protection.

The Guide also showcases colleagues around the world who are testing creative new advocacy strategies to raise the profile of these abuses, and to change the social, cultural and legal structures that tolerate and perpetuate them. The key, of course, is to make certain that all of us, as human rights leaders in our communities, take notice and speak out.

The cases in this Guide also show that this is not simply a matter of police aggression or abuse. LGBTI persons suffer just as much from violence, persecution and social exclusion within their very own homes, often from their very own families, and at school, work and play. When the police and the courts ignore these “private” assaults on the bodies and the identities of lesbian, gay, bisexual, transgender or intersex people, their indifference and inaction become a public act—and a human rights abuse.

What we do

In all of our programs, including the LGBTI initiative, Global Rights collaborates with local partners to expand our understanding of sexuality-related violence and discrimination in human rights terms, as well as to respond to specific human rights cases

involving LGBTI communities. While the LGBTI initiative is based at the headquarters office of Global Rights in Washington, a majority of this work is being conducted in cooperation with Global Rights support offices and other partners in an attempt to link localized LGBTI concerns to human rights campaigns at the regional and international levels. Specific projects have been launched so far in Nigeria, Bosnia-Herzegovina and Nepal.

We are also part of a broad coalition in Latin America that is working to influence the Organization of American States. Building on years of experience in litigating cases before the Inter-American Commission on Human Rights in Washington, Global Rights is expanding LGBTI discussions and protections within the Inter-American human rights system and at the Organization of American States (OAS). The process of inclusion of LGBTI civil society started during the General Assembly of the OAS in Santo Domingo in June 2006. To date, our substantive OAS advocacy has focused primarily on support for broad anti-discrimination language in the draft for a new regional human rights treaty, the Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. Global Rights will continue to work with partners from Latin America to protect this crucial treaty language on sexual orientation, gender identity and expression during ongoing diplomatic negotiations..

Within the context of the formal human rights treaty body system, the Initiative has built an alliance with several human rights law clinics to file reports with the United Nations Human Rights Committee on the rights of LGBTI individuals under the International Covenant on Civil and Political Rights (ICCPR). So far it has submitted reports on the United States, Barbados, Bosnia-Herzegovina, Chile, Honduras, Czech Republic, Zambia, Grenada, Georgia, Botswana, Panama, Macedonia, Tunisia.

Why do we need this Guide?

This Guide will help explain the human rights standards that are most relevant to the protection of LGBTI communities in terms that are easy to grasp and framed within a broad human rights context. By providing case studies, it helps illustrate how those standards are applied in real life. And it includes exercises to help advocacy organizations and activists better understand the complex social constructs that define our notions of gender, sexual health and human sexuality.

This publication is a training Guide—not a naming and shaming report. It will help all of us think more creatively about how best to raise sexuality issues. This Guide proposes different approaches and offers information without imposing solutions or establishing agendas that can only be defined by working at local level. It will help us think collectively and strategically about our existing human rights tools that we can use to respond to various categories of abuse, and about tools we may still

need to develop. But most importantly, it provides inspirational examples of ongoing human rights struggles that we are winning, and a glimpse at some of the powerful personalities behind those struggles, many of whom are putting themselves and their families at great risk in defense of human rights. These stories challenge each of us to become more effective human rights leaders in our own communities.

Notes

1. See “Human Rights and Sexual Orientation,” E/CN.4/2003/L.92*, 17 April 2003 at http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&FileID=406.
2. Some of the earliest successful human rights standard-setting efforts occurred at the level of the European regional human rights system. See Chapter 3 for more detail about this.
3. Eight human rights organizations, including Physicians for Human Rights (PHR, US), Human Rights Watch (HRW, US), Legal Defense and Assistance Project (LEDAP, Nigeria), and International Gay and Lesbian Human Rights Commission (IGLHRC, US) delivered a letter to the Cameroonian Minister of Justice, S.E. Monsieur Amadou Ali, urging him to prevent the medical examinations because, they contended, the proposed examinations have no investigative value, are abusive, intrusive, and when conducted non-consensually and under incarcerated conditions, amount to cruel and inhuman treatment.

How to Use this Guide

Each chapter of the Guide is organized into five sections:

- a. An introduction with bullet points indicating the main “learning” points in the chapter;*
- b. Substantive discussion(s) about particular human rights and sexuality issues;*
- c. A list of key terms helping the reader, if needed, to better understand the meaning of concepts, words or acronyms;*
- d. Notes for facilitation (including information about background resources);*
- e. A participatory exercise.*

This Guide is designed to introduce sexuality-related rights, with an emphasis on lesbian, gay, bisexual, transgender and intersex rights issues, to those already familiar with human rights. It is also designed to facilitate human rights advocacy by sexual rights and LGBTI rights activists. It does not attempt to provide a basic introduction to human rights concepts, principles and practices, but, where relevant, provides references to such information on key topics. It seeks to provide basic and easy-to-grasp information about the promoting and protecting sexuality-related human rights advocacy and provides guidance, and how to integrate this work into ongoing human rights and LGBTI advocacy.

A series of case studies were commissioned, and they form a core feature of the Guide. These in-depth discussions bring accounts of sexual rights violations perpetrated against a range of communities spanning the globe, and the human rights strategies activists have employed to effectively respond and improve the status of sexual minorities and vulnerable groups. The experience offered through these analyses will, we believe, prove invaluable to advancing sexuality-related rights and integrating sexual rights and human rights by exposing readers to a range of successful strategies undertaken in diverse contexts. Moreover, the case studies were selected to illustrate

applications of Global Rights' five core tools. They cover efforts covering a range of violations—from arbitrary arrest and detention to police harassment and abuse to violence perpetrated by family members—and are situated throughout the globe.

The Guide can be used in several ways. First, it provides basic guidance for those seeking to address a broader range of human rights issues in their advocacy—whether their work covers the spectrum of human rights issues or more specifically emphasizes sexual rights and/or LGBTI rights. For this purpose, sections can be extracted and used by themselves, or taken as a whole. For example, a generalist human rights organization may be especially interested in working in especially difficult environments, or in educating themselves about how sexual rights is a component of the work they are already doing. Alternatively, an organization working on LGBTI rights may be especially interested in learning more about the political and legal foundations of work on sexual orientation, gender identity and human rights in an international framework.

Second, it has been designed to provide the core educational and methodological elements for a training, workshop or trainers' training on sexuality and human rights. Thus, in addition to the educational and substantive information, it includes both notes for facilitation, participatory exercises and background resource recommendations. While the Guide is designed so that sections build on each other, sections can also be used by themselves, especially by making use of some of the resource materials we list at the end of each section, as well as in Appendices B.

It can also be used as a reference manual on sexuality-related human rights issues. For this reason, we have included fairly extensive information about other resources so that the reader can obtain more in-depth information on each of the topics we cover in the Guide. Definitions and important terms are highlighted throughout in bold, with brief definition of key terms provided at the end of each section. A "Glossary of Terms" is also included in the end of the manual for easy reference.

Finally, we consider this, as with all such guides, to be a work-in-progress. We welcome your comments, recommendations, stories and testimonies.

I Sexuality-Related Rights and LGBTI Issues

Introduction

One night, not so long ago, a mother was beating her daughter. [The daughter] was placed in a sack, hung from the ceiling, and beaten by a broom again and again. On other occasions, the daughter was made to kneel on painful rocks or dry mung beans, arms stretched out, both hands holding glasses of water, and told to hold that position for hours on end unless she wanted to be mercilessly beaten again. When she was not beaten, she was forced to do manual domestic labor, often doing “traditional” male chores like fixing broken pipes or standing near the front door all night long. All this, simply because she is a lesbian.⁴

Reports of international human rights law and standards violations often fail to capture the extent of such torture and cruel, inhuman and degrading treatment. Victims slip through the cracks of human rights protection for various reasons. In the case above, the perpetrator of the abuse is a family member; the matter is therefore considered private, outside the purview of government scrutiny and protection. Second, the mother might try to justify the abuse by citing the daughter’s non-conforming sexuality and gender identity/expression: Not only is she a lesbian, but she is a woman who is “masculine” in presentation and therefore deserving of punishment.

The story comes from a report on violence against lesbians compiled by the organization LeAP! (Lesbian Advocates Philippines). While the focus of LeAP!’s report is the Philippines, this incident could have taken place nearly anywhere in the world. From country to country, community to community, countless lesbian, gay, bisexual, transgender, and intersex persons are discriminated against or subject to violence. Because their sexual orientation or gender identity and expression may not conform to the social and cultural standard of their communities, they are often seen as a legitimate target for discrimination or abuse.

In virtually all communities worldwide, people (and women in particular, given many societies' concern with regulating women's sexuality) are punished for expressions of desire or forms of self-presentation that are considered "abnormal" or for resistance to rigid social strictures of "appropriate" masculinity or femininity. In Chile, for example, an openly lesbian judge, Karen Atala, has been denied custody of her own children because of her sexual orientation and for being engaged in a relationship with another woman. The case was considered by the Chilean Supreme Court that surprisingly upheld the discriminatory decisions of the judges of first and second instance against a colleague of theirs. In India sodomy laws criminalize sex between men, and men who have sex with men (MSM) who are taken into police custody are commonly raped while in custody.

Stereotypes about "appropriate" gender roles harm everyone, but especially those whose sexual identity or activities stray from the so-called norm: This might include single women, men who are not "masculine enough," unmarried opposite-sex couples, or even people who associate with marginalized and stigmatized people. In Morocco, for example, social workers working with MSM have been arrested and accused of "incitement to vice."⁵ In the U.S., police regularly arrest transgender women and subject them to harassment, discrimination and, at times, cruel, inhuman and degrading treatment because the police conflate transgender with sex workers.⁶

This chapter introduces the basic language of sexual rights that is key to understanding and combating discrimination. By the end of this chapter, the reader should:

- ◆ Be able to define the basic terminology of gender and sexuality, especially as it relates to sexual and gender identity and expression
- ◆ Be familiar with the ways in which sexual and gender non-conforming practices challenge the social construction of gender and sex
- ◆ Begin to understand the struggles of LGBTI individuals with regard to their sexual rights

Basic Definitions:

The language and meanings of LGBTI rights

Definitions of gender, sexuality and gender identity can be as fluid as their expression. Each term used here connects to a whole system of naming and understanding the meanings of sex and gender (see Key Terms at page 15). In general, the term "sex" has been used to designate the physiological component of maleness and femaleness,⁷ while gender is regarded as the social components of becoming a woman or man. An individual's process of gender differentiation encompasses psychological, social and cultural elements.^{8,9} "Sex" (as physiology) and gender (as femininity or masculinity) are supposed to be neatly divided into the two (heterosexual) categories

of female and male, and they are supposed to correspond to each other in an individual (e.g., having a female body means being/feeling/acting like a woman). The reality, not surprisingly, is far more complex.

In this manual, **gender** refers to the attributes and roles differentially ascribed to males and females. These attributes and roles are socially constructed, context-based, and learned through socialization. Although mutable, they are rooted in longstanding assumptions about women, men, boys and girls. They inform relationships between and among males and females.¹⁰ **Gender identity** is the “individual’s own feeling of whether she or he is a woman or a man, or a girl or a boy.” In other words, “gender identity is self-attribution of gender.”¹¹ **Gender expression** describes the external characteristics and behaviors that are socially defined as feminine or masculine including dress, speech, mannerisms, and social interactions.

For many individuals, categorization of sex and gender occurs when the physical body and psychological identity correspond with each other. A “transgendered” person, however, feels that his or her physiological body does not mirror her/his internal identity. **Transgender** is a broad term describing individuals who feel their anatomical sex does not match their gender identity, and/or whose appearance and behaviors do not conform to the roles socially expected of their sex. **Transsexuals** are individuals who decide to live as the sex other than that assigned to them at birth. While some transsexuals reconstruct their physical characteristics through hormones or sexual reassignment surgery, others simply take on “masculine” or “feminine” characteristics. A **transvestite** is an individual who wears the clothing and accessories of the opposite gender. Both transvestites and transsexuals are considered transgender. By being outside the male/female dichotomy, the transgender person challenges the social construction of both gender and sex.¹²

This challenge can become a rallying point to claim rights. In much of Latin America, for example, the term *travesti*—referring to “those who appear in public wearing clothes of the opposite sex”—has been claimed by trans activists since the beginning of their struggles. In Argentina, municipal ordinances and misdemeanor codes criminalize the identity of *travestis*,¹³ with penalties ranging from fines to imprisonment. Police use the codes to threaten, extort and harass *travestis* into paying bribes or providing sexual services for free, or both. Those who refuse to comply are fined or arrested. Once in detention, *travestis* might be subjected to verbal, physical, psychological or sexual abuse by police officers and by other inmates. Activists and leaders are particularly targeted for violence because they often organize the community to refuse to pay bribes.¹⁴ After years of struggle, organized *travestis* managed to have the codes’ disposition repealed in several provinces and active campaigning is also under way in the other provinces.

The process of **gender attribution** is one in which communities define individuals, “predict” their expected behaviors and create “distinguishable social statutes” in order to attribute rights and duties.¹⁵ In many societies, attribution is strongly based

on how dichotomous genders, male and female, are constructed. And yet, the reality of many societies is much more complex. As Radhika Chandiramani of Tarshi, a sexual and reproductive health and rights organization in Delhi, India, notes, “In our part of the world, there is such a profusion of gender and sexual expression...in India, when asked, how many genders there are, most people will say—two, man and woman. But if while crossing the street you come across a *hijra*,¹⁶ and ask who that is—even a child will say ‘a *hijra*,’ meaning someone who is neither man nor woman, someone who occupies a ‘third’ gender.”¹⁷

Gender identity is separate from, though sometimes linked to, sexual preferences. **Sexual orientation** refers to a person’s sexual and emotional attraction to people of the same sex (homosexual orientation), another sex (heterosexual orientation) or both sexes (bisexual orientation). While convention poses sexual orientation and sexual desire as fixed, we consider it to be fluid and therefore changeable over time. **Homosexual** generally refers to a man who has sex with men (MSM) or a woman who has sex with women (WSW). **Bisexual** refers to individuals who have sex with both men and women. **LGBTI (lesbian, gay, bisexual, transgender, and intersex)** as a category refers to individuals and groups who claim sexual and political identities based primarily on their same-sex practices and/or their challenge to gender norms. It encompasses sexual orientation and expression as well as gender identity and expression.

Although the political, social, sexual and gender identities encompassed by LGBTI are not equally relevant in all communities and/or by all individuals, the category of LGBTI exists as a collective concept that has been claimed by some individuals and activist groups in many countries to assert their demand for recognition, space and legal personhood. In other words, it has been successfully used for political, social and economic organizing purposes. However, the LGBTI categorization contains several weaknesses. First, it lumps women, men, transgender and intersex people together, even though the human rights abuses they most commonly face may be significantly different. It also risks erasing differences of history, geography and politics, as well as other characteristics for which individuals face stigma and discrimination, such as their race, ethnicity, (im)migrant status, health status, language, etc. Finally, it may put out of sight culturally specific sexual and gender identities, giving the wrong impression that those identities originated in the West, and only recently.

Key Terms¹⁸

Bisexual

A person who is sexually and emotionally attracted to both sexes.

Cross-dresser

A person who occasionally chooses to wear clothing conventionally associated with another gender. They may or may not adopt a different gender identity when cross-dressing.

Gay

The term gay is sometimes used to encompass all LGBT people, but it is more commonly used to refer to men whose primary sexual and emotional attraction is to other men. It also has a self-identification or group-identity connotation.

Gender

Refers to a social construction of femininity or masculinity that varies in time and place and is constructed through learned, rather than innate, behavior. Gender and sex do not have the same meaning.

Gender expression

Refers to the expression through clothing and behavior, or the inner sense of identification and self-awareness, that manifests a person's fundamental sense of themselves as masculine or feminine, and male or female. This can include dress, posture, hairstyle, jewelry, vocal inflection, speech patterns, and social interactions.

Gender identity

Gender identity refers to a person's deeply felt sense of identification of their gender, in relation to the social construction of masculinity or femininity. A person may have a male or female gender identity, with the physiological characteristics of the same or different sex. Gender identity is different from sexual orientation.

Heterosexual

A person who is sexually and emotionally attracted primarily to people of the opposite sex.

Homosexual

A person who is sexually and emotionally attracted primarily to people of the same sex.

Homophobia

Prejudice against lesbians, gay men and bisexual people.

Intersex

A person who is born with characteristics (mostly gonadic, chromosomal or genital) that do not seem to fit the typical definitions of female or male, as far as the reproductive or sexual anatomy is concerned. Intersex anatomy may or may not show up at birth. The term historically used was "hermaphrodite," which is now generally adopted by zoology rather than by medical science.

Lesbian

A woman whose primary sexual and emotional attraction is to other women. It also has a self-identification or group-identity connotation.

LGBTI

Acronym used for Lesbian, Gay, Bisexual, Transgender, Intersex; an inclusive term for groups and identities.

MSM

Acronym used for men who have sex with men; generic reference to same-sex sexual conducts between men, which may or may not imply gay identity or emotional attraction.

Queer

As used in the U.S. context of identity politics,
continued on next page

Key Terms *(continued)*

is an umbrella term for a range of sexual orientations and gender identities that include lesbian, gay, bisexual and transgender. The term can have a more political connotation than gay, lesbian, bisexual or transgender.

Sex

A person's sex refers to biological or anatomical identity as male or female. Although often used interchangeably, gender and sex do not have the same meaning.

Sexual orientation

Refers to the direction of an individual's sexual and emotional attraction, whether to individuals of a different sex (heterosexual), same-sex (homosexual) or both sexes (bisexual).

Transgender

Used as an umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth, including cross-dressers, female or male impersonators, pre-operative, post operative or non-operative transsexuals. Transgender people may define themselves as female-to-male (FTM, assigned a female biological sex at birth but who have a predominantly male gender identity) or male-to-female (MTF, assigned a male biological sex at birth but who have a predominantly female gender identity); others consider themselves as falling outside binary

concepts of gender or sex. Transgender people may or may not choose to alter their bodies hormonally and/or surgically: the term is not limited to those who have the resources for and access to gender reassignment through surgery. Transgender is not about sexual orientation; transgender people may be heterosexual, lesbian, gay or bisexual.

Transphobia

Prejudice against transgender people.

Transsexual

A transsexual person is someone who experiences conflict between biological sex and gender identity. A transsexual person may undergo sex reassignment surgery so that his/her physical sex corresponds to his/her gender identity.

Transvestite

In the U.S. context, transvestite is an out-of-date description most often referring to men who wear clothes conventionally associated with another gender.

WSW

Acronym used for women who have sex with women; generic reference to same-sex sexual conducts between women, which may or may not imply lesbian identity or emotional attraction.

Notes for Facilitation

A glance through the entire Guide will be useful to help ground yourself in the Guide's main terms and concerns. A fair degree of understanding of and comfort with the concepts of gender and sexuality is important in order to convey the key concepts included in this chapter. In addition, the final section is organized around the five core tools of Global Rights. For more information on these tools, please see the Global Rights website at www.globalrights.org.

Resources and Background Materials

There are a number of key resources that may also be useful to review, outlining some of the history of work on LGBTI human rights globally. Of particular use are:

- ◆ Amnesty International's *Crimes of Hate, conspiracy of silence*: Torture and ill-treatment based on sexual identity, AI Index: ACT 40/016/2001;
- ◆ Amnesty International's *The Human Rights of Lesbian, Gay, Bisexual and Transgender People: A primer to working with the United Nations Treaty Monitoring Bodies and the Special Procedures of the United Nations Commission on Human Rights*, AI Index: IOR 40/004/2005;
- ◆ Bridge, *Cutting edge pack on sexuality* (at http://www.bridge.ids.ac.uk/reports_gend_CEP.html#Sexuality);
- ◆ Human Rights Watch and the International Gay and Lesbian Human Rights Commission (IGLHRC), *More than a Name: State Sponsored Homophobia and Its Consequences in Southern Africa* (2003) (available at www.iglhrc.org);
- ◆ IGLHRC, *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You* (2000) (available at www.iglhrc.org).

The web pages of several other organizations are extremely useful, such as Behind the Mask (<http://www.mask.org.za/>), CREA (<http://web.creaworld.org/>), along with others listed in the resources section. Finally, it may be especially crucial to review the glossary of terms, so that you are familiar and comfortable with these.

Exercise 1: The politics of naming—yourself and others

Materials required: flip chart/blackboard/whiteboard, chalk/pens.

Tips for facilitation: It is useful to be familiar with some of the prevailing stereotypes about sexuality, sexual orientation/identity, and gender identity and expression, as well as the key laws regulating, prohibiting and/or controlling same-sex practices and non-gender conforming identity/expression. This exercise helps bring to the surface the wide variety of laws and regulations (such as vagrancy, obscenity and indecency laws) that used to persecute same-sex sexual conduct and identity as well as gender non-conformity. This exercise is designed to bring these issues to the surface in an easy and non-confrontational manner that draws on the knowledge of all the participants and allows them to express some of their own terms of prejudice in order to examine these and, ultimately, discard them.

Step 1: In a large group, discuss the following as a brainstorming exercise:

- a. What are the names used for men who have sex with men and women who have sex with women in your country/community?

Hint: Spend enough time so that the participants feel comfortable saying the “bad” things that are in common usage as well as those that are more neutral.

Step 2: Once the list is fairly representative of terms and stereotypes, move to the next question:

- b. What are the practices that don’t fit heterosexual norms? How widespread are they? Where do they occur? Are there “identities” attached to them?
- c. What are the stigmas attached to these terms?

Step 3: Now that you’ve discussed stereotypes and real practices, move to identify violations:

- d. What are the major rights violations taking place against those engaging in these sexual practices?

Step 4: Identify laws and policies—including those that penalize and those that protect:

- e. What are the relevant local laws (both punitive and protective)?

Step 5: Identify allies:

- f. What are the lesbian/gay/bisexual/transgender/intersex (LGBTI) or men who have sex with men (MSM) and other organizations in your country/community with whom you might work?
- g. Are there organizations working on other issues, such as HIV, women’s rights, or general human rights that might be allies to consider?

Hint: Keep the information elicited in this discussion available for review, especially in the context of considering action strategies.

Notes

4. *Unmasked: Faces of Discrimination Against Lesbians in the Philippines*. Manila: LeAP! 2004. Hereafter referred to as *Unmasked*. See, in particular, the Introduction, written by Sangeeta Budhiraja, with Susana T. Fried and Stephan Sastrawidjaja.
5. ICASO Morocco Country Report.
6. Amnesty International, "Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S." AI Index: AMR51/122/2005.
7. S. Kessler, W. McKenna, *Gender. An Ethnomethodological Approach*, Chicago (1985), p. 7.
8. S. Whittle, *Respect and Equality—transsexual and transgender rights*, London (2002), p. 4.
9. Some argue, however, that both gender and sex are socially constructed. Under this worldview, the term gender may be used for both physical and socio-cultural characteristics, since the biological male/female dichotomy is a social and political creation, and is not "natural" or pre-existing, S. Kessler, W. McKenna, see note 7, pp. 42 ff.
10. Jeanne Ward, "If not now, when? Addressing gender-based violence in refugee, internally displaced, and post-conflict settings", The Reproductive Health for Refugees Consortium (2002). Available at: <http://www.rhrc.org/pdf/gbvintro.pdf>.
11. S. Kessler, W. McKenna, see note 7, p. 8.
12. S. Kessler, W. McKenna, "Who put the "Trans" in Transgender? Gender Theory and Everyday Life," *The International Journal of Transgenderism*, at <http://www.symposion.com/ijt/ijtintro.htm>.
13. In their "Glossary Under Construction," trans activists Mauro Cabral and Javier Leimgruber explain, "The current use of the term *travesti* (transvestite) in the Latin American region has a very specific meaning. It denotes, in general, a person who has been assigned a male gender at birth and whose gender expression corresponds with some culturally intelligible version of femininity; to be a *travesti* is independent of one's sexual orientation and may or may not involve body alterations through silicone prosthetics, hormones, etc."
14. Human rights violations against *travestis* in Argentina have been widely denounced. To learn more about specific cases and the wide range of violations, please visit the website of the International Gay and Lesbian Human Rights Commission (www.iglhrc.org). UN Special Rapporteurs on Extrajudicial, Summary and Arbitrary Executions and Torture have reported on cases involving *travestis* in Argentina. Their reports can be accessed at the UN Human Rights Council website (www.ohchr.org). Action Canada for Population and Development has put together a summary of UN references to sexual and reproductive rights where most of the Rapporteurs references are listed (see www.acpd.org).
15. J. Lorber, *Paradoxes of Gender*, New Haven (1994) p. 32.
16. "Hijra is a term used in the Indian subcontinent and includes those who aspire to and/or undergo castration, as well as those who are intersexed. Thought some *hijras* refer to themselves in the feminine, others of them say that they belong to a third gender and are neither men nor women." in *plainspeak: Talking about Sexuality in South and Southeast Asia*, October 2005, Issue 1: p. 27
17. Radhika Cahndiramani, 2005. "what's the difference?" in *plainspeak: Talking about Sexuality in South and Southeast Asia*, October 2005, Issue 1: p. 25.
18. Adapted from Amnesty International, *Stonewalled* (2005), pp. 130-132. Other references are: Intersex Society of North America, at www.isna.org.



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Overview of Sexual Rights

2

Introduction

We would go out at night, to the places where they (the travesti) worked and watch how the police treated them. In Chaco, the riot police were sent, armed from head to toe. It was devastating: we saw people with HIV&AIDS spending ten days or more under detention, without food, without medicines and hiding their status, to avoid being brutalized even more.

The hardest part was to convince them that being arrested five days out of seven every week was not normal. They were used to it, that was their life. We identified the leaders in each place, the ones who were already recognized as leaders by the community because they were older, or more outspoken, or more generous—whoever had the capacity to make others believe in what she said and to gather others.

We would go and hold meetings. It was always 30 people at least. In Santiago there were usually 100 or more. We would explain what the Codes were, what the police could and could not do to them, how they were citizens and they had rights that needed to be respected. We did not want to have human rights experts facilitating the workshops; it would have been intimidating to the community. It was us, who have had the same experiences as them, who spoke their same language, who had the authority to speak. And it worked.

- Marcela Romero, trans woman, activist and president of Red de Latinoamerica y el Caribe de Personas Trans (Red LAC-Trans), describing how using the language of rights helped strengthen the movement in Argentina.

Sexual rights, like all human rights, belong to all of us, and they encompass the minimum standards necessary to live a life of dignity. While these rights have been codified in a variety of international treaties and agreements, they also find resonance in diverse social and cultural settings. In human rights law, the primary “duty-bearers” responsible for promoting and protecting human rights have been governments. The primary “rights-holders” have been individuals. However, recent evolution of human rights advocacy also seeks to broaden accountability beyond State actors, and therefore looks at the responsibility of a range of “non-state” actors, like family members, teachers, health care providers, private enterprises, parties in conflict and multi-national corporations.¹⁹ On the one hand, the State, as primary duty-bearer, is responsible for ensuring the respect, protection and fulfillment of all human rights for all. On the other hand, in the context of evolving human rights norms and standards, human rights advocates are seeking to build clearly defined and direct responsibility by non-state actors.²⁰

This newly evolving definition is particularly important in the context of sexual rights, as decisions about sex and sexuality are often made in locations once considered immune to public scrutiny, like the home and family (i.e., the “private sphere”). This chapter looks at the evolving concept of sexual rights as a component of human rights, and the ways in which it encompasses a distinct set of rights and obligations. It situates sexual rights within the framework of international law, and examines some of the challenges to protecting and enjoying sexual rights.

The human rights of lesbian, gay, bisexual, transgender and intersex persons can be considered as a subset of the broader category of sexuality-related rights. However, the rights of LGBTI persons, as with all individuals and groups, is not limited to the realm of sexuality, but encompasses the range of civil, cultural, economic, political and social rights.

By the end of this chapter, the reader should:

- ◆ Be able to define the terms sexual rights, sexual health, LGBTI rights and reproductive rights and understand the differences among them
- ◆ Understand the concept of a “rights-based” framework
- ◆ Understand some of the dilemmas surrounding sexual rights, such as the universality of rights and the implications of women’s lack of negotiating power over their sexuality

What are “sexual rights”?

All people have the right to control what happens to their bodies, to make personal decisions regarding sex and sexuality and to participate in public and civic affairs regardless of their sexuality or gender identity. For years, LGBTI activists and advocates, along with women’s health and rights advocates, HIV&AIDS organizers and other human rights activists, have been seeking greater recognition for the full

expression of sexuality as a human rights issue. “Sexual rights” refers to sexuality and human rights associated with physical and mental integrity in connection to all domains of power in the public and private spheres that determine sexual norms. They commonly include the right of an individual to choose and express his or her sexual identity free from discrimination, coercion, or violence; the right to sexual health information and services; the right to experience a safe and satisfying sex life—including the ability to choose one’s sexual partner—as well as the right to express sexuality outside the context of reproduction. Sexual rights also include the right not to be punished arbitrarily or imprisoned because of discriminatory laws or prejudices about sexuality, as well as the right to the full development of human persons and to sexual citizenship.²¹

Sexual rights are the right to say NO... And the right to say YES	
To violence	To the intimate partner of your choice
To rape	To the spouse or life partner of your choice
To harassment	To pleasure
To discrimination	To self-expression
To trafficking	To bodily integrity
To forced marriage	To a life free from violence
To abuse	To self-determination
	To safe abortion
	To information about your body
	To information about your rights and responsibilities
<i>International Women's Health Coalition</i> http://www.iwhc.org/issues/sexualrights/whataresexualrts.cfm	

In this Guide, we use the expression **sexual rights** not only as affirmative rights but also to define and condemn the myriad ways that State, community and family control of sexuality, sexual expression and gender expression takes violent and abusive forms, thereby constituting human rights violations. In this chapter, we will look at human rights approaches to sexuality and sexual rights, and some ways in which international law can be used to protect and promote these rights. The concept of sexual rights is relatively new and continually evolving. As such, there is no standard definition.²² Rather, notions of sexual rights (like sexuality and gender) are heavily influenced by community standards, religion and culture and vary over time and place.

Activists worldwide are exploring the language and concepts of sexual rights as an organizing principle. For instance, in an interview in the first issue of CSBR

(Coalition for Sexual and Bodily Rights in Muslim Societies), Ahlem Belhadj, co-founder of *Association Tunisienne des Femmes Démocrates*, and the main organizer of “Women, Sexual Rights and Reproductive Rights: Gains, Freedoms and Resistances,” the first ever meeting on sexual rights in Tunisia,²³ commented,

We work on sexuality in Tunisia and see firsthand that many power mechanisms function through the regulation of sexuality, which is still a taboo through various constructions of what is sacred, shameful, decent etc. We conducted research in Tunisia, on the major problems women face. Ninety percent of women have problems in the domain of sexuality. A large majority of them can't have an orgasm. There are those subject to violence, outcast, those robbed of their freedom and who have to suppress themselves. Women asked us to prioritize this issue first. And then there are youth.... They really need to discuss sexuality. Because they are stuck between the changing lifestyles and social values, they are confused.²⁴

Since sexual rights are so often a new concept or new organizing strategy, it is important to engage in an open process of discussion and definition. As Ms. Belhadj put it so eloquently in describing the discussions at the conference noted above,

The issue of sexuality in general was still blurred. We needed discussion and definitions. There are different experiences and perspectives due to historical and social processes. We tried to combine feminist and human rights perspectives and I think we took a step forward in this. The obstacles in social, cultural, and legal domains were also explored in the meeting, and we developed common goals. Sexuality which is often linked to reproduction and the family, was explored as a right and a space of pleasure. This is very significant. We discussed those who face particular problems due to their position in the social hierarchy. Sex work was discussed very openly and intensely for the first time. But the biggest progress was made on the issue of sexual orientation. I think this was the first discussion on the existence and invisibility of lesbian women in Tunisia. What is even more important is that we initiated a debate in Tunisia on sexuality. We've opened a gate. We don't have all the answers yet, but so many questions are out in the open for the very first time.... As we are seeking the own answers more roads will open up.²⁵

Thus, as is clear, sexual rights must be viewed as broader than LGBTI rights because they encompass more than identity categories. For example, not all women who have sex with women (WSW) or men who have sex with men consider themselves to be gay or lesbian. Individuals face persecution and abuse not only on the basis of identity, but also because they engage in sexual or bodily practices or express desires that violate community standards or transgress state norms and laws. This is the case, for example, sex workers or women and men who marry outside of religious, ethnic or other

cultural distinctions and face persecution as a result. In Senegal, for example, men who have sex with men and consider themselves to be the “insertive partner” during sex may not consider themselves to be homosexual. In fact, the majority of men who have sex with men in Senegal also have sex with women, thus calling into question the meaningfulness of definitions of sexuality that require either/or distinctions.²⁶

The expression “sexual and reproductive health” or “sexual and reproductive rights” itself obscures important distinctions between the two categories. Reproductive rights concern the right of people to choose if, how and when to have children, while sexual rights are applicable outside a reproductive context. Sexual rights can be linked under some circumstances to reproduction (e.g., right to determine if sexual activity shall result in reproduction through family planning or abortion, etc.) but many sexual rights are not (sexual speech, imagery, etc.). Moreover, sexual rights are relevant at all ages, since children can suffer sexual abuse, and people may be sexually active into old age, after their potential childbearing years. Connecting sexual and reproductive rights too closely ties sexuality to childbearing and fertility.

Over the past decade, a greater openness to discussion of sexual diversity and sexual rights can be observed. For instance, an increasing number of reproductive rights and family planning organizations have sought to encompass sexual rights as an element of reproductive rights. The International Planned Parenthood Federation includes sexual rights as a pivotal aspect of their work, and notes the importance of “sexual pleasure and expression, sexual orientation, and sexuality as part of a free and empowered life.”²⁷ Still, there remains confusion and concern about too closely linking reproductive and sexual rights—from those who fear the stigma attached to working on sexual rights, as well as from those who fear losing the diversity of sexual rights concerns through a more narrow construction of reproductive rights.

The International Conference on Population and Development (ICPD) (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995) outcome documents note that reproductive rights rest on the “recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.”²⁸ Sexual rights, or the human rights to sexuality, are distinguished from the above and articulated in the Beijing Declaration and Platform for Action from the UN Fourth World Conference on Women, as “women have the right to have control over and decide freely and responsibly on matters related to their sexuality, free of coercion, discrimination and violence”²⁹

Understanding sexual rights also requires addressing its intersection with and distinction from sexual health. Whereas the term “sexual health” has often been framed in the context of pathology (as in sexually transmitted infections) or service provision (such as counseling and care around reproduction issues) it is being redefined to encompass well-being, not merely the absence of disease. However, sexual

rights moves beyond questions of bodily well-being or freedom from disease, to also encompass speech, association, public life or pleasure, expression or bodily integrity. While the sexual health context is one important component of the sexual rights panorama, seeing sexuality and sexual rights solely through a sexual health lens risks creating a definition of “normal” or “healthy” sex that is too narrow by default.³⁰

Rights principles and rights-based approaches

Rights principles

Human rights are universal, indivisible, interrelated and interdependent. All people, regardless of their sexual orientation or gender identity/expression, race, nationality, language—among other factors—should have access to all human rights described in the Universal Declaration of Human Rights (UDHR). Rights applied to sexuality identify rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations). Duty-bearers have “positive” obligations to protect, promote and provide for the exercise and enjoyment of sexual rights. This promotional approach includes, for example, the provision of comprehensive sexuality education and safe and affordable services related to sexual and reproductive health. Human rights approaches to sexuality also include the obligation of the government not to engage in human rights abuses, e.g., abstaining from violations of sexual rights. For example, a government should not imprison people for adult consensual sex; it must punish violators, such as police who rape sex workers; and must provide redress to those making claims of abuse.

These obligations extend to the policies and actions of non-state actors. Rights-based approaches increasingly take into account the duties and actions of a wide variety of actors including individuals, local organizations and authorities, private companies, aid donors and international institutions. For example, a private company may determine that they should have a good and effective policy on sexual harassment and should provide disciplinary action for staff in violation of that policy.

Too often State and non-state actors do not investigate or punish rights violations related to sexuality. Frequently they do not promote conditions allowing the enjoyment of rights, or are rights violators themselves. Furthermore, because violations of sexual rights often take place in private settings, they may be difficult to regulate and penalize. Organizations working to protect people from discrimination because of their real or perceived sexual orientation, sexual or gender identity have been among the most vocal to insist that sexuality is not simply a private matter. Laws throughout the world that regulate non-conforming sexual behavior affirm that sexuality is a public issue.³¹

By now, a range of sexual rights issues are well established in the **violations** paradigm.³² These include sexual violence, rape, discrimination and forced marriage, among others. Sexual violence is increasingly understood as a violation of an

individual's bodily integrity and right to sexuality, as well as violence per se. However, because sexual rights are controversial, it is easier to argue that persons should not be targeted for such abuses than it is to push for an approach promoting or protecting non-conforming aspects and expressions of sexuality, sexual identity and sexual health. Indeed, the use of rights-based approaches to sexual rights is well-grounded in international human rights law and principles from treaties, covenants and documents from major United Nations conferences.³³

Focusing too much on violations of sexual rights, however, risks a full recognition of sexuality as a place of variability including in the pursuit and experience of pleasure as a facet of human existence. In fact, a critical aspect of sexual rights acknowledges a major reason people have sex—the pursuit of pleasure. Such “affirmative” definitions address rights beyond what has already been recognized as part—either explicitly or implicitly—of existing international human rights law. However, though they may not yet have received formal recognition, these rights are important to strive for in the promotion of healthy sexuality and sexual rights.

Rights-based programming approaches

Rights-based programming stresses the universality, indivisibility, interdependence and interrelatedness of rights. It further emphasizes accountability and obligations as core operational and procedural principles. Commonly, rights-based approaches are understood to be based on practices of:

- ◆ Universality/Inalienability/Non-Discrimination
- ◆ Participation/Inclusion/Empowerment
- ◆ Transparency
- ◆ Accountability/Obligation
- ◆ Interconnectedness of rights (i.e., assuring the conditions for enjoyment of rights)

For programs and services to serve the human rights of their users, they must be available, accessible, acceptable, and of high quality (so called 3AQ).³⁴ This means that the process of their design, development, implementation and evaluation must include the meaningful input of those it is intended to serve. Frequently this requires a pro-active effort to engage people whose sexual and gender expression and practices put them out of reach of most legal, health, educational and other services, community organizing and legal and policy advocacy.

Negotiating sexual rights

Promoting and protecting sexual rights may be difficult because, as we have noted, they are often negotiated—or violated—privately. Women, in particular, may find it difficult to advocate for these rights, as systemic discrimination (in education, health, employment, access to resources, decision-making, etc.) has left them in a subordinated negotiating position. Women's lack of power is evident in numerous realms: rampant sexual violence and gender-based persecution in times of peace; systematic rape, enforced pregnancy, and sexual torture during civil or national

conflict. At the same time, laws, policies and cultural norms often limit the explicit discussion of sexuality, particularly for women and young people.

The limitations to women's negotiating power over their sexuality and bodily integrity has important implications. It makes them more likely targets of violence and increases the likelihood of their contracting sexually transmitted infections such as HIV& AIDS, for example. While gender power imbalances may be more evident in heterosexual relationships—with male partners more likely to assert their will over their less-powerful female partners—they are also relevant in a same-sex context.

It is also important to note that a woman can be the perpetrator of human rights abuse and a man can be a victim. Women (whether family members, intimate partners or community members) can violate the rights of other women.³⁵ Or, in other cases, sexual violence is used to regulate sexuality as a homophobic weapon. In South Africa, lesbians have been targeted for rape specifically because of their sexual orientation and so the male aggressor can “prove the [victim's] womanhood.”³⁶

Survivors of same-sex sexual violence face multiple stigmas: They may be hesitant to report abuse, fearing exposure of their sexuality, or they may find that available resources cater primarily to those in heterosexual relationships. They may also face discrimination from those who are supposed to be providing them services and solace. For example, data from several provinces in South Africa attests to the predominance of such discrimination. In their submission to the South African Human Rights Commission, the organization OUT LGBT Well-being reports:

The impact of discrimination in the health care system, as a result of negative and prejudiced attitudes toward sexual minorities, can result in individuals not seeking treatment, as was reported by 16% of the sample in KZN (Kwa-Zulu Natal). Our Gauteng research findings presented similar trends:

- ◆ 6% of the sample had been refused treatment based on their sexual orientation
- ◆ 12% of the sample delayed seeking treatment for fear of discrimination
- ◆ 12% of respondents had lived with health conditions and not sought help for fear of their sexual orientation being discovered. These statistics are worrisome, as living with conditions like sexually transmitted infections (STIs) can accelerate the spread of HIV&AIDS....Turning to the matter of gender-based violence the OUT research revealed concerning levels of violence, sexual and non-sexual, against gay men and lesbian women in both provinces. Gay and bisexual men are also frequently targeted for rape, usually at the hands of men they identify as straight. And the notion of “corrective rape”, the rape of lesbian woman to “make them straight”, has been documented by a partner organization, The Forum for the Empowerment of Women.³⁷

Although lesbians may be able to access general domestic violence services, since these are mainly geared toward women, gay men may have a harder time seeking assistance or support. Indeed, negotiating rights frequently means directly confronting the authority of the State, whether in the form of the police, social service providers, teachers or other government officials, who are frequently engaged in regulating non-conforming identities.

Limitations of rights in the context of sexuality

While certain rights are absolute, interference with other kinds of rights may be justified in particular circumstances. For example, laws setting a minimum age of marriage conflict with the right to marry. At the same time, minimum age of marriage laws may protect young women from a variety of severe negative health and human rights consequences, like premature childbearing, arranged or forced marriage, etc. Another example involves conflict between religious beliefs and a woman's right to control her body. While States may allow conscientious objection to contraception or abortion, a woman's right to choose requires that reasonable provision be made for access to these services.

In a world of competing interests and rights, then, how can we assess when and whether violation of sexual rights can be justified? The Siracusa Principles, adopted

Siracusa Principles³⁸

Certain rights are absolute, which means that restrictions may never be placed on them, even if justified as necessary for the public good. These include such rights as the right to be free from torture, slavery or servitude; the right to a fair trial; and the right to freedom of thought.... Interference with most rights can be legitimately justified as necessary under narrowly defined circumstances in many situations relevant to public health. Limitations of rights, however, are considered a serious issue under international human rights law, regardless of the apparent importance of the public good involved. When a government limits the exercise or enjoyment of a right, this action must be taken only as a last resort and will only be considered legitimate if the following criteria are met:

1. The restriction is provided for and carried out in accordance with the law;
2. The restriction is in the interest of a legitimate objective of general interest;
3. The restriction is strictly necessary in a democratic society to achieve the objective;
4. There are no less intrusive and restrictive means available to reach the same goal; and
5. The restriction is not imposed arbitrarily, i.e., in an unreasonable or otherwise discriminatory manner.

in the early 1980s by a group of human rights practitioners, provide guidance on the limitations of rights. They list criteria which must be met in order to justify any sort of interference with the enjoyment of rights.

However, a core principle remains—there is no excuse for adverse discrimination and violence under any circumstance.

Key Terms

Sexual rights

Sexual rights are the rights of individuals to the control over their bodies and to make personal decisions about their sexuality and sexual activity. Sexual rights encompass bodily integrity, autonomy, choice, empowerment and diversity with reference to the sphere of sexuality. They imply the protection from discrimination and coercions as well as from violence and other forms of interference with personal choices and decisions. They include the claim for respect, protection and fulfillment of those rights. Sexual rights are also comprised of the right to participate in the public sphere to assert the above mentioned claims and to be equally vested with power regardless of sexuality.

Sexuality is a characteristic of every individual and it transcends cultures, religions, nationalities. Thus sexual rights belong to everyone as an aspect of their human rights.

Reproductive rights

Reproductive rights are the rights of individuals to choose how, when, if and under what circumstances to have children, including the right to decide not to have children. Reproductive rights are related to sexual rights because reproduction implies choices in the sphere of sexuality.

Sexual health

Sexual health has been defined, following the notion of right to health, as “a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.”³⁹

Sexuality-related rights

The notion of sexuality-related rights refers to the bundle of rights related to the exercise of sexuality. The definition of sexuality-related rights intersects with the notion of sexual rights as well as with LGBTI rights.

Duty-bearer and rights-holder

The terms duty-bearer and rights-holder seek to apply abstract rights to concrete individuals, clarifying reciprocal relationships of responsibility.

Duty-bearer: The duty-bearer is the subject responsible for ensuring that rights are respected, protected and fulfilled. Duty-bearer is usually the state, but also other subjects, such as family members, international institutions, and other “private” entities can be considered to be duty-bearers under certain circumstances.

Rights-holder: The rights-holder is the claimant or beneficiary of the obligations of the duty-bearer. Every right comes with an obligation, and this relationship links duty-bearers and rights-holders. Right-holders have the duty not to infringe on others’ rights.

Respect, protection and fulfillment of rights

This is another key notion for understanding human rights. *Respecting* rights means not interfering with the exercise of rights (e.g., the state must avoid torture, arbitrary arrest, medical fees that prevent access to health care).

Protecting rights means preventing violations by third parties and providing redress if rights are violated (e.g., the state must prohibit discrimination, or must prevent parents to keep children out of school).

Fulfilling rights means taking positive and proactive actions to ensure that rights are realized (e.g., the state must implement legislation establishing equal pay).

Notes for Facilitation

This section includes a fair amount of detailed information. Much of it, and especially the discussions about the formal human rights system and language that may appear to many as legalistic may elicit resistance. It is important to move slowly through the section, making sure that all concepts, points of tension, sticky issues and challenges are adequately understood by all participants. The goal of the section is to move through the material in a way that results in a fair amount of comfort with sometimes complicated but crucial concepts that are too often misunderstood or tangled up with each other.

Resources and Background Materials

- ◆ Sonia Corrêa, “From Reproductive Health to Sexual Rights: Achievements and Future Challenges” available at: www.hsph.harvard.edu/Organizations/healthnet/reprorights/docs/correa.html;
- ◆ Sonia Corrêa, Adrienne Germain and Rosalind Petchesky, Thinking Beyond ICPD+10: Where Should Our Movement Be Going? *Reproductive Health Matters*, Vol. 13, No. 25 (2005);
- ◆ Susana T. Fried, “Annotated Bibliography: Sexuality and Human Rights,” at <http://www.iwhc.org/resources/sexrtsbiblio.cfm>;
- ◆ Susana T. Fried and Ilana Landsberg-Lewis, “Sexual Rights: from concept to strategy,” in Kelly D. Askin, ed., *Women’s Human Rights Reference Guide*, Transnational Press (2000);
- ◆ Geeta Rao Gupta, “Gender, Sexuality, and HIV&AIDS: The What, the Why, and the How,” *Plenary Address, Global Congress on HIV & AIDS*, Durban, South Africa, July 12, 2000, available at: www.icrw.org;
- ◆ Eric Heinze, *Sexual Orientation: A Human Right* (The Hague: Martinus Nijhoff Publishers (1995);
- ◆ Pinar Ikkaracan, “Women, Sexuality, and Social Change in the Middle East and the Maghreb,” *Social Research* 69/3 (2002): pp. 753-781;
- ◆ Elizabeth Khaxas, “Organizing for Sexual Rights: The Namibian Women’s Manifesto” in Cynthia Meillón with Charlotte Bunch, eds., *Holding on to the Promise: Women’s Human Rights and the Beijing + 5 Review*, New Brunswick, NJ: Center for Women’s Global Leadership, Rutgers (2001), pp. 60-65. See also, “Sexual Rights are Human Rights,” statement by Elizabeth Khaxas at the Rally for Democracy and Human Rights, Windhoek, Namibia, April 28, 2001;
- ◆ Alice M. Miller, “Sexual but Not Reproductive: Exploring the Junctions and Disjunctions of Sexual and Reproductive Rights,” *Health and Human Rights* 4/2 (2000): pp. 68-109;
- ◆ Rosalind P. Petchesky, “Sexual Rights: Inventing a Concept, Mapping an International Practice,” in *Framing the Sexual Subject*, Richard Parker, et al., eds., University of California Press (2000), pp. 81-103;

- ◆ Doug Saunders, "Sexual Orientation in International Law—What role has international law played in the LGBT movement?" at http://www.ilga.org/news_results.asp?LanguageID=1&FileID=1078&ZoneID=7&FileCategory=7;
- ◆ Bonnie Shepard, "The 'Double Discourse' on Sexual Rights and Reproductive Rights in Latin America: The Chasm between Public Policy and Private Actions," *Health and Human Rights* 4/2 (2000): pp. 111-143;
- ◆ Kristin Walker, "Evolving Human Rights Norms around Sexuality," *International Law Students Association Journal of International and Comparative Law* 6 (2000): pp. 343-353.

Exercise 2: Assessing rights and responses⁴⁰

Materials required: flip charts and pens, violations chart

Tips for facilitation: explain that these are fictional scenarios, but in each case they are built on real stories. If it is useful, you may want to consider changing the names to more easily fit the context in which these are being used. Read through the scenarios before assigning them. In each case, ask the participants to identify the following: Who has been violated? Who is the violator? What is the violation? What is the appropriate response and remedy?

Pakistan

Malikka fell in love with her best friend at age 14. She was thrilled when the girl returned her affection. Since then, she has had a number of relationships with women and she has read a bit about lesbianism. Recognizing her story in some of the South Asian lesbian magazines she found, she was determined to resist the marriage her family was planning for her. When she told her father she would not go through with the wedding, he beat her and told her she was ungrateful. Feeling she had no options and without any other means of support, Malikka finally agreed to the wedding. She has been married about two months and has been raped six or seven times by her husband. He hit her the first two times that she resisted his advances, demanding to know what was wrong with her. Malikka knows that if she reveals her real desires, or if her husband or community believes she has betrayed them, there is the possibility that she could be targeted for a so-called “honor killing.” Terrified that her husband will discover her secret, she says nothing. She hopes to become pregnant soon, believing her husband might leave her alone if she has a child.

Romania

Adrian and George are two gay men in their early 20s who live in a small city in Romania. They are involved in a three-year relationship, but rarely get to spend time alone with each other. They both live with their families and are part of a slowly growing gay male community. Sometimes they lie to their families to get out of the house and travel to Bucharest in order to participate in public gay culture because there are no gay bars or gay social spaces in their city. What they do have in their city is a public park where men who have sex with men sometimes go in order to have some semblance of privacy. Late one night Adrian and George are arrested in a secluded area of the park by an undercover police officer. They are charged with public solicitation and public scandal, both offenses under the Romanian Penal Code. They are held in the police station, where they are verbally taunted. One police officer hits Adrian and George while he calls them “faggots” and “queers.” Adrian and George know that they didn’t pick each other up that night, they know that there was no exchange of money, and no one else watched or was a part of their sexual activity. The charges against them are false, but the laws are not in their favor.

Worksheet/chart			
	Individual	State	Other non-state actor
Who had their rights violated?			
What is the violation?			
Who is the violator? Is there more than one (please list)?			
Who is the duty-bearer(s)? What actions should the duty-bearer(s) take?			

Exercise 3: “Fortune cookies”⁴¹

Instructions: In this exercise, quotations inserted into cookies magnify central themes and raise issues about gender, gender stereotypes, and gender-based discrimination.

Tips for facilitation: You will need to identify quotations that are appropriate for the participants as above. You can also write your own quotations.

1. Identify quotations and insert them into “fortune cookies” in advance. These should echo some of the main stereotypes and discriminatory statements that are common in the setting in which the training is taking place. You can also simply print them on strips of paper to hand out to the participants in pairs or groups. If time is limited, fold the strips of paper and place them in a container.
2. Distribute the fortune cookies (or strips of paper) to individuals, pairs or teams.
3. Provide 10 minutes for participants to reflect, formulate and discuss their responses (e.g., agree/disagree and/or relevance of the quotation) as individuals, in pairs or in teams.
4. In the large group - display each quotation on a flip chart, whiteboard, or PowerPoint slide in turn to ensure everyone can reflect on the quotation, with each group giving a two-minute presentation about their discussion and responses.

Extension: “One-minute paper”

Invite participants to take a minute to record the thoughts that came to mind while reflecting on the quotation.

Notes

19. See, for example, HRRC, "Circle of Rights: Economic, Social and Cultural Rights Activism" at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle>, especially module 9, and "Subaltern sexualities, Fighting for sexual rights in Africa" in *Feminist Africa* 6 (2006). See also, Amnesty International, "It's in our hands: stop violence against women" (AI Index: ACT/77/001/2004; Amnesty International, "Respect, protect, fulfill women's human rights: State responsibility for abuses by 'non-state' actors," AI Index: IOR 50/001/2000; Andrew Clapham, *The human rights obligations of non-state actors*, Oxford University Press (2006); FIDH, "Time to Act: holding business accountable to human rights," June 2004 at <http://www.fidh.org/IMG/pdf/eco290604a.pdf>; Anissa Hélie and Jan Bauer, "Documenting Women's Rights Violations by Non-state Actors," at Rights and Democracy (http://www.dd-rd.ca/site/_PDF/publications/women/Non-State.pdf); Smita Narula, "The Right to Food: Holding Global Actors Accountable Under International Law" at *Columbia Journal of Transnational Law*, Vol 44, p. 691 (2006); Rights and Democracy, "Fundamentalisms and Human Rights: report of the meeting" at <http://www.dd-rd.ca/site/publications/index.php?subsection=catalogue&id=1429&page=4>.
20. See for example, United Nations Economic and Social Council (ECOSOC), "Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights" (2005). UN Doc. E/CN.4/2005/91.
21. D. Richardson, "Constructing sexual citizenship: theorizing sexual rights" in *Critical Social Policy*, Vol. 20 (2000), pp. 108-135; Latin American and Caribbean Women's Health Network, "Towards Sexual Citizenship" in *Women's Health Journal*, July-December 2003, at http://findarticles.com/p/articles/mi_m0MDX/is_3-4_2003/ai_n18617056.
22. The process of creating definitions is always fraught with danger, particularly in terms of whom or what is included and excluded. The challenge is to devise definitions that provide room for different local/cultural/historical meanings of sexual rights.
23. The meeting was held in Tunis, Tunisia between November 17-19, 2006 with Women for Women's Human Rights (WWHR)—New Ways, Turkey.
24. CBSR E-news, Vol. 1, Issue 1, Winter 2007, p. 3
25. *Ibid.*
26. Horizons/Population Council, *Meeting the sexual needs of Men who have Sex with Men in Senegal*, p. 2.
27. International Planned Parenthood Federation, at <http://www.ippfwhr.org/site/c.kuLRJ5MTKvH/b.2777697/k.B585/Access.htm>.
28. "Reproductive rights and reproductive health" in "Programme of Action of the International Conference on Population and Development" at http://www.unfpa.org/icpd/icpd_poa.htm#ch2.
29. Declaration 96, in "Beijing Declaration and Platform for Action: Fourth World Conference on Women", September 15, 1995 at http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF.
30. See Beijing Platform for Action and ICPD plan of Action.
31. For more information, see ILGA, "State Homophobia A world survey of laws prohibiting same sex activity between consenting adults." The research, by Daniel Ottosson, Södertörn University, Stockholm, Sweden was updated in April 2007.
32. A "violations" paradigm focuses on identifying the victim, the violator, the violation and the remedy. Thus it looks at protection from and response to violations rather than an approach that focuses on the exercise and enjoyment of rights. See, for example, Lynn P. Freedman, "Reflections on Emerging Frameworks of Health and Human Rights," in Mann and Jonathon, *Health and Human Rights: A Reader*, Routledge (1999).
33. For more information, see Sonia Corrêa, Adrienne Germain and Rosalind Petchesky, "Thinking Beyond ICPD+10: Where Should Our Movement Be Going?" *Reproductive Health Matters*, Vol. 13, No. 25 (2005). Susana T. Fried and Ilana Landsberg-Lewis, "Sexual Rights: from concept to strategy," in Kelly D. Askin, ed., *Women's Human Rights Reference Guide*, Transnational Press (2000); Rosalind P. Petchesky, "Sexual Rights: Inventing a Concept, Mapping An International Practice," in *Framing the*

Sexual Subject, Richard Parker, et al., eds. University of California Press (2000), 81-103; Doug Saunders, "Sexual Orientation in International Law—What role has international law played in the LGBT movement?" at http://www.ilga.org/news_results.asp?LanguageID=1&FileID=1078&ZoneID=7&FileCategory=7.

34. General Comment 14 (2000), The right to the highest attainable standard of health, E/C.12/2000/4.
35. See, for example, the discussion of honor killings elsewhere in this guide.
36. See Reddy, V., Potgieter, C.A. & Mkhize, N., "Behind the Mask" at <http://www.mask.org.za/article.php?cat=&id=1200> (2007); "Cloud over the rainbow nation: 'corrective rape' and other hate crimes against black lesbians," *HSRC review*, 5(1):10-11
37. OUT, "Submission to the South African Human Rights Commission public inquiry into the right to have access to health care services *Health care for lesbian, gay, bisexual and transgender people: Issues, implications and recommendations*." Presented by OUT LGBT Well-being on May 31, 2007, pp. 4-5.
38. United Nations Economic and Social Council (ECOSOC), "The Siracusa Principles on the limitations and derogation provisions in the international covenant on civil and political rights" (1985). UN Doc. E/CN.4/1985/4, Annex.
39. World Health Organization, *Defining sexual Health: report on a technical consultation on sexual health*, January 28-31, 2002, Geneva (2006).
40. Scenarios developed by Cynthia Rothschild.
41. According to Wikipedia, fortune cookies are "delicate, crisp cookie[s] made from flour, sugar, butter, vanilla, and milk which is baked around a fortune, a piece of paper with words of faux wisdom or vague prophecy. Unique to the United States and Canada, it is usually served with Chinese food as a dessert. The message inside may also include a list of lucky numbers (used by some as lottery numbers) and a Chinese phrase with translation. Despite conventional wisdom, they were actually invented in California." See http://en.wikipedia.org/wiki/Fortune_cookie.



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Human Rights Law in Context: From Principles to Practice

Introduction

No matter how much we change the law, it is much easier than changing the reality.

—Inaam Asha, social worker/lawyer, Jordan

Sexual rights, including protecting the expression and practices of non-conforming sexual orientation and gender identities, are human rights. They are not special rights, but rather, they are already protected by international and regional human rights treaties and constitutions. In fact, this Guide stresses the importance of understanding and positioning sexual and LGBTI rights within existing human rights norms and standards. This kind of framing has numerous advantages: First, it shows how these rights ought to be available, because they draw upon established notions and mechanisms for the protection and exercise of rights. Second, it encourages the creation of multiple alliances within the human rights community from women's rights advocates to trade unionists. Last, it allows for mechanisms of accountability and enforceability: States party to international human rights treaties, for example, are required to demonstrate their compliance with the provisions they have signed onto.

However, despite the importance of international and regional frameworks, the realities of implementation are often much more complex. For example, despite the many countries that have signed onto human rights treaties, 86 countries in 2007 had legislation criminalizing same-sex conduct between consenting adults (that may or may not target men who have sex with men, or more in general any sexual behavior considered “unnatural”). In order to make a real difference, then, international and constitutional *principles* of human rights must be translated into legal domestic *rules* and consequently *policies and practices* by state authorities (from the national to the municipal to the village level) and non-state actors. And such prac-

tices must be consistent: In Fiji, for example, anti-sodomy laws coexist with a constitutional principle prohibiting discrimination on the basis of sexual orientation.

This chapter will help activists better understand and utilize international and regional human rights systems for the protection of sexual rights. By the end of this chapter, the reader should:

- ◆ Be familiar with the main international human rights instruments upon which sexual and LGBTI rights can be claimed
- ◆ Comprehend the global politics of LGBTI rights within the international system
- ◆ Understand sexual rights precedents in law and in practice
- ◆ Become familiar with European, Inter-American, and African regional human rights instruments and their effectiveness (or lack thereof) in promoting human rights
- ◆ Be able to better insure implementation of laws and practices promoting sexual and LGBTI rights domestically

Human rights framework

Human rights have several fundamental characteristics. Firstly, they are universal and inalienable: All people are entitled to human rights, regardless of their sexual orientation, gender identity and expression or sexual choices. Sexual rights advocates highlight the universal dimension of rights, and the importance of sexuality as a fundamental aspect of an individual's identity. Human rights are also indivisible: All rights have equal status, whether civil, cultural, economic, political or social, regardless of sexual orientation, gender identity and expression of the rights-holder. Lastly, human rights are interdependent and interrelated: Protection, respect or fulfillment of a right often depends on the accomplishment of another right; all rights are therefore equally important and connected to each other. For instance, freedom from discrimination (on grounds of sexual orientation, gender identity and expression) is a pre-requisite for the enjoyment of virtually all other rights.

The above-mentioned characteristics shape human rights principles without exception. Although this chapter will focus mostly on human rights mechanisms and how human rights principles should be translated into domestic practice with reference to LGBTI and sexual rights, advocates should keep in mind the essential importance of such principles, and the role they play universally. In other words, human rights principles are themselves tools, if not *the* primary tool, for advocates to fight abuses and violations, as well as to claim rights.

Human rights principles obtain their legitimacy through a widespread agreement to abide by them. There is, in a manner of speaking, a global consensus about their legitimacy, even if there is disagreement about some of the specific characteristics of particular rights. Sexuality- and gender-based rights as human rights are no exception. For instance, if we consider the right to choose a sexual partner of the same sex,

framed in modern human rights principles, we can see that it is traditionally accepted by many populations and cultures. Among native populations in Northern America, examples of two-spirited individuals (both men and women) adopting the gender role of the opposite sex (with or without cross-dressing) are rather common: in such context their relationships with individuals of the same-sex (exclusively between a two-spirited individual and a person whose gender role is corresponding to the sex) are recognized by their society. Similarly, several examples of societal recognition of relationships between women have been documented in more than 30 populations in Africa. Often these unions are celebrated with marriage rites (such as, for instance, among the Nuer populations living in Sudan). In several cases, the woman who takes another woman as her partner assumes the opposite gender role, that is to say the role of the “husband.”⁴²

One recent and groundbreaking example of how to frame the full range of human rights principles as applied to sexual orientation and gender identity is represented by the **Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity**. These Principles offer advocates an instrument to claim for rights on international, regional, domestic and local levels by applying international human rights standards to issues of sexual orientation and gender identity and expression. Drafted and approved by a group of international human rights law experts and human rights advocates in 2007, the Principles affirm binding legal standards with which all States must comply. The Principles were developed in response to common patterns of abuse and discrimination directed toward individuals because of their actual or perceived sexual orientation and gender identity. They call for action from the UN human rights system, national human rights institutions, non-governmental organizations and others to fight violations of LGBTI rights.

International human rights law, instruments and principles:

United Nations system

The international system of human rights norms, standards and accountability is located within the United Nations. In other words, the treaties, agreements and policies to which countries worldwide have agreed to obligate themselves are managed, maintained and monitored through various bodies and offices located within the UN. At the same time, regional human rights systems encompass a series of overlapping agreements, which often are more effective. Regional human rights systems exist in Europe, the Americas and Africa. There is currently no Asian human rights system through several regional and sub-regional bodies are considering the development of regional standards.

The main instruments of human rights protection within the United Nations system do not explicitly mention sexual orientation, gender identity and expression,

Introduction to the Yogyakarta Principles

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity.

Nevertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The international system has seen great strides toward gender equality and protections against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.

To address these deficiencies a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary. It is critical to collate and clarify State obligations under existing international human rights law, in order to promote and protect all human rights for all persons on the basis of equality and without discrimination.

The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

Sonia Onufer Corrêa
Vítit Muntarbhorn

nor even “gender.” However, evolving notions of international human rights are increasingly understood to include sexual rights and the protection of individuals whose sexual and gender identity and expression do not conform to norms of their community. The extent to which United Nations bodies and procedures have been able to address issues related to sexual and LGBTI rights depends on their nature, whether they are political bodies or expert-based bodies or procedures. While too often United Nations political bodies have been influenced by geopolitics and conservative political forces, expert-based bodies and procedures have been used successfully to defend LGBTI rights. Throughout this chapter we will highlight notable precedents which demonstrate the evolving recognition of sexual and LGBTI rights in the context of sexual orientation, gender identity and gender expression.

Charter-based organs

Human rights instruments in the United Nations system are either **Charter** or **Treaty-based organs**. Charter-based organs are mandated by or derived from the **Charter of the United Nations**. The Charter instituted, among others, the **General Assembly**, the **Economic and Social Council (ECOSOC)**, and the **Human Rights Council** (previously **Commission on Human Rights**). These are typically **political bodies**, since their decisions and resolutions depend on the votes of the delegations of Member States.

ECOSOC, formed by representatives of 54 States, is a key organism for civil society participation in the United Nations. It decides upon the requests by non-governmental organizations to receive consultative status,⁴³ based on the recommendation of the **ECOSOC Committee on NGOs**. The **NGO Committee** is composed of representatives of 19 Member States. Accreditation (the determination of consultative status) with ECOSOC allows NGOs to influence and participate in United Nations activities—in particular to the activities of the Human Rights Council—as well as to deliver written statements, as established by ECOSOC Resolution 1996/31. However, too few LGBTI organizations have enjoyed the benefits of accreditation. In fact, the ECOSOC Committee on NGOs has consistently rejected several NGOs addressing LGBTI rights. While the situation appears to have been rectified somewhat with the accreditation of a few new LGBTI groups, the Committee itself remains greatly politicized: For instance, in 2006 the dismissal of the application of LGBTI organizations was supported by a very atypical coalition of countries formed by, among others, the United States, Iran, China, Cuba, Pakistan, Sudan and Zimbabwe.

The (now defunct) Commission on Human Rights was the main United Nations political body formed for rights promotion. In 2006, the Commission on Human Rights was disbanded and the **Human Rights Council (HRC)** was established. Its establishment marked an attempt to replace and reform the Commission, whose effectiveness was highly criticized. A subsidiary organ of the General Assembly, the Council promotes and supervises the implementation of human rights among Member States. It makes recommendations to the General Assembly and undertakes

a universal periodic review of the human rights records of all UN Member States. The Council is the discussion forum on human rights within the United Nations. It deals with the complaint procedures established by the ECOSOC resolutions, as well as the appointment of **special procedures**.

Special procedures are independent expert mechanisms designated by the Council to investigate and report on human rights violations in a specific country or on a specific thematic issue. Special procedures, also known as **Special Rapporteurs, Independent Experts, Working Groups, or Special Representatives (or, simply, Representatives) of the Secretary General** (who function in a way that is similar to Special Rapporteurs but are appointed by the UN Secretary General), are experts appointed in their individual capacity to analyze the human rights situation related to an issue, raise visibility before the United Nations and the international community, and mobilize national and international communities. These experts are setting human rights precedents in their reporting on violations on the grounds of sexual orientation and gender identity and expression. Special procedures may interact directly with governments through special appeals, regular meetings, reports and report follow-up.

Treaty-based organs

Treaty-based organs derive from international conventions negotiated and signed within the UN system. When States ratify international and regional human rights

Special procedures and LGBTI rights

In 1994, newly appointed Special Rapporteur on violence against women, Radhika Coomaraswamy, addressed the issue of violence against women practicing alternative sexualities as a special kind of human rights violation. Ever since then, special procedures have been highlighting human rights violations on grounds of sexual orientation and gender identity in their annual reports as well as in country reports (as follow-up on their visit to the countries). Special procedures' analysis "has served not only to identify the specific forms, causes, and consequences of abuses based on sexual orientation and gender identity, but also to promote new approaches to human rights as they apply to human sexuality."⁴⁴ These "new" approaches include examining the intersectional dimension of discrimination and abuse, where sexual orientation or gender identity is often one factor of vulnerability among others. In 2004, the Special Rapporteur on the Right to Health, Paul Hunt, articulated a rights-based analysis of the notion of sexual health. For example, countries have an obligation to provide funding promoting a range of services, from enjoyment of sexual and reproductive health to access to abortion and medical services. In fact, the existence of special procedures, their nature as experts (and not political representatives) and their interaction with civil society actors has highlighted the importance and the visibility of LGBTI and sexual rights.

Special procedures in action: the case of Cameroon

In May 2005 police raided a bar in Yaoundé, Cameroon, arresting more than 30 men and women on suspicion of homosexuality. Homosexuality is an offense punishable by up to five years of jail in Cameroon,⁴⁵ and after a few days, the suspects were sent to the notorious Kondengui Central prison. After attempts by local lawyers to obtain the release of the men, as well as to address the issue before the Cameroonian Human Rights Commission, proved unsuccessful, the International Gay and Lesbian Human Rights Commission (IGLHRC) submitted a complaint in November 2005 to the United Nations Working Group on Arbitrary Detention. The letter asked for their intervention in condemning the arrest and continued detention of the men. In response, IGLHRC accessed the emergency procedure. This allows the Working Group to make confidential rapid appeal to the government, but also grants the government time and opportunity to respond to the allegations made against it. After the government's response, IGLHRC asked the International Commission of Jurists (ICJ) to add its voice to the appeal and assist in formulating the legal language of the counter-response. In October 2006, the Working Group issued a legal opinion: The detention of the men was arbitrary and violated the International Covenant on Civil and Political Rights ratified by Cameroon. They urged the Cameroonian government to stop arbitrarily arresting people on the basis of their sexual orientation. This was only the second time the Working Group had issued such a statement in connection with a sexuality-related detention.

conventions, they have a legal obligation to protect, respect and fulfill rights and duties established by such instruments. *Treaty bodies* monitor States Parties'⁴⁶ compliance with the obligations to which they have committed themselves. They receive reports from States Parties with reference to measures undertaken to implement the Covenant and progress made, and they address observations in this regard and offer concluding comments to reflect their assessment of these periodic reports. Some treaty bodies also receive individual complaints. Finally, they also interpret treaties in an evolving world through *General Comments* and other decisions.

The most well-known and fundamental human rights document, adopted by the General Assembly in 1948, is the **Universal Declaration of Human Rights**. Although the Declaration is not legally binding, its importance is undisputed. Two key conventions that convert the content of the Declaration into legally binding principles are the **International Covenant for Civil and Political Rights** (ICCPR) and the **International Covenant for Economic, Social and Cultural Rights** (ICESCR). ICCPR and ICESCR form, together with the Declaration, the so-called International Bill of Rights.

The **ICCPR** was adopted by the General Assembly in 1966 and entered into force in 1976. A treaty body formed by eighteen members, the **Human Rights Committee**

(HRC) ensures compliance with the Covenant. Under the First Optional Protocol to the ICCPR, the HRC also receives *individual complaints* of human rights violations in the form of written communications. If it finds the petition admissible, it delivers a decision on the merit of the complaint. Member States must submit *periodic reports* on the implementation of the convention to be considered by the Committee.

Civil society groups may submit *shadow reports* in parallel to, and even in absence of, the government reports. Shadow reports are a method for NGOs to supplement or present alternative information to that presented on official government reports. This has the double purpose of documenting violations not properly addressed in government reports and educating treaty body members.

Human rights advocates can systematically make use of the reporting system and consider sexual and LGBTI rights violations in the context of the language and the provisions of the treaty. Since 2006, for example, Global Rights, in collaboration with IGLHRC, local and regional groups, has systematically submitted shadow reports to the HRC detailing violations of LGBTI rights. In most cases the HRC has included language on abuses against LGBTI individuals and communities in its observations and reactions to country reports.⁴⁷

For over a decade, the Human Rights Committee has been instrumental in prohibiting discrimination on grounds of sexual orientation. Its first precedent-setting decision was the 1994 *Toonen v. Australia*, where it ruled that laws prohibiting sexual contact between consenting adults were a violation of the fundamental human rights to privacy (art. 17) and non-discrimination (arts. 2 and 26) enshrined in the ICCPR. According to the HRC, the protected category of “sex” in the ICCPR “is to be taken as including sexual orientation.”⁴⁸ In the 2003 decision in *Young v. Australia* the Committee stated that different treatment of unmarried opposite-sex partners and same-sex partners for purposes of government pensions constitutes a form of discrimination under article 26. In 2007 in *X v. Colombia*, the HRC reasserted its position on the recognition of state pensions for same-sex couples. This decision was the first to impact a country from the Global South.

The International Covenant on Economic, Social and Cultural Rights was also adopted by the United Nations General Assembly in 1966 and came into force in 1976. It commits States Parties to work toward securing economic, social, and cultural rights (ESCR) to individuals, and, in certain cases, to groups. While historically less utilized than the ICCPR, its treaty monitoring body, the **Committee on Economic, Social and Cultural Rights** (“the Committee”) has supported LGBTI rights. In the year 2000, General Comment 14 on the right to the highest attainable standard of mental and physical health, the Committee stated that sexual orientation is a prohibited basis of discrimination, and has an impact on health status.⁴⁹

Other treaty-monitoring bodies such as those for the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) and the **Convention on the Rights of the Child** (CRC) have communicated to reporting

Relevant United Nations Treaties				
Convention	Entry into force	Monitoring Treaty Body	Periodic review	Possibility of Individual complaint
International Covenant on Civil and Political Rights (ICCPR)	1976	Human Rights Committee	Yes	Yes
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1976	Committee on Economic, Social and Cultural Rights	Yes	No
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1971	Committee on the Elimination of Racial Discrimination	Yes	Yes
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1991	Committee on the Elimination of Discrimination Against Women	Yes	Yes
Convention Against Torture (CAT)	1991	Committee Against Torture	Yes	Yes
Convention on the Rights of the Child (CRC)	1990	Committee on the Rights of the Child	Yes	No
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	2003	Committee on Migrant Workers	Yes	Yes (this only becomes operational when ten States Parties have made the declaration under article 77).
Convention on the Rights of Persons with Disabilities	2008	Committee on the Rights of Persons with Disabilities	Yes	Yes

The Convention on the Rights of Persons with Disabilities and the recognition of sexual rights

The specific question of sexual rights was a subject of discussion during the negotiation of the Convention on the Rights of Persons with Disabilities. Article 23(1) “Respect for Home and the Family” as approved by Member States reads, “States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships (...)”; a 2006 version of article 23 was more advanced in recognizing the right to sexuality of persons with disabilities by stating that “Persons with disabilities have the equal opportunity to experience their sexuality, have sexual and other intimate relations and experience parenthood.” This provision was subject of an animated controversy and was finally removed. A general and weak reference to “relationships” was left in the final version of article 23, while article 25 on the right to health recognizes the right to access to health care “including in the area of sexual and reproductive rights.”

governments that sexual orientation is a human rights issue for which governments must be held accountable.⁵⁰ Indeed, the working sessions of the treaty bodies are also occasions for advocacy, through informal individual meetings or briefings with Committee members. Reference to sexual rights and LGBTI rights in treaty bodies’ concluding observations reinforces the jurisprudence on the topic with reference to international human rights law.

Relevant United Nations treaties appear on the previous page.

Regional systems

In this section we consider regional systems intended to protect human rights, and whose fundamental instruments and mechanisms have some resemblance to the UN instruments and mechanisms. It is, however, important to highlight that there are other supra-national systems designed with different purposes, mostly with the scope of implementing regional security and cooperation or creating regional common markets, that have interesting spaces for rights protection and enhancement. Some of these have been successfully used by human rights advocates to address LGBTI and sexual rights issues. Several examples will be described at the end of this section.

European system of protection of human rights

The **Council of Europe** is the political regional organization formed by 47 Member States, all European countries with the exception of Belarus. It aims to promote human rights and democracy, and fight discrimination, among other goals. Its main bodies are the **Committee of Ministers**, formed by the Member States’ ministers of foreign affairs, and the **Parliamentary Assembly**, formed by representatives of the

Claiming sexual rights

Below is a partial list of rights relevant to the forms, circumstances, and consequences of sexual rights discrimination and violence:

- ◆ **RIGHT TO PRIVACY:** Universal Declaration of Human Rights, article 132; International Covenant on Civil and Political Rights, article 17
- ◆ **RIGHT TO EQUALITY:** Universal Declaration of Human Rights, article 7; International Covenant on Civil and Political Rights, article 26
- ◆ **FREEDOM FROM DISCRIMINATION:** Universal Declaration of Human Rights article 7; International Covenant on Civil and Political Rights, article 2
- ◆ **FREEDOM FROM ARBITRARY ARREST:** Universal Declaration of Human Rights, article 9; International Covenant on Civil and Political Rights, article 9
- ◆ **THE RIGHT TO ASYLUM:** Universal Declaration of Human Rights, article 14; International Covenant on Civil and Political Rights, article 13
- ◆ **THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON:** Universal Declaration of Human Rights, article 3; International Covenant on Civil and Political Rights, article 6 and 9
- ◆ **THE RIGHT TO EDUCATION:** Universal Declaration of Human Rights, article 26; International Covenant on Economic, Social and Cultural Rights, article 13; Convention on the Elimination of All Forms of Discrimination Against Women, article 10
- ◆ **THE RIGHT TO INFORMATION:** Universal Declaration of Human Rights, article 19; International Covenant on Civil and Political Rights, article 19
- ◆ **THE RIGHT TO HEALTH:** Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 12; Convention on the Elimination of All Forms of Discrimination Against Women, article 12
- ◆ **THE RIGHT TO FREEDOM FROM TORTURE AND DEGRADING TREATMENT:** Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; Convention Against Torture
- ◆ **THE ELIMINATION OF DISCRIMINATORY STEREOTYPES:** Convention on the Elimination of All Forms of Discrimination Against Women, article 5
- ◆ **THE RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION:** Universal Declaration of Human Rights, article 20; International Covenant on Civil and Political Rights, articles 21 and 22

In addition to Global Rights, several major human rights groups have already addressed sexual rights as part of their mandates, among them Amnesty International, Human Rights Watch, the International Council of Jurists, the World Organization Against Torture and the International Service for Human Rights,⁵¹ along with a growing number of regional and national human rights initiatives.

European Court of Human Rights: 30 years of cases

The European Court is the international court with the longest and richest history of case law on LGBTI and sexual rights. Following are the areas in which the Court has set international precedent:

SODOMY LAWS AND AGE OF CONSENT: In 1981, in the famous case *Dudgeon v. United Kingdom*, the Court asserted that criminalization of same-sex sexual contact between consenting adults, still in force in Northern Ireland, constituted a breach of the *right to private life* protected by article 8 of the ECHR. This ruling set precedent for both the Human Rights Committee and several supreme courts throughout the world. The case was then confirmed in two following decisions, *Norris v. Ireland* and *Modinos v. Cyprus*. About 20 years later, in *L. and V. v. Austria*, the Court also stated that laws setting a higher age of consent for same-sex sexual conduct violated article 8 as well as the principle of non discrimination in article 14 of the ECHR.

RIGHTS OF UNMARRIED SAME-SEX COUPLES: In July 2003, the Court established in *Karner v. Austria* that different treatment of unmarried opposite-sex partners and same-sex partners for purposes of housing violated articles 8 and 14 of the ECHR. This ruling came just one month before the similar decision of the Human Rights Committee.

RECOGNITION OF TRANSGENDER RIGHTS: In 1992 in *B. v. France*, and 2002 in *Goodwin v. United Kingdom* and *I. v. United Kingdom*, the Court asserted that State refusal to allow sex change on the birth certificate of a post-operative transsexual person violated articles 8 and 14, as well as the right to marry under article 12 of the ECHR. Such decisions were confirmed in the most recent case in *L. v. Lithuania*. Although these cases do not yet establish a full right to gender identity, in *Van Kück v. Germany*, the Court argued that the refusal to order the reimbursement for hormone therapies and surgery was in violation of article 8 of the ECHR. This decision highlighted that “gender identity is one of the most intimate private-life matters of a person.”

CUSTODY RIGHTS: In the case *Salgueiro da Silva Mouta v. Portugal* the Court argued that the refusal to grant parental responsibility to a gay father on grounds of his sexual orientation constituted discrimination based on article 14 of the ECHR.

ADOPTION: In the 2008 case *E.B. v. France* the Court established that the denial of adoption for a single woman on grounds of her sexual orientation violated articles 8 and 14 of the ECHR.

EMPLOYMENT DISCRIMINATION: In 1999, in the cases *Smith and Grady v. United Kingdom* and *Lustig-Prean and Beckett v. United Kingdom* the court held that discharge of homosexuals from the military constituted a violation of article 8 of the ECHR.

continued on next page

European Court of Human Rights (*continued*)

FREEDOM OF ASSOCIATION: In 2007 the court in *Bączkowski and Others v. Poland* stated that the prohibition on LGBTI groups to hold a march constituted a breach of the right to freedom of association under article 11, as well as article 14 of the ECHR.

NONCONSENSUAL SEXUAL ACTIVITIES: In 2003, in *M.C. v. Bulgaria* the Court argued that the failure by the State to effectively guarantee prosecution of non-consensual sexual acts, even when the victim had not resisted physically, constituted a violation of article 8, as well as of the prohibition of degrading treatment established by article 3 as well as of article 8.

SEXUALITY EDUCATION: In 1976 the judges argued in *Kjeldsen, Busk Madsen and Pedersen v. Kingdom of Denmark* that compulsory sexuality education introduced in state primary schools did not violate the rights of parents of the children according to several articles of the Convention.

national parliaments. The Council of Europe, and particularly its Parliamentary Assembly, has pioneered support of LGBTI rights. Its 1981 landmark Recommendation no. 924 on discrimination against homosexuals called on Member States to decriminalize same-sex sexual conduct between consenting adults, as this was still a crime in several European countries. It further called for equal age of consent (same-sex rules for age of consent must be the same as heterosexual rules), fighting discrimination in employment, preventing State actors from perpetrating violence against homosexuals, and granting custody and visitation rights to homosexual parents. In its 1989 Recommendation no. 1117 on the condition of transsexuals, the Assembly called on States to allow legal change of sex and name, as well as to combat discrimination. According to the Resolution (93)38, international NGOs may enjoy consultative status that the resolution defines as participatory status: Consultative status enables them to receive direct information from the organs of the Council and invitations to attend official events, as well as to submit written opinions and memoranda to the council bodies themselves.⁵²

The key instrument for the respect of human rights in the region is the **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**. Approved in 1950 under the auspices of the Council of Europe, and ratified by all members of the Council, the ECHR protects civil and political rights and establishes the **European Court of Human Rights (ECtHR or “the European Court”)** to enforce the Convention. Any individuals who believe that their rights have been violated may bring a case to the Court, whose sentences are legally binding for all Member States and offer enforceable individual remedies (such as damage compensation). The European Court is the international body with the most substantive case law on LGBTI and sexual rights.

Recognition of LGBTI rights in the EU

The EU has been one of the pillars for the advancement of LGBTI rights in Europe. The European Parliament has, starting from 1984, passed non-binding resolutions calling on Member States to fight discrimination on grounds of sexual orientation and gender identity, as well as intervening in the situation of the human rights of other countries. The most well-known are the 1994 Resolution on equal rights for gays and lesbians in the European Community, in which the Parliament called for full equality, including the recognition of same-sex couples in Member States, and the 1989 Resolution on discrimination against transsexuals, similar to the recommendation approved by the Parliamentary Assembly of the Council of Europe.

It is also important to acknowledge the role that the Court of Justice had in banning discrimination against transsexuals at the workplace. In *P. v. S. and Cornwall County Council* the Court argued that discrimination on grounds of sex, protected by consolidated European legislation, included discrimination on grounds of gender reassignment, and the dismissal of the employee who underwent genital surgery violated the European provision on equal treatment between men and women. More recently, in *K.B. v. National Health Service Pensions Agency and Secretary of State for Health* the judges went beyond establishing that the lack of recognition of the post-operative transsexual's new gender violated the European provisions on equal pay between men and women; they also ruled that it violated article 141 of the EC Treaty for the consequences regarding the pension rights of the applicant should she survive her partner, as well as for the violation of her right to marry. Also, more recently, in *Maruko v. Versorgungsanstalt der deutschen Bühnen*, the Court established that different treatment with reference to survivor's pension is not admissible if national law places registered same-sex couples in a situation comparable to the one of spouses.

Based on its legislation and case law, the European Union constitutes an important space for advocating on LGBTI rights in member countries. Furthermore, the respect of human rights and of the principle of non discrimination is a requirement for countries both to join the EU ("*Copenhagen criteria*") as well as for economic cooperation ("*Cotonou agreement*" with African, Caribbean and Pacific countries).

Another instrument of the European system is the **European Social Charter**. Adopted in 1961 and revised in 1996, it guarantees economic and social rights. However, aside from being used to denounce discrimination against the LGBTI community, its reach has been relatively limited. This is due to the more limited powers of the monitoring body, the **European Committee on Social Rights**, which functions more like a treaty monitoring body than a judicial proceeding.

A second European system that has proven effective to protect human rights is the **European Union (EU)**. The EU, formed by 27 Member States,⁵³ originated as a com-

mon market (**European Economic Community**), regulated by the **European Community Treaty** (EC Treaty). The EU is governed by a **Commission**, a **Council of Ministers** of the Member States, a **Parliament** elected by citizens of the member countries, and a **European Court of Justice**. In 1993, a process of political integration started, strengthening the goal of protection of human rights as a self-standing objective, no longer necessarily connected to the needs of the common market. The 1997 Treaty of Amsterdam amended the EC treaty introducing, among other things, a provision enabling the EU organs to take action to combat discrimination on grounds of sexual orientation. As a consequence, in 2000, a directive⁵⁴ was introduced prohibiting discrimination on grounds of sexual orientation in employment and occupation (Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation). The most recent **Charter of Fundamental Rights** of the European Union prohibits discrimination on multiple grounds including sexual orientation (article 21).

Inter-American system of protection of human rights

The **Organization of American States** (OAS) is the political organization of the American hemisphere, instituted by the **Charter of the Organization of American States** (1948) to promote peace, justice, democracy and solidarity. It is formed by 35 members, including all the American countries (the Cuban government has been suspended as of 2008). The main organ of the OAS is the **General Assembly**, represented by each Member State, which decides on the overall policy of the organization and has powers in the area of human rights. The **Permanent Council**, formed by several Committees, executes the decisions of the General Assembly. The **Committee on Juridical and Political Affairs** has particular relevance as far as human rights and the fight against discrimination are concerned, because it is the Committee where human rights documents (conventions, declarations) are drafted and negotiated.

Activities of the General Assembly and Permanent Council are open to civil society, and NGOs play a vital role in monitoring and engaging with the organs of the OAS and member country delegations. By registering with the OAS system, civil society gains visibility and the right to participate.⁵⁵ The importance of LGBTI participation can be seen, for example, in the negotiation process of the draft Inter-American Convention against Racism and all Forms of Discrimination and Intolerance, which includes language prohibiting discrimination on grounds of sexual orientation, and gender identity and expression. Such inclusive language is the result of the participation of the LGBTI regional movement in the process of the Conference of Santiago in 2000 and the regional preparatory meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and other forms of Intolerance held in Durban, South Africa in 2001. In particular, partnership between international, regional and domestic LGBTI groups has been strategic to ensure a broader protection that includes prohibition of discrimination on grounds of gender identity and

LGBTI rights in the Inter-American system of protection of human rights

Despite great potential, little has been achieved in the Inter-American system in terms of LGBTI rights so far. The most important organ is the Commission, which decides on individual cases, but also grants *thematic hearings* during its sessions. It has also instituted a mechanism of “Special Rapporteurs” similar to that used in UN special procedures.

INDIVIDUAL CASES: Only a few individual cases have been filed before the Commission and, so far, none has been decided on the merit of the case. The most interesting has been the case of *Marta Álvarez v. Colombia*, regarding the right of same-sex couples to engage in intimate visits in jail with their partners. The case resulted in a decision of admissibility by the Commission, but it did not move forward because the State Party adopted a satisfactory remedy. Advocates might want to consider litigation before the Commission as one strategy for moving the discussion about sexual orientation, sexuality and gender identity forward in the American system.

THEMATIC HEARINGS: During its session, the Commission grants hearings on relevant human rights issues in the region. The hearings consist of activists presenting to the Commissioners the situation of human rights in a specific country or on a specific theme. This is a significant opportunity for visibility and awareness-raising for the LGBTI civil society.

SPECIAL RAPORTEURS: As in the case of the special procedures, Special Rapporteurs may consider and report on violations based on sexual orientation and gender identity relevant to their mandates. Civil society has the opportunity and obligation to work with Special Rapporteurs to raise visibility on LGBTI rights.

OTHER TREATIES AND TREATY BODIES: Within the Inter-American system, other treaties relevant to sexual orientation and gender identity-related rights violations have been adopted: Most important are the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Convention of Belém do Pará), with its monitoring body—the *Inter-American Commission on Women*—and the Additional Protocol to the *American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (Protocol of San Salvador). Other relevant conventions include the *Inter-American Convention to Prevent and Punish Torture* and the *Convention on the Elimination of all forms of Discrimination against People with Disabilities*.

expression. This partnership is particularly important in a region where most episodes of violence are committed against transgender and *travesti* individuals and communities. The LGBTI movement only recently obtained full recognition as component of the civil society starting from the XXXVII General Assembly of the

OAS in Panama, 2007, and in particular during the formal dialogue between the civil society and the ministers for foreign affairs of the hemisphere. More importantly, such visibility and participation obtained a significant political acknowledgement during the XXXVIII General Assembly in Medellín, where the member states approved unanimously the resolution “Human Rights, Sexual Orientation and Gender Identity”,⁵⁶ expressing concern for human rights violation and calling on the Permanent Council for further action.

Specific instruments and organs for the protection of human rights within the Inter-American regional system include the 1948 **American Declaration of Rights and Duties of Man**, the first international human rights instrument of this nature, preceding the UDHR; the 1959 **Inter-American Commission on Human Rights**, created by the charter of the OAS as an autonomous organ; and the 1969 **American Convention on Human Rights** which defined and broadened the mandate of the Commission, in force since 1978. The Convention has been ratified by 24 countries, and protects civil and political rights as well as economic, social and cultural rights. According to the Convention, the Inter-American Commission has the function of promoting and monitoring human rights in the region: it may draft reports, conduct visits *in situ*, create special rapporteurships (similar to the UN special procedures). As importantly, the Commission may receive individual complaints regarding single cases of human rights violations. When the complaint is filed and considered admissible, the Commission delivers a report with recommendations. Such a decision is in fact non-binding. However, in certain cases (as explained below) the Commission will defer the case to the **Inter-American Court of Human Rights** if states do not comply. The Court was established by the American Convention and came into force in 1981. The Court presides over cases for those Member States which have accepted its jurisdiction: its decisions are legally binding and offer enforceable remedies. The Inter-American Court includes an advisory function. In addition, it has the capacity to appoint thematic Rapporteur to investigate and report on human rights situations. The headquarters of the Inter-American Commission is in Washington, D.C. while the Inter-American Court of Human Rights is in San José, Costa Rica.

African system of protection of human rights

Successor to the **Organization of African Unity (OAU)**, the **African Union (AU)** entered into force in 2002 as the regional organization formed by all African countries, with the exception of Morocco. Within its scope, the AU promotes human rights according to the regional and international instruments. The supreme decision-making organ is the **Assembly of Heads of States**, meeting once a year. The AU has a **Commission**, an “executive body,” and a **Pan-African Parliament**, the “legislative body” of the organization. The Constitutive Act of the AU also foresees the establishment of a Court of Justice.

Under the auspices of the former OAU, Member States negotiated a regional human rights instrument, the **African Charter on Human and Peoples’ Rights**.

The African system and LGBTI rights: what perspectives?

The African Commission offers an interesting space for the participation of the LGBTI civil society. NGOs may obtain observer status,⁵⁷ allowing for participation in the activities and the sessions of the Commission, and opportunities for education of Commissioners. From 2006 onwards, the regional LGBTI movement—with the support of international groups—has increased its visibility before the Commission. Activists participated in the last few sessions of the Commission—such as on the occasion of the periodic review of Uganda and Cameroon—to highlight specific LGBTI human rights violations. The case of Nigeria’s “Same-sex Marriage Prohibition Act,” criminalizing advocacy on LGBTI issues, gained the attention of the NGOs Forum and generated the inclusion of language on LGBTI issues in the resolution on human rights defenders.

Other ways of promoting LGBTI rights in the African regional system depend on the mechanisms established by the Commission, as well as other instruments, such as:

PERIODIC REVIEW: Member States have the obligation to report to the Commission about their implementation of the African Charter. LGBTI organizations may, in parallel, submit *shadow reports* on the violation of LGBTI human rights.

SPECIAL MECHANISMS: Similar to the United Nations and the Inter-American systems, the African system has instituted thematic special rapporteurs, whose mandate includes the monitoring of the situation of rights violations as well as the consideration of individual cases. LGBTI civil society can work with Rapporteurs to raise awareness of rights violations.

INDIVIDUAL COMMUNICATIONS: Although subject to restrictions, namely the decision of the majority of Commissioners as well as the exhaustion of local remedies, LGBTI individuals or groups can consider bringing cases to the Commission.

OTHER TREATIES: The *Protocol on the Rights of Women in Africa* as well as the *Charter on the Rights and Welfare of the Child* can expand the protection of rights-based on sexual orientation and gender identity in the region.

This entered into force in 1986, ratified by all AU Member States. The African Charter created an **African Commission on Human and Peoples’ Rights** to monitor and interpret the Charter itself. The Commission, which meets twice a year, accepts *individual communications*, considered only on request of the majority of its members. All member countries also have the duty to submit *periodic reports* to the Commission. In 2004 a Protocol instituting an **African Court on Human and Peoples’ Rights** entered into force. The new Court will rule on individual cases and the decisions will be legally binding for Member States. In 2004 a process of merging

and integrating the African Court on Human and Peoples' Rights with the African Court of Justice began.

In May 2006, the International Gay and Lesbian Human Rights Commission (IGLHRC), with support from the Open Society Institute, organized a delegation of two dozen African LGBTI activists to attend the African Commission on Human and Peoples' Rights in Banjul, Gambia. Because of its status as an NGO with consultative status, Alternatives-Cameroun took the floor to highlight continued detention of gay men in prison. The statement was delivered by Cameroonian lesbian activist Sybille Nyeck, and drafted by an international team consisting of Joel Nana (Alternatives Cameroon), Alice Miller (the Open Society Institute and Columbia University School of Public Health), Ian Swartz (the Rainbow Project, Namibia), Chino Obiagwu (LEDAP) and Cary Alan Johnson (IGLHRC). After hearing the government's report and the speech by Alternatives Cameroun, at least three Commissioners directly questioned the detention and Cameroon's criminalization of consensual same-sex acts. This was the first time such issues had been publicly raised by members of the African Commission.

Other regional systems

As indicated above, other regional systems primarily established to promote security and cooperation, common markets, democracy and good governance have in recent years offered spaces for discussion about human rights. If the case of the European Union is certainly peculiar, in other cases human rights advocates have been able to negotiate LGBTI and sexual rights in those regional venues. Examples of such regional systems include:

- ◆ The ***Mercado Común del Sur (MERCOSUR)***, a regional trade agreement between Brazil, Argentina, Uruguay and Paraguay (Bolivia, Chile, Peru, Ecuador, Colombia, Venezuela are associate members) established in 1991;
- ◆ The **Organization for Security and Co-operation in Europe (OSCE)**, formed by 56 European, Northern American and Central Asian Member States focusing on security, democracy, economic cooperation and human rights;
- ◆ The **Association of Southeast Asian Nations (ASEAN)**, established in 1967 with the purposes of promoting economic growth, social progress, peace and stability in the ten Member States (Indonesia, Malaysia, Philippines, Thailand, Singapore, Brunei, Vietnam, Lao, Myanmar, Cambodia);
- ◆ The **Commonwealth of Nations**, formed by 53 states most of which are former British colonies, with the goals of promoting democracy, free trade, good governance, human rights, rule of law;
- ◆ The **Caribbean Community (CARICOM)**, formed by 15 countries (the 13 English speaking Caribbean countries, Suriname and Haiti), with the main goal of promoting economic development, trade, labor and cooperation; it is provided

with a Caribbean Court of Justice, with functions similar to the European Court of Justice, but functioning also as appellate court of last instance in some cases;

- ◆ The **Economic Community Of West African States (ECOWAS)**, created in 1975 and formed by 15 countries with the main purpose of promoting economic integration in the region, but also affirming the recognition, promotion and protection of human and people's rights; it is provided with a Community Court of Justice with functions similar to the European Court of Justice;
- ◆ The **Southern African Development Community (SADC)**, formed by 14 countries, with, among its goals, the improvement of the standards of living and quality of life, freedom and social justice;
- ◆ The **League of Arab States**, formed in 1945 by 22 Arab countries of Northern Africa and Middle East, that adopted in 1994 an Arab Charter on Human Rights.

Examples of advocacy on LGBTI rights

As mentioned, regional systems whose primary purpose was not necessarily the promotion of human rights have increasingly offered spaces for civil society to advance their human rights agendas.

LGBTI and sexual rights activists have benefited from these spaces to advocate for rights. For instance, starting from 2006 several LGBTI organizations from Mercosur countries started attending the sessions of the organization. In 2007, the LGBTI groups, with the cooperation of the Uruguayan presidency of the meeting, organized a special session on Sexual Diversity, Identity and Gender mostly targeting the Human Rights Authorities of the member countries and resulting in an important statement promoting LGBTI rights.

Ensuring respect for laws in practice

While the increased use of international and regional human rights frameworks is encouraging for LGBTI activists, the real test of their usefulness is at the national level. In order for international or regional human rights principles to be effective, they must be “naturalized” into domestic systems. Such “naturalization” occurs through States’ ratification of international and regional human rights conventions, by which States legally bind themselves to protect, respect and fulfill rights and duties established by the ratified international instruments. Moreover, human rights instruments are generally adopted at domestic level as fundamental principles of law through national constitutions and legislation. Indeed, almost all countries in the world have either constitutions or bills of rights introducing rights such as freedom of association, right to health, right to life, the principle of equality and nondiscrimination. However, as of 2008, only *four countries* in the world (in four different continents) explicitly prohibit discrimination on grounds of sexual orientation in their

constitutions: These are South Africa, Ecuador, Portugal and Fiji. Only one, Ecuador, explicitly prohibits discrimination based on gender identity.

Legal principles (contained in either domestic or international law) therefore may not be enough. In many cases there are no internal instruments to directly implement such principles. In other cases, *political practice trumps legal principles*. For instance, when the Nicaraguan Parliament introduced so-called *sodomy laws* in 1992—criminalizing same-sex sexual conduct between consenting adults—the internal remedy did not work: The law was challenged before the Constitutional Court through a specific procedure available in most Latin American countries (*recurso de amparo*⁵⁸). However, the Court rejected the claim, and the law was repealed only in late 2007 by the Parliament. Similar kinds of legislation were repealed in the United States only in 2003.

Only in Europe has the regional system been effective in guaranteeing the repealing of such discriminatory laws in all countries. However, despite the fact that the European Court on Human Rights has recognized a fundamental right to gender reassignment, few countries actually explicitly regulate the issue. Most Eastern European countries have no regulation. In Western Europe, access to health systems for transgender individuals during gender transition is often denied or limited.

So what can be done to ensure that human rights principles do not remain abstract, formal and, ultimately, irrelevant statements? Starting from the identification of the principles, activists can advocate for repealing or revising laws that violate human rights of LGBTI individuals or communities and limit sexual choice, while supporting implementation of the principle of non-discrimination.

For example, sodomy laws or legal provisions that deny the recognition of gender identity are not only discriminatory, they also create a situation of vulnerability that may affect the enjoyment of other fundamental rights and nourish violent crimes or police brutality. These rights include the right to life, the right to freedom from torture or other cruel, inhuman, degrading treatment or punishment, liberty and security of the person, and the right to health. Laws that violate freedom of association for LGBTI human rights defenders reinforce vulnerability and perpetrate abuses against one group, as well as jeopardize the work of *all* human rights defenders. Also, the absence of law protecting marginalized groups from discrimination is a way to perpetuate their vulnerability, exposure to violence, and denial of social and economic rights, such as the access to work or health.

However, laws per se are not enough. For human rights advocates to ensure that LGBTI human rights are respected, protected and fulfilled, certain conditions must exist:

- ◆ **Laws must be effective:** Anti-discrimination laws must provide effective remedies, such as judicial and administrative procedures available for the victims (also through the involvement of the civil society), adequate sanctions, compensatory tools, and monitoring and implementing mechanisms, such as equality bodies or national human rights commissions.

The case of Romania

In 1993, the UN Human Rights Committee criticized Romania for maintaining discriminatory laws, including sodomy laws that codified bigotry against sexual minorities.⁵⁹ At the beginning of the same year, the Romanian Government received clear signals to repeal such laws (Article 200 prohibiting sodomy) as a prerequisite for admission to the Council of Europe.⁶⁰ In September 1993, a month before becoming a member, the Parliamentary Assembly of the Council of Europe called upon the Romanian authorities to “discontinue the punishment of homosexuals” and to “shortly change its legislation in such a way that.... the Penal Code will no longer consider as a criminal offence homosexual acts perpetrated in private between consenting adults.”⁶¹

In response, the Government proposed a new, harsher version of the law punishing homosexual acts “which cause public scandal.” However, the term “public scandal” was never defined, leaving it open to personal interpretation and, therefore, abuse. In addition, the Senate added a new paragraph punishing acts or propaganda encouraging homosexuality with imprisonment.⁶² Although disputed in the Chamber of Deputies, this version of the new text was supported by the Romanian Constitutional Court in July 1994.⁶³

International organizations, along with a national LGBT group, continued to document abuses against the rights of lesbians and gay men in Romania—cases which reveal the tenacity of prejudice among police, prosecutors, and other officials.⁶⁴ In November 1996, a new Article 200 of the Romanian Penal Code came into force.⁶⁵ Yet arrests of homosexuals remained common, as did police brutality against them.⁶⁶

In August 2000, the Romanian Government adopted an Anti-discrimination Law, which included discrimination based on sexual orientation. It applies to all public and private natural or legal entities, as well as public institutions. Its scope includes employment relations and professional training, occupation, social protection and social security, public services or other services, access to goods and facilities, education, enforcement of public peace and order and any other field of the public life. The existence of this law, while clearly necessary, contradicted existing discriminatory legislation against LGBTI individuals.

Article 200 of the Penal Code and the general concerns about LGBTI rights became issues for Romania’s accession process to the European Union: The European Commission monitored Romania with respect to equality before the law of gays and lesbians, critiquing Article 200 and demonstrating that respect for LGBTI rights was an important condition for accession.⁶⁷

The requirement to respect human rights is part of the Copenhagen political criteria⁶⁸ for accession to the European Union. The European Parliament adopted resolutions deploring the lack of political will of the Romanian

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The case of Romania (*continued*)

officials. Adoption of the European Framework Directive 78 in 2000 made the issue of combating discrimination based on sexual orientation a fundamental criterion of accession. “The European Union encourages Romania to take further steps towards the abolition of article 200 of the Penal Code in order to put an end to this discriminatory regulation.”⁶⁹

- ♦ **Laws must be accessible:** LGBTI individuals and communities must be empowered through dissemination of information about rights and remedies against abuses, in a way that is easily understandable by the addressees.
- ♦ **Laws must be “practicable”:** Human rights advocates must pay attention to the practice of the law, which is the result of at least four components:
 1. **Public policies:** Advocates, as human rights practitioners, should constantly monitor public policies and practices of public authorities; in other words they should be the *trait d’union* between fundamental principles, legal rules and the “concrete practice” of human rights. Lack of discriminatory laws is not enough: In Honduras, for instance, despite the absence of legal discrimination, police brutality against *travesti* and LGBT defenders is widespread. In Bosnia-Herzegovina a very advanced Gender Equality Law did not produce the expected results because of poor implementation by State authorities.
Also, the existence of legal protection in a hostile environment does not guarantee per se the effective implementation of human rights: In Turkey, despite the approval of a law that includes a prohibition of discrimination on grounds of sexual orientation, the government is challenging the right to freedom of association of LGBT groups.
 2. **Social justice:** This refers to “access to rights,” whether the right to justice, health services, housing, education, work, or other benefits. For example, a black lesbian living in Johannesburg’s slums may not benefit from rights to non-discrimination regulations in the same way as a white middle-class lesbian woman living in the same city. A Hindi-speaking *khoti* in Delhi has a different exposure to sodomy laws, and consequent abuses, than an English-speaking middle-class gay man. A Nepali-speaking *meti* in Pokhara, Nepal or a *travesti* in Sao Paulo’s *favelas* are at much higher risk for abuse than a male activist in Kathmandu or downtown Sao Paulo. In all these examples factors other than the law itself—race, gender (and gender role/identity), language, and economic situation—create situations of privilege or vulnerability even within “marginalized” communities. The complexity and nature of issues related to the enjoyment of human rights for LGBTI people is not different from enjoyment of rights for any other exposed population.
 3. **Cultural specificity:** Advocates should remember that grassroots communities

are only empowered if they understand the essence of rights and remedies. Even the best laws will be ineffective if they cannot “be translated” into the local language. In Nepal, for instance, *metis*⁷⁰ don’t necessarily perceive their identities as related to sexual orientation or gender identity or expression. Human rights activists should act as “cultural and legal intermediaries” in this sense.

4. **Intrinsic limits of legal categories:** Advocates should also remember that, although law plays a crucial role with respect to sexuality, gender and rights, the connection among them is always very complicated. As Fabeni and Miller point out, “the rights and law discourse ... includes the notion of identities, behavior, and expression; individuals and groups; claims of actors and responses of States (and supranational organisms). Law is then functionally linked as a tool for respecting, protecting, and fulfilling rights.”⁷¹ Fluidity of human sexuality, gender expression, sexual and gender identities may or may not be captured by the rigidity of legal categories and definitions: For this reason, the holistic approach to human rights at the national, regional and international level is one appropriate response for sexual and LGBTI rights advocates.

Key Terms

Sodomy laws

Sodomy laws (or anti-sodomy laws) are the ones criminalizing same-sex sexual intercourse among consenting adults. They may or may not explicitly and specifically target sexual conducts between individuals of the same sex, and generally more specifically men who have sex with men. Often these laws criminalize any intercourse considered “unnatural” (regardless of the gender of the partners), that is to say any sexual act different from vaginal penetration between a man and a woman. Very often these offences are defined in criminal law as “unnatural carnal knowledge,” “unnatural behaviour.” Most of the laws still in force today are heritage of Victorian colonization.

Special procedures

Special procedures “is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to investigate and report on human rights issues in specific country situations or in connection to particular theme (such as the right to health, violence against women, arbitrary execution, arbitrary detention, etc.) in all parts of the world.”⁷²

They may be individual (Special Rapporteurs, Independent Experts, Representatives of the Secretary General) or collective (Working Groups). Among other activities, they receive specific allegations (from the victims or third parties, e.g., family members, NGOs) on violations pertaining their mandate; conduct country visits; and investigate the human rights situation related to the country or theme of their mandate. They draft annual or country reports.

Similar mechanisms are put in place also in regional systems of protection of human rights (generally Special Rapporteurs).

Treaty bodies

Treaty bodies are the collegial committees of

experts that monitor, through periodic review, the implementation of the seven existing core U.N. human rights treaties. Some of the treaty bodies also receive and deliberate on individual complaints and are empowered to initiate inquiries under certain conditions (see the chart at page 51). Treaty bodies also receive state-to-state complaints.

Individual complaints

Individual complaints are the procedures established by U.N. human rights treaties that enable individuals to submit testimony about the violation of their rights before the treaty bodies. Individual complaints, formally called *individual communications*, are only one of the three procedures to bring complaints before the treaty bodies (the others being state-to-state complaints and inquiries). Following the complaint or communication, the treaty body may, if the requirements are met, deliver a non-binding decision.

Exhaustion of local (domestic) remedies

The requirement of the exhaustion of local remedies is a principle of international law. It is one of the conditions of admissibility of a petition before regional human rights organs for the protection of human rights (Commissions or Courts), as well as before UN treaty bodies that allow for individual complaints. The petitioner has to demonstrate that legal remedies have been exhausted unsuccessfully. Some exceptions to the rule are established when remedies are not available or not accessible to the victim, when they are ineffective or when the domestic legal system does not offer remedies in due time.

Periodic reviews

Periodic reviews are mechanisms established by several international and regional human rights instruments. Countries that have ratified

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Key Terms *(continued)*

a treaty may be subjected, if so established, to a review of their compliance with the obligations provided by the treaty routinely (generally every four years). Reviews are based on the reports on the situation of human rights that states must submit, as well as on reports of the civil society (known as *shadow reports*).

A new mechanism, the *universal periodic review*, has been established by the UN General Assembly and mandates the UN Human Rights Council with a general periodic review of all UN Member States every four years. Information may be provided by states, civil society and the Office of the High Commissioner for Human Rights.

Individual remedies

Individual remedies are the measures in favor of the applicant determined in the decisions of the courts within the regional systems of protection of human rights. They generally consist of dam-

age compensation, and are enforceable for all signatories to the treaty (the “State Party”).

Binding nature of a decision or instruments

Not all decisions delivered by organs established by human rights instruments are obligatory for the state, and therefore legally enforceable. The decisions delivered by regional courts of protection of human rights are binding: states have the obligation to implement the decision and execute the individual remedies possibly provided. Decisions of other organs have non-binding nature: however, they have interpretative nature, and the infringement by states may have other consequences.

Also, international law generally makes the difference between *hard law* and *soft law*. Soft law are those non-binding instruments, such as resolutions, recommendations, declarations. Hard law are authoritative and binding instruments, such as treaties, conventions, regulations.

Notes for Facilitation

Although this is the longest chapter of the Guide, the facilitator should keep in mind that it is not meant to be exhaustive. This chapter provides a general overview of international and regional human rights law bodies and instruments that are relevant to issues of LGBTI and sexual rights, in a language that is meant to be friendly for an audience that does not necessarily have legal background.⁷³

Given the breadth of the chapter, the facilitator is advised to select a specific topic s/he wants to examine more in depth. The choice will most certainly depend on the audience, and their geographical location, especially with reference to regional system of protection of human rights to which they may be able to appeal; however, different systems might provide best examples or best practices that the facilitator might want to use to encourage the conversation on the question of LGBTI and sexual rights.

All relevant legal instruments (conventions, resolutions, declarations) and decisions mentioned in this chapter and available as full text on the internet are referred to in the appendix. Also, the appendix provides information regarding the websites of international and regional bodies and organizations mentioned above. These websites contain information and a number of documents and references that will be useful to learn more about a specific body or organization.

Resources and Background Materials

For a few readings on LGBTI and sexual rights issue and human rights see, among many others:

- ◆ L. Helfer, A. Miller, "Sexual Orientation and Human Rights: Toward a U.S. and Transnational Jurisprudence," in 9 *Harvard Human Rights Journal* 61 (1996);
- ◆ A. Narrain, "Human Rights and Sexual Minorities, Global and Local Contexts," at http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2001_2/narrain/;
- ◆ A. Miller, "Sexual but not Reproductive: Exploring the Junction and Disjunction of Sexual and Reproductive Rights," in *Health and Human Rights* 4(2): 69-109 (2000);
- ◆ I. Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation—A Decade of Development and Denial at the UN," in *Health and Human Rights* 7(2):48-80 (2004);
- ◆ M. Scheinin, "Sexual Rights as Human Rights—Protected under Existing Human Rights Treaties?," in *Nordic Journal of International Law*, vol. 67 (1998);
- ◆ J. Wilets, "International Human Rights Law and Sexual Orientation," in 18 *Hastings International and Comparative Law Review* (1995);
- ◆ R. Wintemute, *Sexual Orientation and Human Rights*, Oxford University Press (1997);
- ◆ S. Whittle, *Respect and Equality: Transsexual and Transgender Rights*, Routledge Cavendish (2002).

The Yogyakarta principles will be extremely useful to explain how human rights apply to sexual orientation and gender identity. For this purpose, see <http://www.yogyakartaprinciples.org/>. To order copies of the principles or other related documents, please, contact the LGBTI Initiative at Global Rights.

The last part of the chapter refers to the implementation of LGBTI and sexual rights in domestic systems. The aim of the section is to highlight potentials and limits of legal protection and what the role and the spaces for human rights advocates are: the facilitator will focus on the local/domestic context, possibly offering practical examples to guide the conversation on strengths and weaknesses of a given socio-legal system.

The exercise that follows may be helpful as a starting point.

Exercise 4: Thinking About Sexuality and the State⁷⁴

Full group discussion or small groups discussions, with report-backs.

What are the kinds of laws and policies as well as practices used by governments to control or regulate sexuality? Think of those that affect your communities (gay, lesbian, transgender, sexual minority, etc.) as well as those that affect other groups.

Compare the group's answers with the list below, presented on a flip chart.

- ◆ Sodomy laws
- ◆ Age of consent laws
- ◆ Laws against vagrancy/loitering
- ◆ Laws on prostitution (a range of forms: criminalizing the act itself, criminalizing keeping of brothels or quarters for “immoral purposes,” criminalizing solicitation, criminalizing pimping, criminalizing johns)
- ◆ Laws prohibiting acts which “offend public morals” or “cause public scandal”
- ◆ Laws penalizing those wearing clothing of opposite sex
- ◆ Laws criminalizing STD/HIV transmission
- ◆ Dress codes (particularly for women)
- ◆ Restrictive laws on registration of NGOs
- ◆ Restrictive laws on freedoms of association or assembly
- ◆ Obscenity/pornography laws, other laws restricting freedom of expression
- ◆ Internet regulation codes
- ◆ Badly written rape/sexual violence laws (failing to penalize marital rape, defining rape in strictly heterosexual terms)
- ◆ Badly written laws on domestic violence
- ◆ Marriage laws (denial of marriage to same-sex partners, denial of marriage to trans people, divorce laws, laws on People Living With HIV/AIDS (PLWHA) marriage)
- ◆ Criminalization of adultery/fornication
- ◆ Laws on parenting/adoption

Exercise 4 continued

Discussion questions

Among the laws, policies and practices listed here, which, in particular, have an impact on, or are used against, people within your communities? Define these impacts.

What other groups or communities are affected by these laws, policies, and practices?

Think about other discriminatory policies and practices by “non-state actors,” including family institutions, religions, cultural institutions, that lead to discrimination and abuse on the basis of sexual orientation/expression or gender identity/expression. In what ways can your government be held accountable? What other strategies should be used to address these forms of discrimination and abuse?

Discuss strategies for building coalitions with other groups affected by discriminatory or abusive laws, policies, and practices by the State. How would you present the sexual rights framework to them? What challenges would you face?

What are the advantages and disadvantages of using a sexual rights framework based on sexual autonomy and bodily integrity, as opposed to identity-based frameworks?

Notes

42. J. Carrier, S. Murray, "Woman-woman Marriage in Africa," in S. Murray, W. Roscoe, *Boy-Wives and Female-Husbands—Studies in African Homosexualities*, New York (1998), pp. 255-266.
43. Consultative status provides NGOs with information about and access to UN meetings.
44. I. Saiz, "Bracketing sexuality: Human Rights and Sexual Orientation—A Decade of Development and Denial at the UN," in *Health and Human Rights*, vol. 7, no. 2 (2004), pp. 54-55.
45. According to section 347(bis) of the Ordinance No. 72-16 of the September 28, 1972 criminal code.
46. A "state party" refers to a country that has signed and ratified a convention, and is, therefore, party to it.
47. See, for example, the recent concluding observations for Chile (May 2007), Barbados (May 2007), and the United States of America (September 2006). The International Commission of Jurists provides a compendium of references and jurisprudence relating to sexual orientation and international law at http://www.icj.org/IMG/UN_References.pdf.
48. In *Toonen v. Australia*, the Human Rights Committee clearly stated that: "...in its view, the reference to 'sex' in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation." CCPR/C/50/D/488/1992 (Australia), 4 April 1992, para. 8.7.
49. The Committee on Economic, Social and Cultural Rights has repeatedly addressed the impact of sexual orientation discrimination on the enjoyment of economic, social and cultural rights. This has usually been done in consideration of Article 2 of the ICESCR, indicating that this Committee, like the Human Rights Committee, considers that "sexual orientation" can be read into the Covenant's non-discrimination provisions. The Committee was also the first treaty body to include explicit reference to sexual orientation in its General Comment 14 on the right to the highest attainable standard of health. (E/C.12/2000/4, para 18).
50. See AI Index: IOR 40/004/2005, "The Human Rights of Lesbian, Gay, Bisexual and Transgender People: A primer to working with the United Nations Treaty Monitoring Bodies and the Special Procedures of the United Nations Commission on Human Rights" (March 2005).
51. *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools*, New York: Human Rights Watch (2001).
52. Committee of ministers Resolution (93)38 on relations between the Council of Europe and International Non-Governmental Organisations, 18 October 1993.
53. France, Italy, Spain, United Kingdom, Portugal, Ireland, Germany, The Netherlands, Belgium, Luxembourg, Austria, Sweden, Denmark, Greece, Finland, Slovenia, Hungary, Czech Republic, Malta, Cyprus, Estonia, Lithuania, Latvia, Poland, Slovakia, Bulgaria, Romania.
54. A directive is a binding piece of legislation establishing legal guidelines to be implemented in Member States.
55. The resolutions CP/RES 759 (1217/99) "Guidelines for the Participation of the Civil Society Organizations in OAS Activities," and CP/RES. 840 (1361/03), "Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities," regulate the participation of the civil society within the OAS system.
56. Resolution AG/RES. 2435 (XXXVIII-O/08) "Human Rights, Sexual Orientation and Gender Identity".
57. "Resolution on the criteria for granting and enjoying observer status" approved during the 25th session in 1999.
58. Petition for writ submitted before the Constitutional Court to seek protection related to constitutional rights.
59. See "Final Comments of the Human Rights Committee: Romania," November 5, 1993, CCPR/C/79/Add.30, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.30.Fr?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.30.Fr?Opendocument).
60. In May 1993, Koenig and Jansson, Rapporteurs for the Council of Europe on whether Romania meets the Council's human rights standards, both insist that Romania repeal Article 200 para. 1 as a prerequisite for admission to the Council of Europe. This information is available in ILGA

- Euro-letter 16, May 21, 1993, at http://www.ilga.info/Information/Legal_survey/europe/supporting%20files/romania_.htm.
61. Council of Europe, Parliamentary Assembly, Doc. 6901, September 27, 1993, Amendment No. 7 and Amendment No. 8.
62. See information available in: ILGA Euroletter 23, February 1994.
63. See Decision no. 81 from July 15, 1994, Romanian Constitutional Court.
64. See information on cases in *Public Scandals: Sexual Orientation and Criminal Law in Romania*, a report by Human Rights Watch and the International Gay and Lesbian Human Rights Commission, New York · Washington · London · Brussels, Copyright © January 1998 by Human Rights Watch and IGLHRC, ISBN 1-56432-178-9, Library of Congress Catalog Card Number: 98-84053, available at: <http://www.hrw.org/reports97/romania/>.
65. The text read:
- “1. Sexual relations between persons of the same sex, committed in public or if producing public scandal, are punishable by imprisonment of one to five years.
5. Inciting or encouraging a person to the practice of sexual relations between persons of the same sex, as well as propaganda or association or any other act of proselytism committed in the same scope, is punishable by imprisonment of one to five years.”
66. See U.S. Department of State, 1999 Country Reports on Human Rights Practices—Romania.
67. See European Commission's answer to Written Question of MEP Louseweis van der Laan, E-4142/00EN, March 12, 2001.
68. See above p. 56.
69. See The EU-Romania Accession Council, “Position of the EU” (7041/01) on March 19, 2001.
70. See below p. 97.
71. S. Fabeni and A. Miller, “The Importance of Being Perverse: Troubling Law, Identities, Health and Rights in Search of Global Justice” in I. Meyer and M. Northridge *The Health of Sexual Minorities. Public Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations*, New York (2007), p. 94.
72. Special procedures of the Human Rights Council, at <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.
73. It is important to remember that international and domestic law is constantly evolving, so advocates who anchor their arguments in international or domestic law or make appeals based on it should be sure that they have the most up-to-date information.
74. From International Gay and Lesbian Human Rights Commission, Manila Workshop, The Philippines, April 12-13, 2003.



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Colombia Case Study: A Bi-national Couple Finds Protection

Background

Juan Fernando Camacho, a Colombian national, and Karl Einar Maartman, a Canadian, met in 2001 on the beaches of Costa Rica.⁷⁵ Juan Fernando, who worked in his family's business, lived on the Colombian island of San Andrés in the Caribbean. In an attempt to control overpopulation on San Andrés, legislation was passed to prevent people from freely registering for resident status. Even Colombian nationals were asked to register in order to live on the island, in essence creating an internal immigration system. Juan Fernando was not a native of the island. However, in accordance with recent legislation, he obtained a residence permit on the grounds of prior residency. Yet the new registration system still proved to be an obstacle for the bi-national couple. In order to establish legal residency for Karl Einar, they established a company "on paper," obtaining a special temporary visa permit for him as a partner and investor. However, because the permit was temporary, periodic permit renewals became increasingly costly.

In 1991 the island passed a decree to restrict and regulate the right of free movement and residence in the archipelago. It granted permanent resident status to those who "enter into a marriage or a civil union (living together) with a resident, if they have shared a common address in the District for a minimum period of three continuous years." Couples applying had to prove their cohabitation at the time of documentation submission. Based on that definition Juan Fernando and Karl Einar wondered if they could apply for civil union status as a same-sex couple.

The first stage: the inquiry

On studying the case, the couple and their legal team decided to proceed with the application in stages. Initially, the couple submitted an exploratory letter. Citing the principle of non-discrimination consecrated in the Colombian Constitution, as well as in international human rights treaties to which Colombia is a signatory, they

asked whether civil union status was available to same-sex couples. The Residence and Circulation Control Office (OCCRE) replied in writing, indicating national requirements for civil union applications, and stating that “given the circumstances, if the validity and legality of their union can be proved by the parties involved, they will be able to apply for acknowledgement of their status as residents within the archipelago.”

The second stage: the formal application

Given the initially positive response to the legal inquiry, a formal application for residency as a same-sex couple was filed on behalf of the couple. In June 2003 a meeting was scheduled with the Coordinator to review their application. However, the meeting did not go as Juan Fernando and Karl Einar had hoped. The Coordinator held the Bible in his hands the entire time, judging not only their application for residency, but their entire life as a same-sex couple. According to the Administrative Director of OCCRE, the term “couple” referred only to long-term male and female partners who are either married or in a monogamous co-habiting relationship.⁷⁶ Following the meeting, Juan Fernando and Karl Einar lodged a formal complaint against the official with Colombia’s Attorney General’s Office and the Ombudsman’s Office. Not only was their application for civil union status rejected by the Administrative Director, Karl Einar was notified that he would have to leave the Island within five days due to his now-illegal status.

An appeal for reconsideration was prepared. In an effort to put pressure on the Ministry of Home Affairs, the final arbiters, the legal team organized an international e-mail campaign for letters in support. However, ultimately, the Ministry believed that homosexual couples should not be afforded the same rights as heterosexual couples—citing Article 42 of the Political Constitution, which states that marital union is an expression of the institution of the family, based on the free decision of a man and a woman.

The third stage: the legal path

Having exhausted all administrative routes, it was time to move to legal action. In Colombia, the Writ for the Protection of Constitutional Rights was created to defend basic fundamental rights in the event of threat of violation by action or omission. In the legal action brought forth, the names of the couple remained anonymous, respecting the right to privacy outlined in the Political Constitution of Colombia as well as the International Covenant on Civil and Political Rights. The legal team did not want the case to be known to third parties or to the media, clarifying that in the public sentence the persons would be referred to exclusively as XX or YY.

The first right, they argued, that was affected was the **right to equality** as consecrated in the Political Constitution of Colombia (art. 13), the Universal Declaration of Human Rights (arts. 2 and 7), the International Covenant on Economic, Social and Cultural Rights (art. 3), the International Covenant on Civil and Political Rights

(art. 3), and the American Convention on Human Rights (art. 24). It was determined that Karl Einar and Juan Fernando received exclusionary treatment in comparison to the treatment afforded to a male and female couple. The legal argument was based on the theory of “suspect criteria” that has been historically used in many countries with reference to social groups (indigenous populations, women, Afro-Colombians, homosexuals and others) that have suffered ill-treatment and persecution to determine whether a criterion for differentiation is suspect and must therefore be prohibited as potentially discriminatory.

The second right affected was the **right to work** (consecrated in the Political Constitution of Colombia (art. 25), the Universal Declaration of Human Rights (art. 23), the International Covenant on Economic, Social and Cultural Rights (arts. 6 to 9), the International Covenant on Civil and Political Rights (art. 8), the American Convention on Human Rights (art. 26), the Geneva Convention III (arts. 49, 50, 53, 60, 61 and 62), the Geneva Convention IV (arts. 39, 40, 51, 52, 95 and 96), Additional Protocol I (art. 16) and International Labour Organization Conventions. Because Karl Einar was denied legal resident status, he was no longer able to work legally on the island either.

In this phase, the legal team emphasized that not only were the rights in question protected by the Political Constitution of Colombia, but they were also safeguarded under international human rights treaties to which Colombia was party. As a guideline for making the decision regarding civil union status, the legal team transcribed favorable judicial decisions by several Colombian corporations and referenced pivotal decisions issued by the United Nations Human Rights Committee. These included the cases of *Toonen v. Australia* and *Young v. Australia*.

In response, the Legal Office of the Ministry of Home Affairs argued that they did not violate the right to equality, because their decision was not based on Karl Einar’s homosexuality, but rather on his status as a long-term partner in a same-sex relationship. With regards to the violation of the right to work, they argued that it was restricted under the given circumstances. Finally they clarified that as per Colombian law, the term “marital union” only applies to a relationship between a man and a woman.

On January 9, 2005, the sole Specialized Circuit Tribunal of San Andrés decided to deny the couple protection, ruling that no rights had been violated, nor had there been unequal or discriminatory treatment or illegal differentiation. According to the Court, the couple could live together with the understanding that the National Constitution only protected the family defined as a man and a woman. The motion for appeal to the Superior Court of the Judicial District of San Andrés was similarly denied on the pretext that homosexual partners cannot be considered “family.”

Media handling of the case

After the Tribunal decision, the island’s media gained access to the entire text of the appeal. Disregarding the request for anonymity, the media revealed full details of

the case to the public, spurring island-wide debate. In spite of the illegal access to documents that the media gained, the couple now feels “this was a positive thing because it brought the issue of same-sex couple rights out of the closet.” Aside from the scandal created by the media, the Protestant and Catholic churches on the island made their disapproval of the issue publicly known. Affirming the Court’s decision, religious institutions focused on rejecting same-sex couples as legitimate partners. A representative of the Baptist Church made an appeal on radio to the citizens of San Andrés, exhorting parents of homosexual or lesbian children to “throw them out of the house, leave them to starve and take them back in only when they stop being homosexual or lesbian.”

The Constitutional Court

All writs for protection of constitutional rights in Colombia eventually go to the Constitutional Court for review. Given the high-profile nature of the case, the Court decided to take it on and make a final decision. With the proceedings now in Court, the legal team once again appealed for widespread support. The various expressions of support included a writ submitted by the International Gay and Lesbian Human Rights Commission (IGLHRC). This type of support has a so-called “aquarium effect,” in essence drawing not only national, but international, attention to the case. It also becomes part of a larger discourse aimed at opening doors and opportunities for people, and generating a more prominent international debate.

The logic of the Constitutional Court was complex. On the one hand, they noted that the Court recognizes only the monogamous and heterosexual family. Therefore, it make sense for residency permits for same-sex couples to be denied. However, they also admitted that this precedent could be considered a violation of the right to equality. Additionally, they noted that the right to “free development of the personality” protects homosexuality as a valid choice that must be respected and protected by the State. Denying residency on account of this status would be clearly discriminatory. In this specific case, although Karl Einar’s application for residency was denied on the basis of his relationship with Juan Fernando, the Court noted that he could still apply for residence on other bases, such as his three-year residence on the island and his economically solvent status. Given these alternative bases for gaining resident status, OCCRE had to adapt the proceedings accordingly. In the end, however, the Court revoked the decisions of the Sole Specialized Circuit Penal Court and the Superior Court, and conceded protection of the rights in question. It further decided to protect the anonymity of the parties involved, and ordered that the names remain private, with the proceedings being strictly confidential. And this case set precedent for LGBTI rights on the island. In February 2007 the Constitutional Court revisited a lawsuit pertaining to the ban on inheritance rights for long-term partners, and it currently protects the rights of same-sex partners on the issue of assets.

Achievements and conclusions

The case of Karl Einar and Juan Fernando highlights some important judicial trends, including inclusion of traditionally marginalized groups into public discourse, increased importance of human rights, and the utilization of the human rights discourse to bring issues of homosexuality to the fore. Winning the case was also a lesson in the effectiveness of persistent public action to change the nature of the discourse. Ultimately, an individual or small group of people can have a deep impact on social and judicial practices, both nationally and internationally.

The reference to international human rights law as criteria to be considered in the decision of the Court showed how States can be held accountable for their commitments before the international community and how the “international human rights law” approach is a valuable strategy in litigating LGBTI cases.

The case also represented an opportunity to change the public perception of LGBTI people through the media, with a supportive community also playing a key role.

At the same time, the case constituted an extremely important example of enforcement of the principle of secular State: religious principles and “icons” (such as a public official pointing to the Bible as a reference point for arguing a position) overtly clashed with legal principles of justice. Moreover, following this decision of the Constitutional Court, the United Nations Human Rights Committee delivered its communication in *X v. Colombia*⁷⁷ addressing the same argument with reference to pension rights of *de facto* same-sex couples (filed by the same attorney and author of our case study). In other words, the case also had an effect in shaping international human rights jurisprudence.

Notes for Facilitation

For more information related to this case and the full text of the decision contact Germán Humberto Rincón Perfetti, Colombian lawyer and director of the organization *Asociación Líderes en Acción*, at rinconperfettigerman@hotmail.com.

The full text of the decision of the Constitutional Court no. C-075 of 2007 on the recognition of economic rights to same-sex couples (mentioned above) is available at <http://www.colombiadiversa.org/dmdocuments/Sentencia.C-075-07.doc> (in Spanish).

Colombia case law and legislation on LGBTI rights is quite rich. The website of Colombia Diversa (<http://www.colombiadiversa.org>) contains information on other decision of the Constitutional Court of Colombia and other tribunals on LGBTI rights, as well as other national and local legislation on the issue.

For the communication of the UN Human Rights Committee in *X. v. Colombia*, see the appendix.

Notes

75. We have retained the real names of this couple, with prior approval from them to do so.

76. On the basis of Resolution 0465 of 2003.

77. See above, p. 50.



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Diverse Sexualities and “Culture”

5

Introduction

Fundamentalism not only pits “culture” against rights, it paints a somber picture of society in which sexuality—and implicitly, a range of other human experience—demands continual and restrictive state scrutiny and control. Against this bleak and onerous vision, rights activists must reassert basic principles of personal freedom; but they must also affirm that human beings require the autonomous enjoyment of their sexualities to lead satisfying, fulfilled, fully human lives.

Scott Long, Human Rights Watch⁷⁸

In many contexts, “culture” is portrayed as fixed and unchanging. However, a look at history tells us otherwise—cultures change, adapt, incorporate and constantly renew themselves. Indeed, within any community, what stands as “culture” tends to represent the interests and perspectives of those empowered to speak for the community. It is, perhaps, more accurate to speak, in any community, of the existence of multiple and overlapping (and sometime contesting) cultures.

Culture, that is, the representation of “culture” by those with the power to claim the right to represent their community, is often invoked as an excuse for violating sexual rights and LGBTI rights. In many societies, cultural norms defining appropriate masculinity and femininity impose roles limiting the freedom of LGBTI individuals, or indeed, all individuals in society. What we might call *hegemonic masculinities* (the social, political and cultural enforcement of particular norms of masculinity and femininity)⁷⁹ can seriously limit the freedom of all individuals to explore anything that is beyond the norm, with potentially severe consequences for health and well-being.⁸⁰ Traditional rules establishing approved (“normal”) sexual behaviors and emotional relationships limit the freedom of expression related to gender and sexu-

ality of a diverse range of individuals, but have an especially significant impact on LGBTI persons and women.

As we have noted, sexuality and culture may be portrayed as fixed and unchanging, particularly by conservative and fundamentalist groupings. The claim to represent the “real” or “true” culture is often used by such groups as a means of pursuing political goals. By preserving the status quo, conservative forces retain the power to decide the parameters of “acceptable” social and sexual behavior.⁸¹

Yet history and our own experiences tell us that cultural norms are not static or monolithic. Rather, they are fluid and constantly evolving, particularly as marginalized groups gain social visibility, access to power and the influence to push for social change. Such shifts in power sometimes threaten those already in power. From a human rights perspective, resistance within a culture or community raises questions often inappropriately framed in terms of “collective” versus “individual” rights (i.e., the rights of groups, like families, religious communities, indigenous communities, etc. versus the rights of individual persons).⁸² This “conflict of rights” (i.e., the uneasy relationship between different rights, sometimes requiring a complicated negotiation or setting of priorities) may be used to discredit the entire human rights framework. However, so called “culturally required restrictions” are often internal restrictions imposed by the group in power on its members in order to prevent challenges to their views or their political or social control.

Not only do cultural norms change, they also vary enormously in different contexts. That diversity presents the promise, as well as the challenge in organizing around sexual rights: How to organize a truly global movement on such a deeply personal and private subject as sexuality, when experiences and standards vary widely from place to place?

This chapter explores some of the opportunities and challenges presented by mobilizing cultures to enhance human rights advocacy and to empower individuals belonging to non-normative sexualities and genders, as well as encouraging and protecting advocates who defend their rights. By the end of this chapter, the reader should:

- ◆ Understand the basic definition of culture and how it has been used within different cultures and societies vis-à-vis sexual rights
- ◆ Have a clearer picture of how norms of sexuality and rights vary across time and space, in ways that shape contemporary understandings and practices of human rights (or human rights abuses)
- ◆ Gain an overview of the importance of religious principles and practices as a potential basis for, as well as an obstacle to, advancing sexuality-related rights

What is culture?

While there are many definitions of culture, one human rights scholar defines it as “an historically transmitted pattern of meanings in symbols, a system of inherited

conceptions expressed in symbolic form by means of which men [and all people] communicate, perpetuate and develop their knowledge and attitudes towards life.”⁸³ As such, culture

provides both the individual and the community with the values and interests to be pursued in life, as well as the legitimate means for pursuing them. It stipulates the norms and values that contribute to people's perception of their self-interest and the goals and methods of individual and collective struggles for power within a society and between societies.”⁸⁴

As the source of individual and communal world views, cultural norms are often so embedded in our personal and collective identities that we are often unaware of their existence. It is this very embedded but dispersed nature of culture that makes it so challenging. Because culture helps form who we are as people, we often assume that such standards are both “normal” and unchanging. In many societies, so-called “hetero-normative” sexual behaviors are thus held up as the cultural norm. In reality, culture is living and changing, formed and refined over decades and centuries, and influenced most by those with the greatest power and social standing.

Culture is constantly being re-invented and deployed for political reasons, frequently used to justify discrimination against those who deviate from the norm. In the area of sexuality, people whose sexual practices and expression diverge from the cultural prescription of *normal* may thus be targeted out for practicing alternative sexual behaviors or for their non-normative gender roles.

How has the concept of culture been used to regulate sexual rights?

Throughout the world, culture is being deployed for political purposes. Culture is defined and mobilized to maintain a binary system of gender and sex (e.g., female/male; feminine/masculine). In many societies, the rigid male/female distinction can be seen from the moment a child is born. It is, indeed, entirely taken for granted, that is, until a child comes along who doesn't fit as an either/or person. The socio-cultural imperative is often expressed by the law. For example, seeming urgency to assign a legal sex to a newborn child soon after birth induces physicians to perform surgery on intersex children at a very early stage but with potentially negative lifelong consequences. In the Czech Republic, for example, where the health care system is public, medical procedures to “fix” the sex of a baby are often carried out before the individual or the newborn's parents are able to express a fully informed consent.⁸⁵ This takes place despite the serious long-term psychological and physical consequences of such interventions.

Gender and sexuality are central elements that help to form and reinforce nationalism and citizenship: Masculinity and patriarchal authority are often associated

with expressions of power and state control. Women, represented as and compelled to be the bearers of cultural values, and the mothers of future generations, find their sexuality rigidly controlled. The anti-LGBTI rhetoric of some political leaders, such as President Robert Mugabe of Zimbabwe, fits this pattern. President Mugabe has reinforced the idea of a binary and patriotic model of heterosexuality-homosexuality by framing (hetero) sexual orientation as a characterizing element of Zimbabwean culture and nationhood.⁸⁶

Assisted reproductive technology is another example of the politicization of culture. In Italy, where conservative Catholicism influences policy decisions, assisted reproductive technologies are regulated through laws that violate the sexual and reproductive rights of single women. Since 2005, only opposite-sex couples have been admitted to treatment, and only in cases of sterility or infertility, not in instances of genetic disease. Moreover, once the egg(s) is/are fertilized, implantation is compulsory: the (presumed) right of the embryo(s) supercedes the consent of the woman. Up to three eggs may be implanted, and prescreening of the embryo is prohibited.⁸⁷ If a woman wants to terminate the pregnancy for whatever reason (if the embryo develops a disease or more than one fetus survives) she must apply for the abortion procedure.

Cultural prescriptions about sexuality are often used as tools of political oppression: In Malaysia, for instance, the “buggery law,” heritage of the British colonialism, constituted the framework for allegations of homosexuality, defined by prime minister Mahathir Mohamad as the “Persian vice,” against former deputy prime minister Anwar Ibrahim. Mr. Ibrahim was prosecuted, imprisoned, then discharged, but the allegations continue to be used against him to obstruct his political career.

On this basis, human rights defenders are denied their rights: in the English speaking Caribbean, the existence of sodomy laws prevents LGBT groups from registering as civil society organizations in their own countries. The “illicit” scope of these groups’ mandates, therefore, also impedes their access to international organizations, such as the Organization of American States (OAS). It may even limit their access to external funding, as many donors will give grants only to legally registered organizations.

Cultural specificity of sex and sexuality

While culture has been used to regulate sexuality in many societies, the ways in which gender is constructed—and even the local spectrum of genders—differ widely from community to community. The current LGBTI concept, for example, does not capture the reality of all non-heteronormative sexual practices and gender identities and expressions. For example, it cannot adequately explain the specificity of *travesti* identity in Latin America, *kothis* identity in South Asia, or even the MSM identity that is increasingly emerging in Africa, as opposed to a global “gay” identity. Nor can it

encompass the challenge presented by heterosexual but “masculine” women or “feminine” men.

Even the notions of sexual orientation and gender identity cannot really capture the specificity of sexualities and genders in different contexts. In many communities, sexuality, sexual practices and gender expression are organized along gender roles and identities: For instance the two-spirited of North American native communities (also known as *berdaches* among the colonizers, from the Persian term *bar-daj* that referred to same-sex partners in cross-generational relationships) assumed a feminine gender identity and role and lived in a relationship modeled on that of a man and woman. In Indian tradition, *hijras* were traditionally identified as third gender and belonged to a special caste, performing a social role, especially in family events. Other forms of cross-gender identities or behaviors are present in other cultures, such as the *‘yan daudu* in Hausa societies or *metis* in Nepal.

In other cases, same-sex sexual behaviors are not necessarily related to sexual orientation or gender identity, but to a “dominance relationship,” such as in the cross-generational relationships, such as among *bedaghs* in Pakistan or *bacchá* in other areas of Central Asia. Also, same-sex behaviors may have a ritual nature, and the sexual nature acquires a completely different meaning: This is for instance the case of ritual same-sex acts among the Sambia population of New Guinea.⁸⁸ Such examples illustrate the problematic nature of rigid male/female distinctions as well as efforts that fix sexual practices—many men who have sex with men also have sex with women; many women who have sex with women also have sex with men.

The dichotomous construction of genders (i.e., the division of gender into two and only two categories) places a heavy burden on individuals who don’t fit accepted categories such as transsexuals and transgenders. It also leads to a host of rights violations that are frequently treated with impunity. For example “codes” or “edicts” (as we have previously discussed) in Argentina have an especially insidious impact because they tend to penalize *travesti* identity, rather than their behavior. As a socially excluded, marginal population, *travestis* share with other groups (like economically deprived youth and children, sex workers in general and the homeless) the burden of having their lives over-regulated by the State, through the police. A host of vague and ambiguous regulations provide the police with the ability to enforce these vague regulations in a discriminatory fashion with impunity against the most vulnerable sectors in society, including *travestis*. In many provincial and local regulatory codes, the police can arrest and/or fine those who create “public scandal” or “behave in an offensive way in public,” as well as those who “incite to sexual commerce in public spaces.” For many police officers the mere sight of a *travesti* walking down the street is a “public scandal.” In many other situations the appeal of enforcement rests in the possibility of obtaining a bribe or, if that fails, mistreating the individual whose low social status hinders denouncing the aggression and getting remedial action.

A Statement in Support of the Open Letter by Vikram Seth and Others

Cambridge, 20 August 2006

I have read with much interest and agreement the open letter of Vikram Seth and others on the need to overturn section 377 of the Indian Penal Code. Even though I do not, as a general rule, sign joint letters, I would like, in this case, to add my voice to those of Vikram Seth and his cosignatories. The criminalization of gay behaviour goes not only against fundamental human rights, as the open letter points out, but it also works sharply against the enhancement of human freedoms in terms of which the progress of human civilization can be judged.

There is a further consideration to which I would like to draw attention. Gay behaviour is, of course, much more widespread than the cases that are brought to trial. It is some times argued that this indicates that Section 377 does not do as much harm as we, the protesters, tend to think. What has to be borne in mind is that whenever any behaviour is identified as a penalizable crime, it gives the police and other law enforcement officers huge power to harass and victimize some people. The harm done by an unjust law like this can, therefore, be far larger than would be indicated by cases of actual prosecution.

It is surprising that independent India has not yet been able to rescind the colonial era monstrosity in the shape of Section 377, dating from 1861. That, as it happens, was the year in which the American Civil War began, which would ultimately abolish the unfreedom of slavery in America. Today, 145 years later, we surely have urgent reason to abolish in India, with our commitment to democracy and human rights, the unfreedom of arbitrary and unjust criminalization.

Amartya Sen

Tolerance or stigma? History of sexual norms

Notions of appropriate sexuality are formed within a specific historical context. Indeed, historically, many societies did and do tolerate sexual behaviors or intimate relationships between men, and in some cases between women.⁸⁹ Interestingly, the first negative judgments on non-Western same-sex practices were reported by missionaries: the “*berdaches*” were defined as “sodomites dedicated to nefarious practices”⁹⁰; the persecution and massacre of the “sodomites” was often performed by the missionaries themselves who followed the conquerors, particularly in Spanish and Portuguese colonies in America, Africa, and Asia.⁹¹

Despite the colonialist imperative to criminalize non-normative sexuality and gender identity, “homosexuality,” or “deviation” from accepted gender and sexual

social norms, is still viewed as an insidious “foreign” influence. Commentators in developing countries warn of Western influenced “alternative” sexuality in contaminating cultural traditions. Such alternative practices include same-sex relations, women who remain single, and marriage across ethnic/racial/religious lines. Indeed, post-colonialist governments share a long history of homophobia with Western countries. In fact, “Western influence” is at the heart of the moral tradition of many developing countries. Stigmas attached to homosexuality, criminalization of same-sex behaviors (and other “unnatural acts”), repression of sexual autonomy and diverse expressions of gender and sexuality, are the result of the long process of religious, legal and political colonization by Europeans. One of the main objectives of Christian teachings was the eradication of traditional polygamous and homosexual practices: In Africa, systems of surveillance were enacted to suppress those “unnatural behaviors”⁹². Characterizations of Africans as “hyper-sexual,” “savage” or “dangerous” have been used to justify racial domination. Penal codes across three continents prohibit “carnal knowledge against the order of nature,” “gross indecency” and “buggery,” terms that have “more to do with Victorian readings of the Old Testament Sodom and Gomorrah story than with anything that can clearly be called “traditional” African or Asian values.”⁹³

Sexual and LGBTI rights and religion

Religion is an important component of culture. In fact, in heavily religious societies, culture and religion may be almost indistinguishable from one another. However, even though religion is often used as a justification for discrimination and persecution of persons whose gender and sexuality do not conform to what the community has designated as “normal,” religion can be used to support sexual and LGBTI rights and some religious communities and churches have publicly declared themselves to be allies. These include several Protestant communities and part of the Anglican Church worldwide, including—in Africa—the Archbishop of Cape Town Njongonkulu Ndungane, his predecessor Desmond Tutu, and the former Archbishop of Central Africa, Walter Makhulu. Some Jewish, Catholic and Muslim communities around the world also support LGBTI rights. Common characteristics of these communities include support for sexual choice, autonomy and equality of individuals in their sexual lives, promotion of the right to sexual and reproductive health, as well as a dimension of interfaith dialogue.⁹⁴

However, religious opposition to homosexuality and alternative sexualities and gender expressions is well-documented and serves as a formidable challenge to LGBTI and sexual rights activists. Scholars in the Catholic Church, Islamic communities, Orthodox Churches and other conservative Protestant or Jewish communities claim a rigid approach to sexual and gender normality. This philosophy is rooted in historical appeals to originating texts and may have little relevance to societies

today. The Holy See and Organization of Islamic Conference have used strict interpretations of the scriptures to justify opposition to sexual and reproductive rights during the 1994 Cairo conference on Population and Development and the 1995 Beijing Conference on Women. They have also contested gender-based persecution and forced pregnancy as “crimes against humanity” under the Rome Statute of the International Criminal Court, and helped squash the 2003 Commission on Human Rights resolution on “Sexual orientation and human rights” (described above), that sought to protect basic human rights based on sexual orientation.

What is the basis for the rigid approach to sexuality, in particular the condemnation of homosexuality? According to researchers, extremist views exacerbate each other across religion and culture and extremist acts are not confined to any one region of the world. For example, in October 1999, 23-year-old Muna Hawatmeh (details of the story can be found on page 136), a woman of Jordanian heritage living in the United States of America (USA), was subjected to death threats, prolonged physical assault and kidnapping by her parents and two elder brothers.⁹⁵

Tolerance and stigma

Muna’s story is one of “honor”-related violence that allows us to draw links between sexuality, mainstream definitions of gender roles and structures of power. Sexual rights advocates working in conservative environments can seek to build broad coalitions by emphasizing the impact that communities’ control over sexuality has on larger constituencies (including, but not exclusively, LGBTI). This approach can be effective in contexts where sexual autonomy (and any challenge to hetero-normativity) is constructed as a threat—to the social order, to customary practices, to cultural values, to religion, etc. But first of all, one needs to identify the social constructs and legal mechanisms that support and perpetuate so-called “honor” crimes, and to clearly define their scope.

“Honor”-related violence takes different forms—ranging from “direct violence as well as indirect subtle control.”⁹⁶ This is partly linked to the fact that “the concept of honor is elastic, changing according to time and place.”⁹⁷ Unequal access to power and gender-based discrimination occur in all societies. Yet, in some contexts, attempts to eradicate “honor” crimes are often denounced as a biased attack against an entire culture. In such contexts, it is useful to point out that women and girls are the most likely targets of punishment for alleged transgressions with respect to sexuality. While men and boys (including heterosexuals) are also victimized in “honor”-related violence,⁹⁸ communities and families tend to single out women for perceived transgressions of norms and values such as virginity, chastity or fidelity. Women face harsh penalties for overt, or perceived, challenges to sexual boundaries. It is critical to emphasize that the concept of “honor” killings is not necessarily only driven by religious factors but by broader cultural notions of appropriate femininity

and the rights of families to control sexuality—even if this requires the most extreme measures.

Documented cases of women victims of “honor”-related violence include: lesbians, bisexuals, sex workers, divorced women, heterosexuals who chose partners against their relatives’ wishes, single women, women seeking divorce, trans women, women’s rights activists, unmarried women accused of being seen in public with a male friend, and women who don’t respect “appropriate” dress codes. In Muslim contexts where “honor”-related violence is justified by reference to religious values, advocates may seek official declarations by prominent religious clerics and scholars who insist that Islam does not sanction such crimes. For example, in February 2007, Syria’s grand Mufti, cleric Ahmad Hassoun, reacted to the murder of a 16-year-old girl by her brother. He “publicly condemned the crime, calling for the first time for the immediate protection of girls at risk and for legal reform on the basis that such crimes are un-Islamic.”⁹⁹ A similar stand was reiterated by Mohamed Serag, professor of Islamic studies in Cairo, Egypt: “In the eyes of Islam, those people [who kill in the name of “honor”] are criminals.”¹⁰⁰

A leading Jordanian lawyer also challenges the myth that links “honor” killings to observance of the Shari’a,¹⁰¹ pointing out that “honor”-based defense actually derives from the European criminal code prevalent 200 years ago.¹⁰² More broadly, a different approach to Islamic religious law compatible with claims for sexual and LGBTI rights, as well as women’s rights, can be seen in some Islamic traditions. One example is the tradition of *Ijtihad*, the “process of making legal decision by independent interpretation of the Qu’ran and the Sunnah”,¹⁰³ which flourished in legal religious jurisprudence in the ninth and tenth centuries. Feminist and LGBTI scholars found claims in contemporary forms of *Ijtihad* to facilitate a rights-sensitive cross-cultural perspective even in the interpretation of the Shari’a.¹⁰⁴

Culture as a positive force for the promotion and protection of sexual rights

“In all cultures there are men and women who challenge accepted wisdom (...) We are defying conservative voices inside our community and struggle to influence the prevailing mentality. Combating honour crimes is . . . an absolute priority that demands mobilisation from all of us.”

Nazand Begikhani, Kurdish Women Action Against Honour Killings¹⁰⁵

While representations of and claims to protect authentic culture are often used to justify violence and violations, local cultures can be mobilized in defense of sexuality- and gender-related rights. As Anissa Hélie explains, human rights advocates must challenge mainstream definitions of “culture.” As she suggests, culture cannot be left

for perpetrators or their allies to define, and it cannot condone harassment, torture or murder. Advocates can use a variety of means both to influence culture and defend sexuality- related rights as consistent with cultural norms and religious traditions. These strategies range from community awareness-raising, national and regional advocacy, and regional coalition building or lobbying at the UN level. They may:

- ◆ Focus on a single case to ensure perpetrators' accountability;
- ◆ Provide expert opinion in asylum claims;
- ◆ Work towards achieving legal reform;
- ◆ Pressure their governments to ratify international human rights conventions;
- ◆ Require the creation of rights-supportive services, such as shelters and safe homes;
- ◆ Promote human rights education;
- ◆ Initiate, support and/or volunteer at emergency hotlines;
- ◆ Orchestrate media campaigns;
- ◆ Train police forces, health care professionals or teachers, etc.

These diverse initiatives should not be viewed as competing or mutually exclusive, but as interconnected and complementary tools.

Key Terms

Heteronormativity

System of rules (that may be legal, cultural, social and/or familiar) that requires individuals to conform to the dominant standards of heterosexual lifestyle. It may consist of legal norms (i.e., in the form of criminalization of certain behaviors, such as sodomy laws, or lack of recognition of different lifestyles, such as denial of rights for same-sex couples); social, cultural and familiar practices or customs (e.g., the expectation, which is in some social or cultural contexts an obligation, to get married with a person of the opposite sex).

Heteronormativity is founded on the idea that each individual is either male or female, and that this defines sex, gender (and gender identity) and gender role, as well as sexual orientation and, as a consequence, defines the “sexual being.”

Patriarchy

Social, cultural and familiar system in which men are dominant over women. Heteronormativity is often considered to be one of the central elements of patriarchy, as the sharp distinction between male and female, including their roles and expectations in society, reinforces the traditional role of men as dominant.

Binary system/model of gender/sex

Social and cultural system or model that

considers gender and sex as consisting of two, and only two, rigid categories, namely male/man and female/woman. Such a system or model excludes those who do not fit within the two categories (such as trans or intersex people).

Gender roles

Behaviors and attitudes associated with being male or female in a society or culture. They may include the elements that characterize the notion of gender expression, as well as other social or familiar roles, such as the attributions of the wife and of the husband in the family; the perception of some jobs as gender-specific (or, in certain societies, the expectation that only men work); the perception that high level education is only for men; the expectation that women take care of the house or the children; the expectation that boys and girls have different interests.

Gender roles are generally core elements of heteronormativity and patriarchy.

Social constructionism

Theory according to which certain practices or concepts that have been taken for granted in a given society or culture (and therefore considered compulsory through the law, the morals, or through societal control) are in fact the product of that society or culture.

Culture-Specific Glossary¹⁰⁶

As we saw in Exercise 1, many countries, communities or even sub-communities have their own words for describing non-conforming sexual orientation, gender identity or sexual practices. As we show below, sometimes these reflect a positive vision of the community to which the term refers. However, in many other cases, the terms are negative and their use is intended to foster stigma, discrimination and shame.

Please, note that, where present, the reference to specific countries is not meant to have a political, but rather geographical connotation. Also, this glossary is not meant to be exhaustive.

Bacchá (Central Asia)

Turkic-Uzbeki term referring to young male adolescents, traditionally performing as cross-dressed erotic dancers, often as sex workers. *Bacchá* may or may not refer to gender identity.

Baklas (Philippines)

Tagalog term used in contemporary society referring to men expressing real or perceived manifestations of femininity, such as cross-dressing, or sexual or emotional attraction for an individual of the same sex. *Bakla* identity expresses both gender identity and sexual orientation.

Bedaghs (Pakistan)

Refers to young men who perform the passive sexual role for adult men in anal intercourse. Although this form of sexual habit has declined, it was traditionally accepted among Swat Pukhtun men in Northwest Pakistan.

Dyŷeiaisha (Japan)

Refers to persons having same-sex relationships (literally same-sex loving person). It is a rather modern term, and includes both homosexuality and bisexuality, as well as persons

who have same-sex sexual contacts during adolescence. It is different from *nanshoku*, a traditional term for male homosexuality that was widespread among monastic, aristocratic and samurai classes since the medieval period (and later also among middle and merchant classes).

Hijras (South Asia)

Communities that have existed in South Asia for more than 4000 years. *Hijras* claim a sacred space due to their third gender status called *pingala* and invoked as *shiva-shakti*, the image of Shiva as half-male and half-female. The person (originally male) who wants to live as *hijra* has to join the community and follow rituals and obligations (living in *satla*, female attire, is one of them). Only those who strictly observe the requirements of community life are allowed to go for nirvan, represented by castration. *Hijras* tend to be associated today with transgender communities.

Ibbis (Senegal)

Refers to men who are more likely to adopt feminine mannerisms and be less dominant in sexual interactions; *ibbis* often have close relationships with women who have political or economic power, for whom they carry out important social ceremonies and functions. In several neighborhoods, *ibbis* enjoy the protection of the entire community. *Yoos* are generally the insertive partner during sex and do not consider themselves to be homosexuals. Those identities and categories generally depend on age, status and type of relationship. In Wolof society, the most common term to define men who have sex with men is *gor jigeen* (literally man-woman).

Soaw Praphet Song (Thailand, Lao)

Refers to biological males who, sometimes at a very young age, adopt female names, clothing

Culture-Specific Glossary (*continued*)

styles, hairstyles and pronouns. They generally take female hormones and undergo cosmetic surgery. A small number also undergo sex re-assignment surgery. *Soaw praphet song* is a term that Thai transgender people have created to refer to themselves to replace the historically negative term *katoey*. *Katoey* is a negative term for male to female transgender people.

Katumua (Angola)

Refers to young boys “acquired” by older unmarried boys after a negotiation between the latter and the father of the former. The practice exists among the Gangellas in the area east of the Wawihé. Men take *katumua* also after marriage.

Bitesha (Congo)

Refers to alternative gender roles among the Basongye groups of the Luba nation, located north of Central Bantu. *Bitesha* (plural of *kitesha*) are either men or women. As to men, their behavior is unconventional, especially with reference to clothes and work, and they are expected to have unconventional sexual behaviors as well. Women also adopt unconventional behavior in terms of clothes and common activities, but often have sexual relationships with *bitesha* men.

Kothis (South Asia)

Refers most often to non-English speaking persons with a feminine homosexual identity. They generally identify themselves as distinct from the gay/bisexual community in South Asia, which tends to be dominated by English speaking homosexual/bisexual males. *Kothis* largely identify with the non-English-speaking lower middle class, and they are generally marginalized because of their socio-economic status as well as their sexuality. While some *kothis* marry the opposite sex, they often have same-sex relationships outside of marriage

and identify as transgender with a feminine orientation.

Metis (Nepal)

Refers to men with feminine homosexual identity, as well as to men who cross-dress; it may or may not have to do with gender identity: often *metis* have a transgender (or third-gender) identity, and may or may not take female hormones. *Meti* is a term mostly used in hills areas. *Metis* are in fact known as *singarus* in the western hills and *kothis* in the Terai areas of the country. In Gurung communities, cross-dressing male dancers are known as *marunis*. The masculine partner of a *meti* is known as a *ta*.

Mahūs (Polynesia, Hawaii)

(linguistic variations in: Maori: *mahu*; Samoan: *mafu*; Mangaian: *mau*)

Known in pre-colonial cultures as men dressing as women, doing women's work, and generally associating with women in traditional societies, many lived in same-sex relationships. Today, *mahū*'s distinguishing feature is gender identity, not sexual orientation, which may or may not be homosexual. Linguistic evidence suggests that they may have been shamans at one time.

(Ma)shoga (East African coast)

Refers to unconventional identity among Swahili-speaking people of the East African coast from southern Somalia to northern Mozambique. *Mashoga* (plural of *shoga*) men generally identify with middle or lower classes and consider themselves “passive homosexuals” (being *mabasha* is to consider oneself as a non-passive homosexual). *Mashoga* use feminine names. They dress in male attire but often with unconventional feminine expression. They are often sex workers or musicians, performing during women's events or at weddings. They may or may not be transvestite, or cross-

Culture-Specific Glossary (*continued*)

dressed, performers involved in rituals in local festivals.

Motsoalle (Lesotho)

Refers to relationships between two women. A *motsoalle* relationship is generally celebrated with gift-giving and feasting. It may or may not be sexual, although *motsoalle* partners generally express affection through kissing and touching. *Motsoalle* relationships may co-exist with marriage: husbands of *motsoalle* partners are generally supportive of the relationship, which is not considered a threat to marriage. It is similar to *bagburu* relationship between Azande women of Sudan.

Muxe or Mampo (Mexico)

Refers to male homosexuality among people of Zapotec origin of the Tehuantepec Isthmus. *Mampos* are generally prized as sons, because unlike other sons (who leave for marriage) and daughters (who often work outside the home), they are expected to look after the home and take care of their parents in their old age. There is evidence that traditionally among Aztec populations homosexuality was sometimes accepted; in other cases, however, *cuiloni*, passive effeminate men, were severely penalized.

Ovashengi (Southwest Africa)

Refers to effeminate men in some Bantu tribes of Ovamboland who perform the passive sexual role in anal intercourse for income. They are most often heavy, wear female clothing and jewelry, and are mainly employed as sex workers. Other forms of same-sex "sexual friendships" are known among other Bantu tribes of Southwest Africa.

Tomboys (Philippines, Indonesia)

This is a non-native term used in contemporary society and referring to women expressing real or perceived manifestations of masculinity,

such as sexual or emotional attraction for an individual of the same sex, or identification with the other sex. Tomboy identity expresses both gender identity and sexual orientation.

Tongzhi (China)

Tong means "same" or "homo-," and *zhi* means "will" or "aspiration." The expression *tongzhi* was adopted by a Hong Kong gay activist in 1989 for the first Lesbian and Gay Film Festival in Hong Kong to capture a positive interpretation of same-sex desire. This newly found usage of *tongzhi* has entered the popular lexicon; indeed, *tongzhi* has become the preferred and empowered homegrown phrase for self-identifying Chinese gays and lesbians worldwide. The term has since been adopted by a broader and more diverse community challenging the traditional definition of gender and sexuality.

Travestis (Latin America)

Refers to males who, often at very young ages, adopt female names, clothing styles, hairstyles, and pronouns. They may or may not take female hormones, modify their bodies with silicone and/or undergo sex reassignment surgery. Generally *travestis* do not identify themselves with men or women, but claim their own identity. *Travesti* is a less comprehensive term than transgender is in English and they do not necessarily identify with the English usage of "transvestite."

Two-spirited (North America)

(also known as *berdaches*)

Derived from interpretations of Native American languages used to describe people who displayed both characteristics of male and female or that embodied both the male and female spirit. Two-Spirit people were highly valued in many pre-colonial Native American cultures because they brought harmony and balance

Culture-Specific Glossary (*continued*)

and were honored to be able to sit in both male and female camps. Today, the term Two-Spirit is claimed by many gay, lesbian, bisexual and transgender Native American people to identify themselves.

Waria (Indonesia)

Refers to biological males adopting female identities. They may or may not take female hormones or undergo cosmetic surgery or sex reassignment surgery. *Waria* include both transvestite and transgender identities. They are considered to be feminine souls in male bodies. *Waria* are often performers, particularly dancers. *Waria* are sometimes defined as **Banci**, which is a more general term identifying homosexual men.

Xaniths (Oman)

Refers to the “third gender” in Omani traditional society. *Xaniths* are both *mukhannath*, men dressing and behaving as women, and *khuntha*, intersex individuals.

‘Yan daudu (Northern Nigeria)

Refers to persons who self-identify as men who act like women in Hausa society. They adopt female pronouns and womanlike behaviors, and cross-dress to perform. Their identity is more similar to the gay identity than to transgender, but they adopt feminine identity when having sexual intercourse with men who have sex with men (not identified as homosexuals) and self-identify as “male lesbians” when they have sex with each other. They are sometimes involved in sex work themselves.

Kuchus (Uganda, Rwanda, Kenya)

Refers to homosexuals who constructed their identity as opposed to the dominant culture. Male *kuchus* may adopt mannerisms and gestures that would not be considered masculine by the mainstream society, while female *kuchus* tend to dress with masculine attire, such as trousers, shirts, baseball caps.

Notes for Facilitation

This chapter contains diverse information based on the law, anthropology, history and religion, as well as several examples from different geographical areas and cultures. Depending on the audience, it may be useful to focus on specific sections, or use the examples and the information that are deemed necessary. A quick review of local/national newspaper or an internet search may result in useful context-specific stories that help to illustrate the points raised in this section.

It is important to consider the “pace” and move through the information at a speed that is comfortable to the participants, and to involve them in a conversation about their own experiences of culture, of what is culturally accepted, what is considered acceptable with regard to sexuality and gender and the ways in which they challenge cultural norms and standards. Participants should be encouraged to propose their own examples, even if not related to sexuality. Sometimes more general examples can be helpful to move into the core of the discussion. To the extent possible, it will help to integrate examples and case studies from the community in which the training is taking place.

The exercise from this chapter can be extremely useful as an introduction to culturally sensitive understanding of sexualities, gender and identities.

The facilitator should keep in mind that this might be one of the most difficult sets of issues to discuss with participants because it may require that they explore some of their basic presumptions or even their values. Sensitive consideration of different cultural and religious positions will be extremely important to help address arguments considered in this chapter. The facilitator should welcome any kind of comment, even if it could be perceived as biased, as long as all comments are made respectfully. Discussion is the only way to advance the conversation and remove stereotypes.

Resources and Background Materials

Please refer to the resources section, as well as to many of the documents cited in the footnotes, for background information. In particular, see

- ◆ S. Budhiraja, S.T. Fried, A. Texeira, “Spelling it out: from Alphabet Soup to Sexual Rights,” at http://www.isiswomen.org/index.php?option=com_content&task=view&id=279&Itemid=135;
- ◆ For examples on different sexualities and genders in general, as well as references to the impact of colonization on sexualities and genders, see D. Greenberg, *The Construction of Homosexuality*, The University of Chicago Press (1988);
- ◆ For examples of different sexualities and genders in Africa, see S.O. Murray, W. Roscoe, eds., *Boy-Wives and Female Husbands: Studies in African Homosexualities*, Palgrave (1998); see also R. Morgan, S. Wieringa, *Tommy Boys, Lesbian Men and Ancestral Wives: Female Sex Practices in Africa*, Jacana Media (2006); S. Tamale, “Out of the Closet: Unveiling Sexuality Discourses in Uganda,” 2:2003, in *Feminist Africa* at <http://www.feministafrica.org/fa%202/02-2003/sp-tamale.html>;
- ◆ For examples of different sexualities and genders in South Asia, see G. Misra, R. Chandiramani, *Sexuality, Gender and Rights—Exploring Theory and Practice in South East Asia* (2005); see also next chapter and the human rights reports published by Blue Diamond society at <http://www.bds.org.np/>;
- ◆ For examples of different gender expressions and identities in Latin America see the website of the Asociacion Travestis Transexuales Transgenero Argentinas at <http://www.attta.org/>.
- ◆ For issues related to culture and human rights, see the writings of Abdullahi Ahmed An-Na'im on the cross-cultural perspective;
- ◆ For issues related to gender, sexual and LGBTI rights, and religion see publications and websites of Sisters in Islam at <http://www.sistersinislam.org.my/>, BAOBAB for Women's Human Rights at <http://www.baobabwomen.org/>, Catholics for a Free Choice at <http://www.cath4choice.org/>; see also A. Wadud, *Qu'ran and Woman*, Oxford University Press (1999);

It might also be helpful to make reference to work by Lynn Friedman and by Ayesha Imam, and to the newsletter of the Coalition for Sexual and Bodily Integrity.

Exercise 5: Identifying myths and facts about anti-discrimination provisions protecting non-conforming sexual and gender identity and expression in the context of religion and culture

This exercise should be adapted with details from your specific context.

Instructions: In pairs or groups, discuss the following myths and facts. Focus on how these myths pertain/are reflected in your own community/country.

MYTH: If this law/policy/regulation is adopted, freedom of speech will be threatened and/or it will deny people their rights of religious freedom and expression. Those who express the belief that homosexuality is wrong, including those preaching the word of the Bible/Qu'ran and other religious texts, will be punished under anti-discrimination laws.

TRUTH: Anti-discrimination laws/regulations/provisions do not restrict beliefs, but practices. If a text professes a belief, it is not a threat to an individual's rights unless it is used as the basis for an enforceable law. The laws restricting discrimination on the basis of race do not prohibit people from holding beliefs, writing, or making public personal statements about race. Other laws, such as hate crimes laws, may, in fact restrict free speech. If a community seeks to protect that individual's right to freedom of expression or religious belief, it can also protect the human right to freedom from discrimination based on race, without any contradiction whatsoever. Human Rights Watch, for example, comments that

As Human Rights Watch stated in 1995, we believe that all such laws [Holocaust Denial laws], regardless of the religions or minorities they seek to protect, disproportionately restrict the protected right to freedom of expression. We are mindful that there are different perspectives on what is permissible and prohibited speech, but we base our position on a strong commitment to freedom of expression as a core principle of human rights and our conviction that objectionable speech is best met with contrary speech, not censorship. We also believe that governments can best counter offensive speech by fulfilling their obligation to take positive measures to protect minorities and to make clear that they reject all forms of discrimination.

MYTH: If this law/policy/regulation is adopted, it will lead to the passage of same-sex marriage/marriage equality laws.

TRUTH: Prohibition of discrimination does not necessarily imply legal recognition of same-sex marriage. For instance, although under international human rights law discrimination on grounds of sexual orientation and gender identity is considered contrary to the principle of non-discrimination of the major international human rights treaties, human rights organs have excluded the existence of a right to same-sex marriage. The decision to legally recognize same-sex marriage depends on the legal and political system of a given country.

MYTH: If this provision is adopted, it will increase the export of homosexuality from the West. Homosexuality is a Western concept and exists in non-Western countries only because of colonization/colonialism/neo-colonialism.

continued on next page

Exercise 5 continued

TRUTH: While some popular concepts and terms related to homosexuality originated in the Western world, the most popular export of the West in relationship to homosexuality is to criminalize it. In post-colonial countries, the laws criminalizing homosexuality originate in their colonial occupiers' legal codices. Prior to colonialism, sexuality was typically understood in more flexible terms, and same-gender acts of love were not widely criminalized. This law/provision/etc. will increase awareness of the need for equal treatment before the law of all people, not the practice of homosexuality, which has been shown to exist historically in all cultures in all regions of the world.

MYTH: If this provision is adopted, it will protect a population based on its choice of sexual practice or gender perversion, preferences that are changeable. There is no evidence to support the conclusion that homosexuality is innate, like race and gender.

TRUTH: Sexual orientation and gender identity are intrinsic to the identity of an individual, whether it is chosen or innate. The argument of whether sexual orientation is a choice or a genetic predisposition has strong evidence on both sides. Many people believe that the origin of an individual's sexual orientation is a combination of choice and genetic predisposition. However, before the law, the origin of this part of a person's nature is irrelevant. Every individual human being deserves human rights.

MYTH: There is no definition of sexual orientation (and even less of gender identity) in the context of human rights. It could mean anything from bestiality to pedophilia. This provision will enforce an expectation to ensure that laws, policies and practices do not discriminate on the basis of "sexual orientation" or "gender identity." However, in the absence of any definition, a precedent may be established to allow polygamy or the lowering of the age of consent for pedophiles.

TRUTH: No human right is more important than another human right, and no one human right can restrict another human right. The human right to sexuality and gender expression free from discrimination, coercion or violence does not include nonconsensual sexual acts, abusive acts, or any other act that may restrict another's human rights. Examples of things not protected by the human right of sexual orientation include bestiality, pedophilia, forced marriage, the restriction of rights based on marital status, marital rape, or marriage arrangements which restrict one's human rights—including monogamous and polygamous arrangements, one or the other of which may be practiced or preferred by some societies based on religion or other beliefs.

Notes

78. S. Long, *Anatomy of a Backlash: Sexuality and the "Cultural" War on Human Rights*, at <http://www.hrw.org/wr2k5/anatomy/1.htm> (2005).
79. Hegemony (or hegemonic) can be defined as "The processes by which dominant culture maintains its dominant position: for example, the use of institutions to formalize power; the employment of a bureaucracy to make power seem abstract (and, therefore, not attached to any one individual); the inculcation of the populace in the ideals of the hegemonic group through education, advertising, publication, etc.; the mobilization of a police force as well as military personnel to subdue opposition," at www.cla.purdue.edu/english/theory/marxism/terms/hegemony.html.
80. Alejandra Sardá, personal communication.
81. See, Lynn P. Freedman, "The Challenges of Fundamentalisms," 8 *Reproductive Health Matters*: 55-69 (1996); and Ayesha Imam, "The Muslim Religious Right ('Fundamentalists') and Sexuality," *Women Living Under Muslim Laws Dossier 17* (September 1997).
82. See, for example, Radhika Coomaraswamy, "Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women," 34 *George Washington International Law Review* 483 (2002); and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford University Press (1995), among others.
83. A. An-Na'im in Melville J. Herskovits, *Cultural Dynamics*. New York: Knopf (1964), p. 54.
84. Abdullahi Ahmed An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment" in An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives—A Quest for Consensus*, Philadelphia (1992), p. 23.
85. O. Pechová, M. Stepánková, "The Status of Lesbian, Gay, Bisexual, Transgender and Intersex Rights in the Czech Republic—A Shadow Report," submitted by Global Rights and IGLHRC to the UN Human Rights Committee in July 2007, p. 9.
86. O. Phillips, "Constituting the Global Gay: Issues of Subjectivity and Sexuality in Southern Africa", in D. Herman and C. Stychin, *Sexuality in the Legal Arena*, London (2000), p. 26.
87. In December 2007 two courts of first instance ordered in two different cases prescreening to be allowed.
88. C. Vance, "Social Construction Theory: Problems in the History of Sexuality", in D. Altman, et al., *Homosexuality, Which Homosexuality?*, London (1989), p. 22.
89. D. Greenberg, *The Construction of Homosexuality*, Chicago (1988), pp. 25 ff.; R. Tielman and H. Hammelburg, "Country-by-Country Survey," in A. Hendriks, R. Tielman and E. Van der Veen, *The Third ILGA Pink Book*, Buffalo (1993), p. 251.
90. D. Greenberg, see note 89, p. 41.
91. J. Fleras, "Reclaiming Our Historic Rights: Gays and Lesbians in the Philippines," in A. Hendriks, R. Tielman and E. Van der Veen, *The Third ILGA Pink Book*, Buffalo (1993), p. 70; E. Heinze, *Sexual Orientation: A Human Right*, Dordrecht (1995), pp. 42-43; D. Greenberg, see note 88, p. 168.
92. D. Gayfield, "On the Periphery of Manhood: the African American Community's Marginalization of Black Male Homosexuality," in *The 2000 Berkeley McNair Research Journal*, at <http://www-mcnair.berkeley.edu/2000journal/Gayfield/Gayfield.html>.
93. E. Heinze, "Sexual Orientation and International Law: A Study in the Manufacture of Cross-cultural Sensitivity," 22 *Michigan Journal of International Law* 283 (2001), p. 306.
94. In its mission, the organization Catholics for a Free Choice "respect and affirm the moral capacity of women and men to make sound decisions about their lives."
95. S. Murray, W. Roscoe, *Islamic Homosexualities*, New York (1997), p. 15.
96. R. Coomaraswamy, "Preface", in L. Welchman and S. Hossain, eds. *'Honor': Crimes, Paradigms, and Violence Against Women*, London (2006).
97. CIMEL/Interights, "Roundtable on Strategies to Address 'Crimes of Honour'—Summary Report," *Women Living Under Muslim Laws*, Occasional Paper No. 12, November 2001, p. 4.

98. For example in Pakistan where, "according to one estimate, around 1,261 cases of 'honor' killings were reported in 2003 alone," there were 938 women and 323 men among the victims. Sarwar, Beena, "No compromise on murder," *The News*, Pakistan, October 17, 2004.
99. R. Ellass, "'Honor' killing spurs Outcry in Syria", *Christian Science Monitor*, Feb. 14, 2007, at <http://www.csmonitor.com/2007/0214/p07s02-wome.html>.
100. E. Hassan, *Yemen Observer*, *ibid*, 2006.
101. The Shari'a is the standard interpretation of Muslim laws, and its provisions vary according to contexts.
102. Asma Khader, "Crimes Against Women Are Crimes Against Humanity," report of the panel held in December 1999, Women's Caucus for Gender Justice.
103. V. Hamzić, "Ijtihad—Before and Beyond—An Overview of Historic and Contemporary Forms of Ijtihad", The 3rd Inner Circle Annual Retreat, Cape Town, Republic of South Africa, June 2006, p. 1.
104. See A. An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights," in A. An-Na'im, *Human Rights in Cross-Cultural Perspectives—A Quest for Consensus*, Philadelphia (1992).
105. N. Begikhani, "HRV in a European Context: The Case of Heshu Yones", *Honor Related Violence within a Global Perspective*, *ibid.*, 2004, pp. 36-40.
106. References from: Amnesty International, *Stonewalled* (2005); People's Union for Civil Liberties, Karnataka, *Human Rights violations against the Transgender Community* (2003); Institute for Tongzhi Studies, at www.tongzhistudies.org; International Lesbian and Gay Human Rights Commission, *The rights of Transvestite in Argentina* (2001); D. Greenberg, *The construction of homosexuality* (Chicago, 1988); TransgenderASIA, at <http://web.hku.hk/~sjwinter/TransgenderASIA>; M. Harada, *Japanese Male Gay and Bisexual Identity*, in *Journal of Homosexuality*, Vol. 42(2) 2001, p. 77; T. Boellstorff, *Playing back the nation: Waria, Indonesian Transvestites*, in *Cultural Anthropology* 19(2):159; S. Murray and W. Roscoe, eds., *Boy-wives and Female Husbands—Studies in African homosexualities*, New York (1998); Institute of Environmental Sciences, Cheikh Anta Diop University, Senegal National AIDS Control Council (CNLS) and Horizons Program, *Meeting the Sexual Health Needs of Men Who Have Sex With Men in Senegal* (2002), at <http://www.popcouncil.org/pdfs/horizons/msmsenegal.pdf>; D. West and R. Green, eds., *Sociolegal Control of Homosexuality—A Multi-Nation Comparison*, New York (1997); S. Tamale, *Out of the Closet: Unveiling Sexualities Discourse in Uganda*, 2:2003, at <http://www.feministafrica.org/fa%202/02-2003/sp-tamale.html>; L. Cameron, *Sexual Health and Rights: Sex Workers, Transgender People & Men Who have Sex with Men*, Thailand, OSI-SHARP; S.B. Pant, *Social Exclusion of Sexual and Gender Minorities*, Blue Diamond Society (2005).



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Case Study: Exposure of Human Rights Violations Based on Gender Identity—Sangama, Bangalore, India

Introduction

People whose sexual and gender identity and expression challenge social and cultural prescriptions of appropriate femininity and masculinity are sometimes referred to as “sexual minorities.” Sexual minorities in India span a diverse range of sexualities and gender identities including gays, lesbians, bisexuals, *hijras*, *kothis* and female to male transsexuals. *Hijra* communities have their own cultures and ways of living, including their own festivals and gods and goddesses.

Same-sex sexual conducts are illegal in India. All homosexual acts come within the framework of the criminal law prohibition regarding “unnatural offences” embodied in Section 377 of the Indian Penal Code based on the British colonial criminal code. According to the code, “voluntary carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment which may extend to imprisonment for life or for ten years and also be liable to fine.” While Section 377 is applicable to the entire spectrum of sexual minorities, *hijras* and *kothis* are the most vulnerable. As the most visible sexual minorities and also the poorest—with few sources of income other than sex work or begging—they are positioned at the bottom of the hierarchies of class and gender. These intertwined factors of class and sexuality make them doubly targeted for violence of brutal proportions, often by the police themselves.

A case study of violence

“Kokila, a 21-year-old *hijra*, had been living in Bangalore City for five years. She survived through sex work, the only option available to most *hijras*. In June 2004, while waiting for clients, she was raped by ten male thugs (“*goondas*”). They threatened to kill her if she didn’t have sex with them. She was forced to have oral and anal sex with all of them. During the sexual assault, two policemen arrived. Most of the

goondas ran away from the scene but the police caught two of them. Kokila told the police about the sexual assault. However, instead of registering a case against the assailants and sending Kokila for medical examination, they harassed her with offensive language and took her, along with the two captured men, to Byappanahalli Police Station.

“In the police station, Kokila was subjected to brutal torture. She was taken to a room, stripped naked, and handcuffed to a window. Six policemen, allegedly drunk, hit her with *lathis* and their hands and kicked her with their boots. They taunted and threatened her, with the statements: “*ninna ammane keyya*” (we will fuck your mother), “*ninna akkane keyya*” (we will fuck your sister), “*khoja*” (derogatory word used against transgenders) and “*gandu*” (one who gets penetrated anally, a derogatory word). Her hands, palms, buttocks, shoulder and legs were severely injured. The police also burned her nipples and *chapdi* (vaginal portion of hijras) with a burning coir rope. One policeman of the rank of Sub-Inspector of Police (SI) positioned his rifle on her *chapdi* and threatened to shoot her. He also tried pushing the rifle butt and *lathi* into the *chapdi*, saying, “Do you have a vagina, can this go inside?” while other policemen watched and laughed. This is to humiliate a transsexual woman by insisting that she is not a woman, as she was not born with a vagina.

“After a few hours, the Inspector of Police (PI), the highest-ranking police official of that police station, arrived in Kokila’s room. He directed the policemen to continue the torture, which lasted into the night. The police tied her up and the Inspector of Police threatened to leave her on the railway track unless she confessed to the knowledge of the robbery of a diamond ring and a bracelet. They ignored her pleas that she had no knowledge of the robbery, or the person they were trying to get her to implicate in the robbery. At 1:00 a.m., four policemen (including the PI and SI) dragged Kokila into a police jeep and took her to a *hamam* (bathhouse) run by *hijras* in Krishnarajapuram area. They physically abused her and forced her to knock on the *hamam* door and call the *hijras* living there to open the door. At around 2:00 a.m., they took her to another *hamam* in Garudacharapalya area. They broke open the lock of that *hamam* and forced her into male clothes (shirt and trousers). They tied a towel to her head and threatened to shave off her hair. Police also searched both the *hamams* illegally. At around 3:00 a.m., Kokila begged the Police to take her to the house of Chandini (a *hijra* human rights activist) who lived nearby. The police entered Chandini’s house forcibly and searched the entire house despite Chandini’s protests. Chandini told the policemen that they couldn’t enter her house at such hours and without any valid reason and her consent. The police then threatened her and her husband with dire consequences. Finally, on Chandini’s demand that Kokila be left behind and her assurance that she would bring Kokila to the police station in the morning if her presence were required, the police left her residence at 3:30 a.m.”

Addressing individual violation

This egregious, though not unusual, incident came to light through the work of Sangama, an organization devoted to protecting the human rights of sexual minorities in India. While Kokila's rape was not the first such incident of violence in Bangalore, it was the first time in Bangalore's history an organization publicly responded. Not only was Sangama willing and able to assist right away, they were well-placed within the community and known through their outreach efforts. Sangama's effective response provides a model for how to strategically address individual violations.

Upon receiving information about the treatment that Kokila had received by the police, Sangama conducted an immediate visit to the police station to pressure officers to register the offence as a First Information Report (FIR), a document required for any further action. Vital to this process was getting the offence registered in the presence of a lawyer. This put the police on notice that members of the *hijra* and *kothi* community, though despised by the wider society, had significant legal support to pursue their claim. The presence of a lawyer also ensured that the rule of law would be observed and that the police would not be able to minimize the gravity of the offence.

Once the necessary legal action had been taken, Sangama began to think about using this incident to spark a wider human rights campaign. They knew that key to this process would be a detailed documentation of the human rights violation. The extract quoted above is a summarized version of the documentation prepared by Sangama. Such documentation was put into an e-mail and distributed locally, nationally, and internationally requesting messages to be sent to the Chief Minister of Karnataka urging him to take action against the perpetrators.

The campaign raised the visibility of the issue, and underscored that the incident was not just a local aberration, but a matter of national and international concern. Sangama also organized a public rally to protest Kokila's treatment, to condemn the police, and to pressure the local perpetrators. In the course of the rally, thousands of flyers were distributed both in English and Kannada (the local Indian language), naming the police officers who raped Kokila, and calling for their suspension. The media covered the protest in such large numbers that the details of the crime and the perpetrators were widely disseminated. Many *hijras* and *kothis* attended both the rally as well as the week-long hunger fast.

To ensure that pressure was applied upon the perpetrators, communities country-wide had to be mobilized. Sangama made an effort to ensure the participation of *hijras* and *kothis* from other parts of India by organizing transport and lodging in Bangalore for out-of-city participants. They also communicated with other human rights activists sympathetic to their cause. The rallies and protest were attended by a wide range of human rights and women's rights groups, thereby illustrating a wider support for *kothi* rights. Ever since its inception, Sangama had participated in a wide

array of human rights activities, and had built solidarity across issues. This ensured that when a local action was called in Bangalore, both human rights and women's rights groups actively participated.

Following the provision of legal aid and the mobilization, some of Kokila's perpetrators were prosecuted.

Moving beyond individual violation: Doing a fact-finding report

While Sangama forced the State to take accountability for the crime against Kokila, their actions did not adequately address larger issue of systematic discrimination. Indeed, exposure of rights violations cannot just stop at addressing individual cases. Rather, it is critical to document how the larger community itself has suffered horrific violence and how that violence is connected to social exclusion. In other words, any improvement for *hijras* and *kothis* will require a more holistic change.

One way to address the above type of concerns is to write a human rights report. In India, civil liberties groups have been using human rights reports as a way of making the State accountable since the 1970s. However apart from one report, "Human Rights Violations against Sexual Minorities," published in 2000,¹⁰⁷ little information had been gathered on the rights of *hijras* and *kothis*. With this in mind, Sangama gathered a fact-finding team with representatives from women's rights and human rights groups and progressive lawyers, as well as a sexuality organization. The diverse composition of the fact finding team as well as the fact that it was done under the auspices of the premier human rights organization in the country (People's Union for Civil Liberties) was key to its success. The team heard testimonies from those who had suffered violence and also used Sangama's documentation. The report emphasized the socio-cultural context of the *hijra* and the *kothi* community, introducing them not just as "victims" of violence but as human beings with distinct modes of cultural and social expression. In this way they could better humanize the communities and frame their struggles in a compelling way, accessible to the general public.

The creation of a fact-finding report

The purpose of the fact finding report was to educate the wider public—and particularly human rights groups—about the plight of *hijras* and *kothis*. Gathering multiple stories of violations, the report communicated a pattern of systematic violence rooted in structures of discrimination and oppression. The report examined the institutions of family, law, medicine and the media, focusing on violence suffered at home and in public spaces, police entrapment, abuse, harassment in police stations and rape in jails. The key point was that violence of such terrible proportions could only occur with wider societal complicity.

The research aimed not just to document events in the past but also to suggest future lines of action. For example, it highlighted ways of mobilizing existing national and international legal frameworks. It also included explanation of basic rights when arrested, fundamental rights under the Constitution, important legal decisions, and key documents in the area of transgender rights, such as the International Bill of Gender Rights.¹⁰⁸ Practical tools were also added as annexes, such as sample bail applications and letters to the National Human Rights Commission of India on police violence. A strong series of recommendations proposed police reform, law reform, medical reform and interventions by civil society. To ensure that the report was a resource for activists and researchers, it included a bibliography as well as a complete list of organizations working on sexuality rights within India.

While the report was a systemic examination of violence, Sangama and the team did not want to portray *kothis* and *hijras* merely as victims. While the emotional power of human rights reporting lies in its ability to make us feel sorry for the person who stands victimized, there is a danger that s/he will be viewed merely as an abused and humiliated person. This ignores the fact that survivors have an enormous capacity for resilience and often resist violence in heroic manners. The report thus consciously incorporated an entire chapter on organizing by *kothi* and *hijra* sex workers, documenting how they have coordinated to fight police violence. Even the visuals used in the report showed pictures of rallies organized by the *hijra* and *kothi* community.

Impact of the report

The report, whose first edition was released in 2003, has proven to be an extremely useful advocacy tool, helping to make issues of sexual orientation and gender identity more “respectable.” It linked marginalization on grounds of gender identity to the human rights discourse. While sexual rights advocates often lack a language to discuss alternative sexuality in a manner acceptable to the mainstream community, human rights provides a framework to build solidarity across “queer” lines. The deployment of human rights language such as “freedom of expression,” and “freedom from arbitrary arrest” has created a cultural space to talk about marginalization on grounds of sexual orientation.

Because the report has received so much media attention, sexual rights advocates and others regularly refer to it whenever the issue of transgender rights is raised. Thus the report was used by activists when the Karnataka legislature was debating the rights of the *hijra* community. Similarly it has been used in training programs with police officers, lawyers, NGO workers and HIV&AIDS and sexuality activists. It has been used in international forums such as the former UN Commission on Human Rights, where it was circulated to the representatives of various South Asian States. The report also serves as a valuable educational resource: Students from law

schools in India have been doing project work based on the report. Report testimonies have also been incorporated into the petition filed against Section 377 to challenge the existing sodomy law.

Conclusion

Sangama's experience illustrates the ways in which a local organization can make a difference in the lives of sexual minorities locally, nationally, and internationally. By building alliances within the *kothi* and *hijra* communities and amongst other human rights communities they developed a reputation and base of support to allow them to effectively denounce deplorable incidents such as Kokila's torture. By documenting a series of individual violations, they were able to show a systematic pattern of violation against all members of the group. They were thus able to frame the violence in human rights language, giving greater legitimacy to their cause. Lastly, the use of multiple modes of protest from e-mail, rallies and other events to fact-finding reports enabled them to raise awareness of the pressing issues and garner media attention to promote their cause.

Notes for Facilitation

It may be useful to collect more information about the situation to which the case refers before facilitating a session using this case study. The report, “Human Rights Violations against the Transgender Community—A study of khoti and hijra sex workers in Bangalore, India” (2003) is available online on various websites. It can be found at: <http://ai.eecs.umich.edu/people/conway/TS/PUCL/PUCL%20Report.html>, where also the story of Kokila is reported.

Media news regarding the report, at the national or local level, can be found at <http://www.countercurrents.org/gen-narrain141003.htm>.

More information on the national campaign to challenge the existing sodomy law, “Voices Against Section 377,” can be found at <http://www.voicesagainst377.org/>.

The report presented in this chapter, as well as the campaign indicated above, can be used as an interesting example of strategic documentation linked to mobilization for human rights activists living in countries where same-sex sexual behaviors between consenting adults are still criminalized.

When using this case study, make sure that the audience had a chance to read the “Cultural glossary.”

Other information may be found on the website of the organization Sangama at <http://www.sangama.org/>.

Notes

107. <http://www.pucl.org/Topics/Gender/2003/sexual-minorities.htm>.

108. Drafted at the International Conference on Transgender Law and Employment Policy held in Houston, Texas in 1993. See <http://www.pfc.org.uk/node/275> for more information.



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7 Sexual Rights in Context

Throughout the world, claims for sexual rights have been part of the agenda of a growing range of groups and linked to an ever wider sphere of issues. Often these groups represent communities that, as in the case of LGBTIs, are frequent targets of rights violations. More generally, women, young people, sex workers and trafficked people, asylum seekers and refugees, HIV positive individuals, workers and others represent groups who have been involved in the claim for sexual rights and, therefore, may constitute both examples and allies in the claim for sexual and LGBTI rights.

In the last ten years, women's health and rights advocates, LGBTI activists, young people's rights organizers, HIV advocates, among other human rights activists, have been seeking greater recognition of sexuality as a human rights issue. Virulent debates (both spoken and unspoken) around sexuality formed the fulcrum of debate during a wide range of inter-governmental meetings from the early 1990s to today: The International Conference on Population and Development (ICPD) and its follow up meetings; the Beijing World Conference on Women and its follow-up; the UN General Assembly Session on HIV; the UN Children's Summit; the (now-defunct) UN Commission on Human Rights, and meetings at the NGO Committee—the committee of Member States of the UN who decide whether NGOs will be given special status (called ECOSOC status) that allows them greater opportunities to participate in UN activities. After a great deal of struggle, necessitating an appeal to a higher UN body (the Economic and Social Council) a number of LGBT organizations have now received this status. Some advances have, indeed, been achieved in posing issues of sexuality as legitimate human rights concerns. However, the gains have been slow and uneven.

This chapter provides a brief overview of the challenges faced and results achieved by these groups and movements, and some of the ways in which they are organizing their claims to sexual rights.

By the end of this chapter, the reader should:

- ◆ Understand the way sexual rights have been articulated by other movements and be able to identify underserved populations at greater risk for sexual rights violations
- ◆ Understand the potential connections between the main concerns of other social movements and groups and LGBTI individuals and communities

Women and sexual rights

For many years, a range of women's movements have been pushing at the boundaries and definitions of human rights, so that violations targeted at them can be more adequately recognized and protected by the international human rights community. These efforts have primarily focused on two areas. First, they seek to show where the types of violations that women most commonly experience are already prohibited within the existing human rights framework but have been ignored or rendered invisible (for example, rape as torture, forced medical treatment as degrading treatment, and sexual violence in armed conflict as a war crime). Second, these efforts expand the boundaries of the human rights framework to better incorporate the reality of diverse women's experiences by giving name to amalgams of rights, like sexual rights and bodily integrity. "Sexual rights" has emerged over the past ten years as a term used in the international women's human rights agenda. However, the issues considered under the rubric of sexual rights have a long history in women's (and men's) resistance to the regulation of sexuality.

Systematic discrimination experienced by women in almost all aspects of their lives—from education to health, employment to decision making, amongst others—has left them in a weak position when it comes to negotiating their sexual rights, both on personal and policy levels. Furthermore, global norms of "appropriate" femininity, discourage open discussions of sexuality (women are supposed to be ignorant about sex, and they are certainly not supposed to talk about it), and hamper efforts to raise awareness about sexual rights. Incidents of gender-based discrimination are numerous and widespread: rampant sexual violence and gender-based persecution of women in peace-time; systematic rape, enforced pregnancy, torture of women in situations of armed conflict; increased enforcement of conservative, religious and cultural fundamentalist policies—especially with regard to women's reproductive and sexual lives; efforts to dismantle laws and policies that were instituted in order to protect lesbians, gay men, bisexual, transgender people from discrimination; and the list goes on.

Often, women's human rights organizations look at the way that gender norms across the world result in similar experiences among women in widely diverse locations. At the same time, many have persistently called attention to differences in women's experiences. Discrimination against women is exacerbated by a range of discriminatory practices in which women from racial, ethnic or national minority

groups, as well as indigenous women, are doubly or triply regulated through norms of gender as well as racist or xenophobic stereotypes. As the Asia Pacific Forum on Women, Law and Development notes, “racist ‘othering’ heightens women’s vulnerability to gender violence and sexual torture by their oppressors. At the same time, the sexist value placed on their ‘honour’ by their own communities makes them prime targets for rape, systematic rape and sexual torture for the purposes of shaming their men.”¹⁰⁹

The concept of sexual rights as an organizing tool has sparked the imagination of a diverse group of women’s rights advocates in part because of its potential to encompass a wide range of rights.

Work in the area of sexual rights has provided women’s movements the opportunity to expand global alliances founded on a diversity of situations, culture, race, class and sexual identity, rather than the possible divisiveness of identity politics.

It draws on the strength of these experiences, while providing a powerful locus for organizing for gender equality and women’s empowerment. Sexual rights are embedded in the ideal of women’s enjoyment of their human rights, as well as their right to live free from violations: Women’s capacity to control their reproductive and sexual lives is inextricable from their sexual autonomy, their health, their bodily integrity and their economic well-being.¹¹⁰

Sexual rights of young people

Sexual rights are a critical issue for young people, especially as they come to grapple with their own sexuality, gender identity and frameworks of desire. While youth is also a time for many to sort through issues of gender identity and sexual preference, young people in general have less access to sexuality information and health services than older people.¹¹¹ Even when they do have access, health services may not be geared toward or appropriate for youth. In many communities, comprehensive sexuality programming is being reduced, rather than expanded, even in the face of the desperate need for it as the AIDS pandemic continues to grow. Such gaps in information and services are especially glaring because evidence shows that adolescents are becoming sexually active at a younger age¹¹² and that they may be particularly vulnerable to diseases such as HIV and other sexually transmitted infections. Early and forced marriage and sexual violence, for example, are of particular concern for young women who may not have the knowledge, confidence or power to say “no.” Not able to negotiate safe sex, young women often find themselves in an impossible quandary: They are coerced or forced to have sex, and then punished for the results. For example, around the world pregnant girls and young mothers are often prevented from continuing their education, but, at the same time, lack of education is a risk factor for women to contract HIV.

Despite these challenges, young people around the world are increasingly organizing to demand their reproductive and sexual rights. More and more, these rights are being incorporated into international documents such as the Youth Position

The Experience of the Youth Coalition

World conferences and their follow-up processes have encouraged and even spawned new sexual and reproductive rights initiatives, like the Youth Coalition (YC). YC is a youth-led, youth-run organization working internationally to promote and protect the sexual and reproductive rights of young people through public education campaigns, advocacy and coalition building. The YC uses the International conference on Population and Development's Programme of Action (ICPD PoA) to advocate for the sexual and reproductive rights of youth. Youth Coalition members are active and work specifically on direct advocacy and lobbying with decision-makers during UN meetings. By attending international conferences and lobbying actively and visibly at these events, the YC strives to inform policymakers, both nationally and internationally, mainly through economic and social commissions, about sexual and reproductive health and rights of adolescents and youth. The YC also hopes to encourage youth participation in the decision-making processes. This kind of advocacy for sexual and reproductive rights has resulted in concrete gains in international and national law and policy.

Paper on the UN General Assembly Special Session on HIV/AIDS. Despite the importance of asserting children's and adolescents' rights, these rights remain highly contentious. Resistance is voiced most strongly by conservative governments and non-governmental organizations opposed to acknowledging adolescents' sexuality, and fearful of young people's decision-making. In this sense, work in this area forms one aspect of efforts to advance sexual rights issues within the context of growing religious and cultural fundamentalisms and conservative political gains.

Opposition to young people's rights also stems from perceived threats to traditional family roles. Advocating for the rights of the child may be seen to infringe on parent's rights and responsibilities. The Convention on the Rights of the Child provides some guidance in this area, emphasizing parents' responsibility to ensure children can exercise their rights, in accordance with their evolving capacities. However, the exact meaning of sexual rights for a child of seven or ten years old is unclear. And how these rights differ from that of a 17-year-old is similarly problematic.

Sexual Rights of Youth and Human Rights Instruments

Taken together, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Programme of Action of the ICPD (with ICPD+5), the Beijing Platform for Action (and Beijing +5) provide solid grounding for advocating on behalf of the reproductive and sexual rights of young people.

Sex work and trafficking

The rights of sex workers are controversial, even among health and human rights advocates. One of the main obstacles to accessing rights is the stigma attached to sex work and its position outside the realm of social acceptability. Sex workers are subject to severe disapproval from society, and are stigmatized as vectors of disease. Due to the illegal (often criminalized) and underground nature of their work in many countries, sex workers have difficulty in insisting on safe sex or accessing health or legal services. Even where sex work is not criminalized, it is still stigmatized.

Sex workers are often the targets of sexual and physical violence and their outcast position makes it difficult to obtain justice when such violence occurs; they are sometimes even seen as responsible for it. According to a member of the Sex Worker Education and Advocacy Task (SWEAT) Force in South Africa, “Exclusion renders sex workers vulnerable to abuse, because outcast status denies sex workers the legal and social protections that are available to citizens.... For these reasons, issues facing sex workers are inextricably related to the fight against violence against women, struggles for basic human rights and for decent working conditions, particularly for the poor who work in informal sectors.”¹¹³

Another obstacle to realizing their rights is the notion, put forward by some feminist as well as conservative “abolitionist” organizations, that no women or man can truly consent to sex work. Under the abolitionist view, individuals working in the sex industry cannot really assert their rights, since violence is an “inherent” aspect of their job. Indeed, these advocates view prostitution per se as a form of violence against women.

Other feminists and human rights advocates recognize that many women willingly and knowingly choose sex work, but they also point to larger issues of poverty, violence, and subordination that induce women into sex work in the first place. They also recognize the existence of millions of people—the majority of whom are women and girls but trans women have also been documented as having been trafficked—who are forced into sex work with deceit, coercion or violence. Trafficking of these victims involves a series of linked crimes at each stage of movement—from the deception or coercion used to induce people to migrate, to violence and deception in transit, to taking away identity documents and holding victims in confinement or bonded labor.

Fortunately, sex workers are organizing themselves to demand their rights within a human rights framework, including labor rights protections. While few international legal or policy instruments recognize sex workers’ rights per se, sex worker demands for safe working conditions and access to health services are grounded in international conventions and treaties. Sexual rights, then, are an important platform on which individuals in the sex sector can base their demands.

Refugees and asylum seekers

A significant amount of advocacy on behalf of refugees and asylum seekers incorporates a human rights perspective. All too often, however, the sexual rights components of refugees and asylum seekers cases are ignored or misunderstood. Approximately 50% of all refugees are girls and women, and they remain at high risk of violence, unwanted pregnancy, unsafe delivery, and sexually transmitted infections.¹¹⁴ There is virtually no data about the percentage of lesbian, gay, bisexual, transgender or intersex refugees or asylum seekers. Immigration laws and regulations may not recognize gender-based or sexual orientation-based discrimination and persecution as a legitimate basis for asylum. This is particularly the case when asylum claims are made on the basis of sexual orientation.

One case from Eastern Europe illustrates the difficulties faced by members of the LGBTI community: A number of years ago, a Russian lesbian applied for asylum in the United States. The basis of her request was that she had been detained a number of times and beaten by the Russian police, who threatened her with involuntary psychiatric incarceration if she continued her work with a lesbian youth organization. Her asylum claim, which included her fear of incarceration, was initially denied. This was in part because the stated motive for the forced institutionalization was the desire to treat or cure her homosexuality, rather than to punish her. A higher court later reversed the decision, claiming “[H]uman rights laws cannot be side-stepped by simply couching actions that torture mentally or physically in benevolent terms such as ‘curing’ or ‘treating’ the victims.”¹¹⁵ However, the case is still open and now revolves around whether the fear of psychiatric persecution is well-founded.

Sexual rights and HIV

The HIV pandemic has brought heightened attention to sexual health and sexual practices. It has also stoked the flames of homophobia and heteronormativity. For people living with HIV and AIDS, sexual rights may be particularly hard to attain. People living with HIV, and especially those from marginalized groups, such as LGBTI individuals, sex workers, racial and ethnic minorities and injecting drug users, among others, face discrimination, loss of employment and the denial of health care. They are subjected to torture and ill-treatment by police and health care providers, as well as intimate partners. Schools, communities, health clinics and the like can all become sites of risk of infection, discrimination and abuse toward people living with HIV. Extreme poverty, complex emergencies and displacement all put individuals and groups at risk of both violence and HIV infection, and they are all circumstances in which prevention, treatment, care and support, as well as legal support and access to justice may be withheld or difficult to obtain.

Women are physiologically more vulnerable to infection, and HIV positive women are subject to particular discrimination, especially around reproductive

choice and their right to sexual autonomy. For example, if they decide to have children they may be blamed for passing the infection on to their children, whereas in some societies forgoing children may draw out questions about their HIV status. Social norms and regulations of masculinity also are likely to increase men's risk of contracting HIV as "traditional notions of masculinity are strongly associated with a wide range of risk-taking behavior."¹¹⁶

In some countries and communities, HIV is concentrated among men who have sex with men (MSM).¹¹⁷ In far too many cases, men who have sex with men are blamed for HIV, and consequently vilified. MSM and transgender individuals are extremely underserved in the global AIDS response, despite linkages between same-sex practices and bias-motivated violence, including sexual violence. Estimates are that "less than 10% of men who have sex with men globally have access to the HIV prevention and AIDS care services they need."¹¹⁸

Transgender persons in particular are often entirely invisible. For men who have sex with men and transgender individuals, the threats of sexual and physical violence are real and persistent all over the globe.¹¹⁹ At the same time, information about the risks associated with anal sex is not widely disseminated, nor are "female" condoms for use by men in the context of anal sex.

At the policy level, the criminalization of same-sex sexual activity in many countries stigmatizes these individuals and groups and exposes them to harassment and violence by the police, as well as by members of the community, with impunity. Such acts or threats of violence ultimately impede efforts to provide men who have sex with men and transgender persons with the information, support and resources necessary to prevent HIV, to seek appropriate treatment and care if infected,¹²⁰ and to report incidents of violence and pursue justice.

Sexual rights and workers' rights: the role of unions

Discrimination in employment and occupation has far-reaching consequences on social and economic opportunities or constraints for groups who are marginalized, including LGBTI people. The role of unions can be crucial for asserting claims and finding allies in the struggle to secure LGBTI human rights. Not only have unions helped support LGBTI rights in the areas of employment and occupation, they have provided political support for legislative reforms and claims of social justice. One of the most extensive international union efforts, for example, has been taken by **European Trade Unions Confederation (ETUC)**. In its congress in Prague in 2003, the ETUC adopted a four-year action program with the goals of recognizing workplace diversity and fighting discrimination, including that based on sexual orientation and gender identity. Another global union, **Education International and Public Services International (EI-PSI)**, the largest international confederation in the public sector, has been working on rights of LGBTI employees for many years.

Unions and LGBTI rights: the case of Italy

The **Settore Nuovi Diritti** (New Rights Department) was created in the 1990s within the **Confederazione Generale Italiana del Lavoro (CGIL)**, the largest Italian trade union with more than five millions members (almost 10% of the country's population). The scope of the department was to work on issues related to the State and secularism. However, it has ended up working mostly on LGBTI rights, sex work, and assisted reproductive technologies. In the field of LGBTI rights, the department not only facilitated the opening of local offices dealing with discrimination based on sexual orientation and gender identity, but it also assumed a key role in facilitating dialogue between LGBTI civil society (in particular the transgender groups) and local and national governments, as well as lawmakers. In this role it has collaborated with members of Parliament to draft legislation, supported pride parades, educated trade union members on LGBTI rights and participated in international events and seminars.

In 1998, a resolution on the Protection of the Rights of Lesbian and Gay Education Personnel was approved by the Second World Congress of Education International. Several initiatives have been carried out since then. In 2004 in Porto Alegre, the EI/PSI International Gay, Lesbian, Bisexual and Transgender Forum was launched during the Fourth World Congresses of EI and PSI.

More recently, the **International Confederation of Free Trade Unions (ICFTU)**, now **International Trade Unions Confederation (ITUC)** urged all of its 223 affiliates (now 304 in 153 countries and territories) to “[s]upport the Resolution against discrimination based on sexual orientation which will be tabled under Item 6 (Racism, racial discrimination, xenophobia and all forms of discrimination)” at the 60th session of the (now-defunct) UN Commission on Human Rights. A few months later, the 18th World Congress of the ICFTU held in Miyazaki, Japan in December 2004, approved a final resolution “**Fighting Discrimination and Achieving Equality**” which appealed to trade unions to fight prejudice, bigotry and

Unions and legislative advocacy: the case of Nigeria

Officials of the **Nigeria Labour Congress (NLC)** joined human rights and other civil society organizations to protest the 2007 **Same Sex Marriage Prohibition Act** and raise awareness about its potentially devastating consequences. The bill not only criminalized same-sex marriages, but bans any form of advocacy on LGBTI rights in the country. The NLC joined the coalition against the bill and participated in a public hearing at the House of Representatives opposing it. The NLC is one of the few cases of African unions dealing with the human rights implications of LGBTI issues.

intolerance in the workplace, in society and in the unions themselves, and recognized that discrimination on grounds of sexual orientation and gender identity is not different in nature and form from discrimination based on other grounds. In sum, the fight against worker discrimination based on sexual orientation and gender identity and expression is becoming part of the unions' official and informal agenda in many countries.

Convention No. 111 of 25 June 1958 Concerning Discrimination in Respect of Employment and Occupation

Article 1

“(...) the term discrimination includes—

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
 3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.”

Notes for Facilitation

This chapter includes extremely wide-ranging information and it is unlikely that any one person will have in-depth knowledge of all the areas covered. Indeed, precisely because these are *evolving* issues, the situation in any particular community will likely take on its own specific form. It will be beneficial to work through each section slowly, or, in a workshop to highlight two or three areas that are most appropriate to the setting. In addition, it may be helpful to gather information from local women's rights, youth, sex workers' rights, anti-trafficking, HIV&AIDS, immigrants' rights, workers' rights, and refugee and asylum seekers organizations and/or service providers about the particular human rights issues facing each of those communities in the setting in which the workshop is taking place.

It may be especially useful to invite representatives from those organizations to give a presentation or function as resource people for the workshop/training. For example, for the section on workers' rights of the chapter, the facilitator might want to explore the possibility to connect with local or national unions who may be interested in LGBTI issues. On the international level, WorkersOut is the international network of domestic unions working on LGBTI issues.

Resources and Background Materials

For further reference, see

- ◆ Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press (2003), for a good general overview of contemporary human rights issues;
- ◆ Geetanjali Misra and Radhika Chandiramani, eds., *Sexuality, Gender and Rights: exploring theory and practice in South and Southeast Asia*, New Delhi: Sage Publications (2005); Bert B. Lockwood, ed., *Women's Rights: a human rights quarterly reader*, Johns Hopkins University Press (2006); IDS Bulletin, *Sexuality Matters*, Vol. 37, No. 5 (October 2006);
- ◆ On the issue of workers' rights specifically, see S. Fabeni, M.G. Toniollo, *The global and national union movement: perspectives and strategies for advancing human rights* (2005), at http://www.cgil.it/org.diritti/omosess/seoul.htm#_edn2;
- ◆ Additional references may be found on the following websites: Education International-Public Service International (EI-PSI), International Gay-Lesbian-Bisexual-Transgender (GLBT) Forum at <http://www.ei-ie.org/glbtf/forum/>; CGIL Settore Nuovi Diritti at <http://www.cgil.it/org.diritti> (documents in English and Italian); UNISON at <http://www.unison.org.uk/out/>.

Exercise 6: Making sexuality connections

Pick a headline or short story from a newspaper that tells a story of a human rights violation (though it does not necessarily use human rights language) not related to sexuality, but related to youth, trafficking, asylum/refugees, HIV&AIDS, or workers' rights.

Break into small groups of 3-4 people

Review the story and answer the following question

1. What is the connection to sexuality?
2. How to articulate this as a sexuality-related human rights violation:
 - a. Who is the victim/survivor?
 - b. Who is the violator/perpetrator?
 - c. What is the violation/harm?
3. What is the remedy?
 - a. Who will provide the remedy?
 - b. Is the remedy available, acceptable and accessible?

(Use worksheet/chart from Exercise 2)

Notes

109. Asia Pacific Women Law and Development, *Gender and Racism Issue Papers* (2001). Prepared for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001, Durban, South Africa. Produced by APWLD, ISIS International-Manila, INFORM and Centre for Refugee Research.
110. See Susana T. Fried and Ilana Landsberg-Lewis, "Sexual Rights: from concept to strategy" in Kelly D. Askin, ed., *Women's Human Rights Reference Guide*, New York (2000).
111. See for example, Friedman, "Overcoming Obstacles to Good Adolescent Health. Network 14(2): 4-5, 1993; Aggelton and Rivers, "Behavioral Interventions for Adolescents" in Gibney, DiClemente, Vermund, eds., *Preventing HIV Infection in Developing Countries*, New York (1998).
112. Gary Barker and Christine Ricardo, *Young Men and the Construction of Masculinity in Sub-Saharan Africa: Implications for HIV&AIDS, Conflict, and Violence*, in World Bank—Social Development Papers, Paper No. 26 (2005), p. 37.
113. Natasha Diller, "Sex Work, Health and Human Rights" in *Women's Health News: Newsletter of the Women's Health Project*, Johannesburg: Women's Health Project (2000).
114. "Ensuring the Reproductive Rights of Refugees and Internally Displaced Persons: Legal and Policy Issues," by Francoise Gerard and Wilhelmina Waldman, *International Family Planning Perspectives*, Volume 26, Number 4, December 2000.
115. *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997), June 24, 1997. See also Amnesty International, *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*. London: Amnesty International (2000).
116. Ibid.
117. Drawn from the public health lexicon, the term *men who have sex with men* focuses on the sexual practices of men who have sex with other men (including transgender people and transvestites). It does not presume an identity attached to this behavior (e.g., homosexual), but is inclusive of men who define themselves as gay or bisexual. For instance, many men who have sex with men also have sex with women and vice versa. LGBT—lesbian, gay, bisexual and transgender refers to individuals and groups who claim these sexual and political identities based primarily on their same-sex practices. It is inclusive of groups and identities, and encompasses sexual preference and expression as well as gender identity and expression. In some cases, LGBT is a problematic category, as it lumps women, men and transgender people together, even though the issues they face are drastically different. However, LGBT exists as a collective concept that is used for political, social and economic organizing purposes. From conventional public health and HIV outreach perspectives they represent at-risk communities or "vulnerable" groups. For example, due to the high incidence of rape, HIV&AIDS rates among black South African lesbians are reportedly as high as in the general population. Yet, attention to women who have sex with women is virtually unknown in HIV advocacy and service provision. Transgender is used as an umbrella term for people whose gender identity and/or gender expression diverges from the sex they were assigned at birth, including cross-dressers, female or male impersonators, pre-operative or post operative or non-operative transsexuals. Transgender people may define themselves as female-to-male (FTM, assigned a female biological sex at birth but who have a predominantly male gender identity) or male-to-female (MTF, assigned a male biological sex at birth but who have a predominantly female gender identity); others consider themselves as falling outside binary concepts of gender or sex. Transgender people may or may not choose to alter their bodies hormonally and/or surgically: the term is not limited to those who have the resources for and access to gender reassignment through surgery. Transgender people may be heterosexual, lesbian, gay or bisexual. Using these definitions, it is possible to look at how HIV&AIDS cuts across gender and sexuality. It is also important in this context to note that information about HIV among women who have sex with women is nearly non-existent. For example, lesbian women in Thailand represent an underserved group vis-à-vis prevention activities. Although HIV prevalence is growing among women who have sex with women—who may have been affected by former male or female partners—they may have difficulty finding out information about safe sex. The majority of information targeted to LGBT individuals is aimed at MSM or katoey. Many lesbians, for example, have no idea that HIV can be transmitted through oral sex. Katoey, or transgendered individuals, represent an important

subset of the LGBT community. Despite an increase in transgender operations (usually male to female), there has not been a corresponding increase in information and health services targeted towards this community, specifically around HIV & AIDS. The 30 baht universal health scheme, for example, does not include a provision for *katoey* men living as women. Furthermore, because they are not legally recognized as women, *katoey* may have difficulty obtaining redress in cases of gender-based violence.

118. UNAIDS, "Men who have sex with men, HIV prevention and care: report of a UNAIDS stakeholder consultation," Geneva, November 10-11, 2003. Accessed at http://data.unaids.org/pub/Report/2006/JC1233-MSM-MeetingReport_en.pdf.
119. While still scanty, some studies are beginning to look specifically at HIV among men who have sex with men. See for example, Carlos F. Cáceres, Kelika Konda, and Mario Pecheny, "Review of the Epidemiology of Male Same-Sex Behavior in Low and Middle-Income Countries," *Review of HIV Prevalence and the Epidemiology of Preventive and Bridging Behavior among MSM in Low and Middle-Income Countries* (March 2005). In Africa, the Horizons Project has pioneered such research with studies about HIV in men who have sex with men in Senegal and in Kenya, and a multi-country study encompassing Burkina Faso, Senegal and the Gambia. See Horizons publications listed at <http://www.popcouncil.org/horizons/pubsarea/pubssd.html>.
120. <http://web.amnesty.org/library/index/engact750052004>.



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Working in Hostile Environments

8

Introduction

The use of sexuality is a potent weapon against one's sense of credibility and one's activism.

—Vahida Nainar, Women's Initiatives for Gender Justice

Violations of sexual rights, including outright attacks on LGBTI activists encompass the range of forms of sexual, physical and psychological violence. They are, unfortunately, an all-too-common occurrence for those who challenge social and cultural norms of appropriate femininity and masculinity. Frequently, the perpetrators are non-state actors (families and communities) with tacit or overt approval by State authorities. Because non-normative sexual practices, including sex between men or between women, sex outside of marriage and exchanging sex for money, among others, are illegal in so many parts of the world, defending sexual rights is often seen as a criminal act in and of itself. This chapter explores in greater depth the kinds of hostility directed towards sexual rights activists. By the end of the chapter, the reader will:

- ◆ Understand the various ways in which discrimination based on sexuality or sexual identity is used to undermine the work of sexual rights and human rights activists
- ◆ Be familiar with the kinds of tactics used by activists to overcome such discrimination and, in particular, to fight for LGBTI rights
- ◆ Learn some successful strategies for addressing these abuses and claiming rights

Attacks on bodily integrity

Attacks on bodily integrity—through the range of forms of sexual, physical and psychological violence—are an all-too-common occurrence for those who challenge

The story of Muna

In October 1999, 23-year-old Muna Hawatmeh (mentioned above), a young woman from a Jordanian family living in the United States of America (USA), was subjected to death threats, prolonged physical assault and kidnapping by her parents and two elder brothers. Alerted by Muna's friend, police forces managed to free Muna as she was being forced to board a plane to Jordan. The case was then brought to trial in the USA: "Prosecutors liken what happened to [her] to 'honor killing', where some families take violent action (...) to avenge a deed, often a sexual liaison by a woman, that is believed to have brought shame and dishonor to the family—in this case, Muna's being gay and living with a lesbian lover."¹²¹

social and cultural norms of "appropriate" femininity and masculinity. The concept of "bodily integrity" as a human right encompasses a bundle of rights, from the right to health to the right to share in the benefits of scientific progress; from freedom from violence and freedom from torture to freedom of association and movement. The notion of bodily integrity is increasingly used to explain this range of rights and to make demands on "duty-bearers."

While it is important to highlight the specific crimes faced by LGBTI people, so-called "honor" crimes can be defined as a cross-cutting theme—that of regulation of sexuality.

On the notion of "Honor"

Honor is generally seen as residing in the bodies of women (...) In many societies the ideal of masculinity is underpinned by a notion of "honor"—of an individual man, or a family or a community—and is fundamentally connected to policing female behaviour and sexuality.

—Radhika Coomaraswamy, *former UN Special Rapporteur on violence against women*¹²²

In 1999, 20 researchers and activists who gathered to discuss strategies in different regions agreed on the following definition: "honor" crimes are "patterns of conduct cutting across communities, cultures, religions and nations and manifested in a range of forms of violence directed, in the majority of cases, against women, including murder ('honor killings') and forced marriage." They further refer to "assault, acid attack, coerced marriage to an alleged rapist, abduction or unlawful confinement/ restriction of movement."¹²³

As previously discussed, references to cultural norms or religious beliefs are often used to justify "honor"-based violations. Conservative members of parliament in Jordan or defence lawyers in Brazil resort to similar arguments as they seek impunity

for perpetrators in the name of “Muslim values” or “Latin blood.” Yet, human rights advocates do challenge mainstream definitions of “culture.” They argue that it is not acceptable for culture to condone harassment, torture or murder, emphasizing that culture cannot be left for perpetrators or their allies to define.

Activists in Turkey have recently secured a number of gains protecting the right to bodily integrity. As Pinar Ilkkaracan explains:

More than 30 amendments to ensure gender equality and sexual and bodily rights are made in the new Turkish Penal Code. For example, the notion that women's bodies and sexuality are commodities of the society and men, and that sexual offences are to be regulated in reference to patriarchal social constructs such as “society's traditions of morality”, ‘chastity”, “honor” have been stamped out. This crucial amendment legally acknowledges women's ownership of their bodies and sexuality in accordance with global human rights norms.¹²⁴

Sexuality-baiting

As described in *Written Out: How Sexuality is Used to Attack Women's Organizing*, “sexuality-baiting” involves manipulating ideas or prejudices about women's sexuality to intimidate, humiliate, embarrass or stifle the work of human rights defenders—including LGBTI activists.¹²⁵ Baiting disproportionately targets women, because it draws on broad political and social consent in most cultures for controlling women's sexuality. However, it can also be used to target men (and boys)—by deploying the threat of violence, retribution or exposure against those who are not sufficiently “masculine.”

Baiting is particularly used to discourage women from organizing on gender, sexuality and other social justice issues. This rhetorical tactic has long been a staple of family and community attacks as well as State-sponsored homophobia and transphobia. Any discussion of “gender,” “feminism” or “sexual rights” may be taken to refer to “deviant” sexualities such as being divorced, marrying against the wishes of the family, refusing to marry or choosing a partner of the same sex. Such attacks reduce the definition of “gender” and the scope of sexualities to a single issue within a vast spectrum.

Other threats against sexual rights defenders are manifested more subtly. These are often woven into the fabric of daily life, where the simplest of activities can be fraught with risks of exposure and sources of potential humiliation. In such cases of family and community discrimination and violence, the State has failed to meet its obligations to respect, protect and fulfill the rights of LGBTI human rights defenders. With unfortunate frequency, the purpose of such *baiting* is to interrupt human rights organizing. In doing so, it also puts the activists' rights, health and even their lives at risk.

In many hostile environments, even one's family and community become a source of danger rather than a safe haven. Persecution of sexual rights activists includes strategies of humiliation, charges that they are traitors, immoral or

indecent or “too western.” Activists may be locked up in their homes, held in so-called “protective custody,” incarcerated in psychiatric institutions, forced into marriage or pregnancy, amongst a host of other abuses. Their offices may be attacked, organizations reputations may be tainted in the media, and family members may be refused jobs or terrorized. Activists from socially marginalized communities, or those who work with LGBTI organizations, immigrants, racial/ethnic minorities, and others may be targeted by State and non-state actors alike. And, when activists do seek justice through the police, their charges are often met with disinterest, complicity or direct violence by the very authorities charged with their protection.

Sexuality-baiting has also been used in trials to challenge the legitimacy of the victim. In cases of sexual violence, this often means insinuating that the accuser (usually a woman) is “sexually loose” or morally suspect. This was the case in the rape trial of former South African Deputy President Jacob Zuma. As the U.S. weekly journal *Newsweek* reported, “The treatment meted out to Zuma’s accuser is hardly likely to encourage women to report sexual violence. Inside the court, Judge Willem van der Merwe allowed evidence detailing her turbulent psychological and sexual history, including earlier allegations of rape and lesbian affairs. By contrast, the sexual past of Zuma—who has several wives in accordance with Zulu custom—barely merited a mention.”¹²⁶

Responding to systematic abuse by State actors

Police abuse

In far too many cases, the police themselves are the primary perpetrators of violence against sexual rights advocates, including in the LGBTI community. In Argentina, for example, the “codes” (police edicts of the early 1990s discussed above) allowed the police to arrest anyone and to keep him/her at the police station for up to 30 days, without notifying a judge or pressing any charges. The edicts were repealed in 1997, following a campaign led by the *travestis* and a broad coalition of feminists, gays, lesbians and bisexuals, human rights and youth advocates, and families of adolescents who had been murdered by the police under detention.

For the *travesti* community, the repeal of the edicts was a milestone: their lives were changed forever. “The first thing they did was to join forces with female sex workers and refuse to pay bribes to avoid arrest. When the police reacted and the abuse/arrests escalated, *travestis*, together with sex workers, staged massive protests in front of the police stations: 30, 50 or even 100 people sat in front of the police station, occupying the sidewalks and the street, chanting slogans and demanding the release of those imprisoned. The noise attracted the TV cameras, and soon the *travestis*—and their cause—became well-known and received increasing sympathy and support”.

The first generation of *travesti* leaders, Lohana Berkins, María Belén Correa and the late Nadia Echazú, were savvy in the way they chose to present their issue. From

the very beginning, they framed their situation as a human rights violation. In Argentina, because of the history of dictatorship and human rights abuses, the term “human rights” enjoys widespread respect. It is associated with resistance to oppression, dignity, bravery, and the quest for a better life—not just for oneself but also for a broader group or community. Presenting themselves as human rights advocates and as a group fighting a corrupt and violent institution—the police—situated the *travestis* on “the side of the angels.” Progressive politicians and judges were quick to make statements on their behalf. At one point during the campaign, a Plaza de Mayo Mother¹²⁷ joined the *travestis* for a protest that involved chaining themselves to the stairs in front of the Palace of Justice. Soon other Mothers, along with the Children of the Disappeared, started to take part in travesti demonstrations.

Restrictions on freedom of movement and expression

Sexual rights activists living and working in hostile environments may also find themselves barred from moving and expressing themselves freely, especially when they attempt to act collectively. Lesbian, gay, bisexual and transgender “pride” marches have been banned in a number of countries, and sometimes have resulted in detention of organizers and allies. One example is the case of Moscow Pride 2007. An article covering the events associated with the attempted march and rally reported, “In all about 20 people were arrested by heavily armed riot police as gay rights campaigners attempted to deliver to Moscow Mayor Yuri Luzhkov a petition . . . signed by about 40 members of the European Parliament supporting a gay pride parade.”¹²⁸

Pride activities in Moldova in 2007 met with far more success. One event, according to the main Moldovan LGBTI Information Center, GenderDoc-M,

was a protest in front of the City Hall against the decision of the authorities to ban a public event in the city center by GenderDoc-M. In deciding not to authorize the event, the City Hall committee accused GenderDoc-M of promoting public sex and homosexuality. The protest demonstration lasted 15 minutes, with about 20 people from GenderDoc-M and partner organizations participating. These included a member of the European Parliament, Maria Carlshamre, and her three assistants, who had come to Moldova specially to support the Pride organizers. The protest demonstration went off successfully and was protected by the police. About 30 people took part in a counter-demonstration, mainly young people from an extremist organization.”¹²⁹

Hostility in the international environment

Despite precedents set and progress made at the international level (see Chapter 3), sexual rights activists still face challenges getting their issues heard on the international agenda. In some cases, their participation has been actively blocked by governments. In other notable instances, governments have opposed resolutions, declarations or other public statements that merely mention LGBTI rights. Indeed,

The Brazilian Resolution: Lessons Learned

In 2003 during the 59th session of the Commission on Human Rights, the delegation of Brazil—with the support of seven countries—submitted a draft resolution on human rights and sexual orientation. The resolution called attention to violation of human rights against individuals on grounds of their sexual orientation. The discussion on the resolution was deferred to the 60th session in 2004 because of the obstructive amendments and no-action motion proposed by member countries of the Organization of Islamic Conference (OIC). Following massive pressure from the Holy See and OIC countries, discussion was again deferred to the 61st session. Due to the unusual and extreme political tension around the issue, Brazil withdrew the resolution in the 61st session.

as referenced in the introduction to this Guide, the Brazilian resolution of 2003, affirming the human rights of LGBTI individuals, caused such a stir in the (now defunct) UN Commission on Human Rights that it was eventually withdrawn. Another Commission on Human Rights resolution, condemning extra-judicial executions faced the threat of withdrawal of support, simply because sexual orientation was included in a descriptive list of some of the grounds for which individuals face extra-judicial executions. Fortunately, for several years running, the language on sexual orientation remained part of the list.

While the extent of opposition to the so-called “Brazil resolution” was striking—particularly in a forum that was supposed to protect human rights—it brought to light deep-seated prejudices against the LGBTI community. On the positive side, public airing of homophobia in such an international forum mobilized a group of international NGOs to incorporate LGBTI issues into their activism efforts.

At the time of the 61st session, however, New Zealand delivered a public statement supported by 32 countries arguing the need for the Commission to address the issues of sexual orientation and gender identity. A similar initiative was proposed by Norway and supported by 54 countries, during the 3rd session of the Human Rights Council in December 2006. It called on UN mechanisms to consider human rights violations based on sexual orientation and gender identity.

Thus, although the draft resolution was eventually withdrawn, it set an interesting precedent with regard to LGBTI rights: Many international and regional NGOs took a proactive advocacy role in supporting the resolution, and a few of them moved on to integrate LGBTI programs in their activities. Also, the discussion at the Commission helped developing a global network of human rights groups that started working together on LGBTI and sexual rights issues, strengthening South-South and North-South cooperation on LGBTI and sexual rights. On the other hand, opposition to this relatively modest text illustrates the power of conservative religious and cultural arguments in restricting LGBTI rights.

Notes for Facilitation

The examples of working in hostile environments, provided here, can be supported with examples from virtually every country and community in the world. It will be useful to begin this session by hearing examples from participants about their own experiences of working in hostile environments and the strategies they have used. In all cases, take time to draw on the experiences of the participants in confronting human rights abuses and the success and challenges they have faced in trying to engage in advocacy, litigation, organizing and providing services.

For the session, it will also be helpful to find examples from the communities in which you are working, and develop exercises that work with local situations. Role playing may be especially helpful, having participants represent the different actors in a hostile situation and develop advocacy strategies, media messages and coalition efforts to confront the threats.

Resources and Background Materials

There are several excellent human rights education documents that provide examples of how to work with local case studies, how to organize an effective role-playing scenario, and the like. See, for example,

- ◆ APAP (Action Professionals' Association for the People), *The Bells of Freedom with Resource Materials for Facilitators of Non-Formal Education and 24 Human Rights Echo Sessions*, Addis Ababa, Ethiopia (1996);
- ◆ International Human Rights Internship Program and Forum-Asia, "Circle of Rights—economic, social and cultural rights activism: a training resource," at www1.umn.edu/humanrts/arab/circleofrights.html (in Arabic), www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm (in English) and www1.umn.edu/humanrts/edumat/IHRIP/frenchcircle/toc.htm (in French).

Notes

121. Peter Freiberg, "Utah family faces trial—Lesbian: Brothers, parents beat and threatened her," *Washington Blade*, May 25, 2001.
122. R. Coomaraswamy, Preface, see note 96.
123. CIMEL/Interights, "Roundtable on Strategies to Address 'Crimes of Honour'," see note 97, p. 4.
124. AWID, "An interview with Pinar Ilkkaracan from Women for Women's human Rights—New Ways" (April 2005).
125. Cynthia Rothschild, et al., *Written Out: how sexuality it used to attack women's organizing*. NY and NJ: Center for Women's Global Leadership and the International Gay and Lesbian Human Rights Commission (2006).
126. Karen McGregor, "Showers, sex and AIDS." *Newsweek International Edition*, May 8, 2006.
127. The Asociación Madres de Plaza de Mayo (Association of the Mothers of the Plaza de Mayo) is a well-known group of Argentine mothers whose children "disappeared" under the military dictatorship between 1976 and 1983.
128. See www.365Gay.com.
129. Genderdoc-M, "Sixth Moldovan Gay Pride—First Victory," Press release, May 3, 2007.



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Nigeria Case Study: Discriminatory Legislation

Background

In January 2006, the Nigerian Federal Minister of Justice presented a bill to the Federal Assembly entitled the “Same Sex Marriage Prohibition Act.” Although the bill was officially a response to alleged claims for LGBT rights in the country, it seemed to be a move by the executive to create a consensus on a controversial issue for political reason (i.e., the re-election of then-president Obasanjo for a third term), with a strong support by conservative churches, within and possibly outside the country. While the overt focus of this draft legislation was to impose criminal penalties against anyone engaging in same-sex relationships, it went much further by prohibiting anyone from aiding in such a union or from engaging in any positive advocacy promoting the rights of LGBTI individuals. In other words, any form of support, advocacy, association or speech related to LGBTI rights, either in private or in public, directly or indirectly, was subject to penalties of the law including imprisonment for up to five years. Despite its draconian language limiting civil and political rights, the Bill enjoyed strong support from high level politicians in Nigeria. It was immediately approved in the first preliminary parliamentary reading.

Public reaction

As intended, the bill generated public hysteria about homosexuality, mostly fomented by religious leaders, politicians and newspapers. It galvanized the most conservative religious leaders, such as Archbishop Peter Akinola, known as a defender of conservative values within the Anglican Church worldwide. The “gay question” became particularly relevant in the electoral debate. For many politicians, it was an easy way to gain electoral consensus on “moral,” religious and “cultural” issues. It was also a way to weed out candidates rumored to be gay.¹³⁰ And the timing of the bill, introduced in the midst of an electoral period, may have been strategic: as

Some of the most draconian provisions of the law included the following:

2. Interpretation

In this Act, unless the context otherwise requires-

“Marriage” means a legally binding union between a man and a woman be it performed under the authority of the State, Islamic Law or Customary Law; (...)

“Same Sex Marriage” means the coming together of two persons of the same gender or sex in a civil union, marriage, domestic partnership or other form of same sex relationship for the purposes of cohabitation as husband and wife.

7. Prohibition of Registration of Gay Clubs and Societies and Publicity of same sex sexual relationship.

(1) Registration of Gay Clubs, Societies and organizations by whatever name they are called in institutions from Secondary to the Tertiary level or other institutions in particular and, in Nigeria generally, by government agencies is hereby prohibited.

(2) Publicity, procession and public show of same sex amorous relationship through the electronic or print media physically, directly, indirectly or otherwise are prohibited in Nigeria.

(3) Any person who is involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationship directly or indirectly in public and in private is guilty of an offence and liable on conviction to a term of 5 years imprisonment.

president Obasanjo was proposing an amendment to the federal Constitution to run for a third presidential term, it was an excellent means to distract the attention of the Nigerian public away from this controversial issue and to “rally around the flag.”

Strategy to fight the Bill

The relatively small LGBTI and sexual rights community in Nigeria found itself literally under siege, as anyone advocating against the bill itself risked conviction of a crime if the bill was approved. The issue was even made even more problematic due to skepticism toward LGBTI rights by mainstream Nigerian human rights groups.¹³¹ Strategies thus relied heavily on international support. Organizations such as Human Rights Watch and Amnesty International drafted an open letter warning of the dangers of the bill as an incitement to violence against LGBTI

individuals. The letter was endorsed by Global Rights, International Gay and Lesbian Human Rights Commission, and the International Commission of Jurists and sent to President Obasanjo in March 2006. This also provided an important opportunity for several Nigerian human rights groups, such as the Civil Liberties Organisation, the Centre for Democracy and Development, the Legal Defense and Assistance Project, as well as regional groups to become involved in sexual rights advocacy for the first time. A phase of international advocacy followed: International NGOs, as well as several embassies and ministries for foreign affairs (essentially those of the European Union, Canada and United States) pressured the executive and the parliament on the human rights implications of the bill. International pressure was key at a stage in which public hysteria in the country made national dialogue impossible.

Pressure from the outside could have been counterproductive without domestic voices against the bill, as rhetoric from politicians was focusing on the need of preserving domestic traditions from external “contamination.” Thus, at the same time, mobilization efforts intensified within the country: At the end of May 2006 the International Centre for Reproductive Health and Sexual Rights (INCRESE) convened a strategic session for allies in Abuja. After a two-day discussion on LGBTI and sexual rights, as well as specific implications of the bill, a coalition for the defense of sexual rights was formed under the leadership of INCRESE. Interestingly, several mainstream human rights groups decided to join it. A second meeting organized by Global Rights, in collaboration with INCRESE, took place in September. Following this second meeting, the coalition started to reach out to members of parliament, other sectors of civil society and professional organizations.

The effort was extremely successful. At a public hearing held in the House of Representatives in February 2007, dozens of activists from the LGBTI and sexual rights movement, joined by other groups, such as the human rights, youth, women rights and workers’ rights movements, voiced their opposition to the bill. The Nigerian Human Rights Commission proclaimed the bill “redundant and unnecessary.” Despite this finding by the Nigerian Human Rights Commission, the bill was approved in preliminary hearings before the Senate. However, because of the increasing political disagreement within the Parliament (especially among Senate leaders) on whether the bill was a priority for the country, it was never brought to final vote.

By this time the law had come to the attention of high level representatives within the United Nations: The then Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani (Pakistan), the then Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène (Senegal), the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk (Turkey), and the then Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt (New Zealand) issued a joint

communiqué condemning the bill. It argued that the Bill violated international law, and “heighten[ed] the potential for stigmatization, discrimination and intolerance against individuals for their actual and imputed sexual orientation or their gender identity, raising serious concerns regarding their protection. ... The Bill [was] likely to undermine HIV/AIDS education and prevention efforts by driving stigmatized communities underground”

As pressure from the government started to mount, in March 2007 a coalition of mainstream Nigerian human rights organizations began legislative advocacy in the Parliament and with the media against the bill, examining its human rights implications: They argued that the scope of the bill was so broad that it could be abused to abridge basic rights. In practice, it could be used not only against individuals for their actual or imputed sexual orientation, but against people sharing their housing for economic reasons, if falsely accused of “living together as husband and wife”; against people who don’t fit the traditional or social standard, or groups working on women’s rights or HIV&AIDS prevention; against journalists publishing any information on LGBTI issues, as well as against politicians “suspected” of homosexuality.

Outcomes and lessons learned

Despite the hostility of the environment and the risk of the extreme consequences of persecution, advocates were able to create an internal united front against the bill, which was not approved in its final reading before the end of the legislature in June 2007 and therefore disappeared. The network of international support, including human rights organizations and United Nations special procedures, provided backstopping to domestic human rights groups. The process of “mainstreaming LGBTI-related issues” according to a broader human rights perspective was effective, and helped build alliances on an issue that was still controversial, even in the human rights community.

The experience of contesting this legislation in Nigeria provides a model of successful legislative advocacy in an extremely tense environment. Activists took a risk in vocally denouncing the bill. Failure would have affected their ability to carry out any further advocacy. While other strategies could have been employed to mitigate the worst-case scenario—such as domestic, regional and international litigation, international shaming and/or the creation of a support network for outspoken activists—the effects of such actions would have been slow, and their success in defeating the bill would not, by any means, have been assured. Instead, the outcome was not only a success for the LGBTI and human rights communities in Nigeria, it also set an important precedent for other countries likely to consider similar legislation.

On the other hand, even though the efforts to pass the bill were not successful, the very extreme public debate generated a violent reaction against LGBTI individuals, who now, more than ever, face abuses, discrimination and repression. The processes of documentation, “continuous education” and mainstreaming LGBTI-related issues are the only solutions to guarantee a concrete social change in the future.

Notes for Facilitation

In order to have a fruitful conversation on this case study and for the audience to fully understand the implications of the Bill as well as the need of removing cultural stereotypes, the analysis of Chapters 3 (with reference to the international and African human rights systems), 5 and 8 is recommended.

Resources and Background Materials

The facilitator should be prepared to discuss the broader issue of denial of LGBTI and sexual rights in the country; same-sex sexual intercourse is a criminal offense both under Federal criminal code and under Shari'a law. For information on LGBTI and sexual rights in Nigeria, as well as for information on the use of Shari'a in the country, please consult the following additional references:

- ◆ International Center for Reproductive Health and Sexual Rights (INCRESE) at <http://www.increase-increase.org/>;
- ◆ BAOBAB for Women Human Rights at <http://www.baobabwomen.org/>;
- ◆ Women's Rights Advancement and Protection Alternative at <http://www.wrapaifl.com/>;
- ◆ Human Rights Watch, "'Political Shari'a?' Human Rights and Islamic Law in Northern Nigeria." (2004) at <http://www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf>;
- ◆ The full text of the Same-sex Marriage Prohibition Bill 2006 can be found at <http://www.nassnig.org/bills/year%202006%20bills%20pdf/june%207%20bills/HB%20246%20BILL%202%20PROHIBIT%20SEXUAL%20REL%20BTW%20SAME%20SEX.pdf> or can be requested from the LGBTI Initiative at Global Rights;
- ◆ The text of the letter sent to President Obasanjo by international and domestic human rights organizations can be found at http://www.globalrights.org/site/DocServer/Letter_-_Obasanjo_-_3.pdf?docID=4803;
- ◆ The text of the statement released by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène; the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt can be found at <http://www.unhchr.ch/huricane/hurricane.nsf/view01/A8F5CC6EAC2D6C52C125728B0054CD9B?opendocument>;
- ◆ A detailed legal analysis of the bill and the legislation criminalizing same-sex sexual behaviors in Nigeria may be requested from the LGBTI Initiative at Global Rights;
- ◆ The issue of LGBTI human rights in Nigeria has had a significant echo in the public opinion and media: To address the content of this case study, a search on the internet to find articles published by Nigerian media, as well as to get information about the international mobilization, is recommended;
- ◆ Information about the arrest of 18 young men in August 2007 in Bauchi, Bauchi State, following the media campaign can also be found on the internet.

Notes

130. This was so clear when even one national newspaper defined former dictator Babangida's leadership as the "'homosexual' regime of General Ibrahim Babangida," *The Vanguard*, February 27, 2007.
131. Many mainstream human rights organizations for a long time argued that they were not "promoting gay rights," even when taking position against the bill.



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Conclusion: Global Rights' Five Core Tools and Sexuality-Related Advocacy— Successes and Challenges

Yesterday I saw a travesti walking along the avenue. She was gorgeous, all made-up, walking like a queen, very sure of herself, almost delighting in herself. Two police cars were coming in her direction, but she did not even notice them. She kept moving. They passed by her, without a single word. Ten years ago, she would have run for cover. Now, she didn't care. And she did not even look at me. May be she did not even know who I was, and that is fine. It is not me that she needs to remember. I don't know if she can speak about her right to be herself, or about our fight against the police and how it changed so many things, but she is living it. We activists tend to think and talk big words, but our community just lives them.¹³²

—Lohana Berkins, *travesti* activist from Argentina

In the previous chapters we examined sexuality-related rights from a human rights perspective. Beginning by defining our terms, we have surveyed their practice, and the ways in which they can be realized, even in extremely hostile environments. We have explored the intersection of sexuality-related rights and culture, the integration of these rights into different movements (international, regional, and national) and legal perspectives on sexual rights. We highlighted how the analysis of LGBTI rights—their complexity and cross-cutting nature in diverse cultural and geographical spaces, as well as in different contexts and movements—requires advocates to understand the broader umbrella of sexuality and sexual rights.

At the beginning of this Guide we introduced five core tools that encompass Global Rights' human rights commitment: Exposure of violations, community mobilization, human rights lawyering and access to justice, law and policy reform advocacy and international advocacy. These are not only Global Rights' "conceptual tools" but, more generally, the main strategies for capacity building. They are also

flexible tools that lend themselves to creative and imaginative use in a wide range of circumstances.

The Guide is anchored in case studies prepared by partners whose work reflects and helps to illustrate these core tools. Although the case studies have been mostly integrated in the text, it is important to highlight in this final chapter the relevance each Global Rights' core tool has in connection with these case studies. This argument is based on two assumptions, one methodological and one substantive.

- a) **The methodological assumption** is that the reader of this Guide now has a basic understanding of sexual and LGBTI rights from a human rights perspective, as well as a sense of some of the key issues and challenges that arise in advocating for these rights;
- b) **The substantive assumption** is that Global Rights core tools may be applied to LGBTI and sexual rights.

This section illustrates the importance of these five tools in working for LGBTI rights. By the end of this chapter, the reader should

- ◆ Recognize the connection between Global Rights' five core tools and LGBTI and sexual rights in practice, with reference to the case studies that we have been using¹³³
- ◆ Understand how LGBTI and sexual rights are issues of concern for every international and domestic human rights organization

The tools

1) Exposure of human rights violations

The case study in Chapter 6 on abuses based on gender identity in Bangalore illustrates how systematic and well-integrated documentation of human rights violations gave greater visibility to violence against marginalized groups. In doing so, it helped to raise awareness about the problem among both State and non-state actors, and highlighted the failed efforts of the State to live up to its duties to respect, protect and fulfill the human rights of transgenders in Bangalore. At the same time, it helped to mobilize reluctant allies—in particular, more mainstream human rights organizations in Bangalore specifically and in India more generally.

Documentation and exposure of human rights abuses is particularly effective when political space is limited, or even absent, for certain communities. Exposure may be the only available tool when other channels are not accessible for holding duty-bearers accountable. This is the case for *hijras* and *kothis* in India (as in many other communities) where sexuality and gender conditions are intertwined with economic and social marginalization.

2) Community Mobilization

Global Rights' second core tool, community mobilization, can be effectively utilized in a variety of circumstances such as when: social and cultural norms are in conflict

Quotes from our Partners

Those who refuse to give up their reproductive and sexual capacities and also those who do not fit into the prevailing gender stereotypes (because they are “too butch” or “too soft,” Feminist, non-heterosexual, et cetera) have no possibility whatsoever—under Argentinean current law—to change their identity papers to reflect their gender and name of choice. And this is of tremendous importance for the lives of *travestis*, as in Argentina ID papers are required for enjoying most of one’s civil, political, social and economic rights: voting, renting an apartment, applying for a job, having social security, traveling around the country and abroad, being eligible for government-funded social programs (food assistance, unemployment benefits, housing, etc.). This is one of the main reasons why *travesti* communities live ‘outside the law’, except for the criminal side of it with which we will deal below. (...)

—Alejandra Sardá

Mulabi, Espacio Latinoamericano de Sexualidades y Derechos.

with human rights principles; the legal system is not able to offer remedies; there is a need to shift the burden of violation from individuals to a group; and there is expectation of a public or mass reaction. This is the case, illustrated throughout the Guide, with the *travesti* community in Argentina. Historically, *travestis* were exposed to extreme violence¹³⁴ and could not access their civil, political, social and economic

Quotes from our Partners

[T]he first thing *travesti* leaders did was to say No to the bribes that they were paying daily and weekly to police officers to avoid arrest. They joined forces with female sex workers with whom they shared the streets, and stopped paying. When the police reacted and the abuse/arrests escalated, *travestis* and female sex workers staged massive protests in front of the police stations: 30, 50, 100 people would sit in front of the station, occupying the sidewalks and the street, chanting slogans and demanding the release of those imprisoned. The noise attracted the TV cameras, and soon the *travestis* became very well known. The publicity was very useful in two ways. First, it helped other *travestis*—in Buenos Aires and elsewhere in the country—to feel empowered by seeing, for the first time in their lives, people like them who were saying that abuse was not to be tolerated, that paying bribes and being beaten if one had not managed to raise as much as the officer wanted was not a fact of life but an aberration. And second, it helped the *travestis* to become well known to other allies: human rights organizations, families, youth advocates who were dealing with similar issues, but in a less “scandalous” manner.

—Alejandra Sardá

Mulabi, Espacio Latinoamericano de Sexualidades y Derechos.

rights. Their only other choice was to undergo sex-reassignment surgery, an often humiliating procedure ending with surgical sterilization. In this context of extreme marginalization, abuse and denial of rights, successful activism meant linking up with other human rights movements, in particular sex workers' rights advocates and the women's movement. While there is more work to be done with regard to *travesti* access to health care, work and education, the strategy of community mobilization proved effective in empowering individuals, significantly improving the quality of their daily lives and bolstering their ability to claim basic rights.

3) Human rights lawyering/access to justice

The case study included in Chapter 4 is an important example of the effectiveness of human rights lawyering. The case has to do with the recognition of a bi-national same-sex couple's right to residency on a Colombian island. As indicated by author (also the attorney of the petitioners) the denial of residency rights exclusively based on sexual orientation was clearly discriminatory. It violated the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee,¹³⁵ as well as of the principle of non-discrimination in article 13 of the Constitution of Colombia. This case provides useful and precedent-setting litigation on LGBTI rights. By recognizing a difference of treatment based on sexual orientation of individuals, the Constitutional Court of Colombia recognizes that the regulation violates the Constitution. Our case study explains how the case set the stage for other decisions of the Constitutional Court and impacted the national debate on LGBTI rights as well as international human rights jurisprudence, as noted in the case study above.

4) Advocacy for Law and Policy Reforms at the National Level

Global Rights' core tool of advocacy stresses how legislative advocacy at the national level can be effective in strengthening the claims of rights-holders, particularly when national legislation is weak on human rights issues and laws are nonexistent or insufficient. The Romanian case is an example of two-step legislative advocacy effort. Article 200 of the Criminal Code was modified in 1993 from a typical sodomy law to a more insidious version punishing public scandal, propaganda, association and proselytism of homosexuality. The advocacy strategy of the organization ACCEPT to get Article 200 repealed was facilitated by two elements: international support and support from mainstream human rights civil society. By working with mainstream groups like the Romanian Helsinki Committee, Romanian Open Society Foundation, and RomaniCRISS, LGBTI and human rights advocates succeeded not only in repealing Article 200, but also in obtaining anti-discrimination legislation.

Quotes from our Partners

[T]he advocacy action for repealing Article 200 began as an initiative targeting only the incrimination of homosexual relations. It is true that the key substantive argument used was that Article 200 establishes discrimination by law on the ground of sexual orientation in Romania. This was also the major concern expressed by international human rights monitoring bodies. However, only when the Government understood the importance of non-discrimination (including on the ground of sexual orientation) as a fundamental value in the process of EU integration, was the advocacy process successful. In August 2000, the Romanian Government adopted an Anti-discrimination Law. For a country with such clear anti-gay criminal law provisions, the presence of anti-discrimination law [was] surprising. Its adoption was a message on the importance that Romania pays to combating discrimination on all grounds, including sexual orientation. (...)

This implied a LGBT rights group to fight for non-discrimination of other groups like ethnic groups, women, religious minorities, persons with disabilities etc. Consequently, in 2001, when the Government Ordinance reached the Romanian Parliament to be approved, the members of the Parliament were subject to double size pressure—to repeal Article 200 and to approve the Anti-discrimination law.”

—Iustina Ionescu

Romanian sexual rights activists and member of ACCEPT

5) International advocacy

International advocacy is most effective when several conditions are met: international attention gives credibility to an issue, the government is concerned about “being shamed” and likely to take follow-up action, donors are influenced and

Quotes from our Partners

IGLHRC, the Astraea Foundation, and the World Organization Against Torture (OMCT) contributed to a relief fund that paid each of the men a small sum of money to help them with the substantial task of reintegrating into their lives after more than a year of harsh imprisonment, negative publicity, and societal stigmatization. Alternatives-Cameroun successfully managed that relief operation and has provided the 11 men, as well as a number of other gay men who have faced arrest and detention in Cameroon, with emotional, physical, and legal support. They have undertaken other public campaigns for gay and lesbian rights in their country. Alice Nkom and ADEFHO continue to work for the repeal of Article 347, and Alice has been a keynote speaker at the 2006 World Outgames and International LGBT Conference in Montreal in July of that year.”

—Cary A. Johnson, Joel Nana, IGLHRC

involved, and the issue is likely to receive consensus and attention from the international community. In such cases, use of the international human rights system can either protect or empower local activists and communities. This technique was used particularly well in the case of the arrests of men and women in Cameroon on grounds of homosexuality. What was initially a local incident of 30 people arrested in a bar became an event of international consequence, with attention from Amnesty International, the International Gay and Lesbian Human Rights Commission, the International Commission of Jurists, and eventually led to the use of United Nations special procedures.

Another significant international advocacy strategy involves building broader thematic or constituency networks and coalitions. Some of these have been extremely successful in generating support for difficult issues, particularly concerning sexuality-related rights. For example, as a consequence of the abuses which occurred in Cameroon in June 2006, as Cary Johnson and Joel Nana explain,

“the administration of the Douala-based Eyengue Nkongo College, a private high school, expelled 34 students (including 12 females), alleging that they were homosexuals. One female student was arrested upon her expulsion. One woman who lived near the school and two former schoolmates were also arrested. On July 7, the Douala First Instance Court released them after giving them a suspended three-year prison term and a fine of US\$50 (25,000 CFA francs) on homosexuality charges.” Following the arrests, **“Cameroonian lesbians and gay men went further in their closets after publication of these arrests. Many were afraid to visit the detainees, fearing that they would end up in one of those crowded dirty cells of the Kondengui central prison.”**

The implementation of international and regional advocacy strategies required the creation of a regional and international network. Already in July 2005,

“IGLHRC and Behind the Mask (BTM), a South Africa-based LGBT media outlet and human rights organization, launched a limited letter-writing campaign on behalf of the detainees, to make the government aware of growing international concern about the case. Publicity generated by BTM kept the case on the agenda of the African and international LGBT movements.”

Then in 2006,

“eight human rights organizations, including Physicians for Human Rights, Human Rights Watch, LEDAP, and IGLHRC delivered a letter to the Cameroonian Minister of Justice urging him to prevent the medical examinations. The letter of protest was also sent to the Cameroon Medical Association. The proposed forensic examinations were never carried out, though it is unclear whether the government was acquiescing to the protest or whether they were unable to find a medical professional willing to undertake the exams.

Quotes from our Partners

Youth Coalition (YC) members are active and work specifically on direct advocacy and lobbying with decision makers during UN meetings. The YC is unique as members work face-to-face with policy makers and UN officials. While other youth organizations organize side events or parallel events where young people can come together, they rarely are involved in language recommendations and lobbying.

In addition to high-level advocacy, language recommendations and lobbying, the YC also tries to create linkages with other groups that are planning to advocate at meetings. For example, the YC has participated in many strategy meetings to plan participation at the 2006 UNGASS review; to discuss how to advocate for sexual orientation at the Commission on Human Rights; to prepare for the ten-year review of the World Program of Action on Youth and to see how young people can work together to approach international financial institutions, etc. By attending international conferences and lobbying actively and visibly at these events, the YC hopes to inform policymakers, both at the national and international organizational level (at the United Nations level and the regional levels mainly through Economic and Social commissions) about sexual and reproductive health and rights of adolescents and youth. The YC also hopes to encourage youth participation in the decision-making processes. The YC encourages NGOs, research institutes, health care providers, service delivery groups, media, and cultural or religious groups to incorporate youth perspectives and adolescent and youth sexual and reproductive health and rights into their work.

—Pamela Pizarro, Youth Coalition

Interestingly, following the international mobilization, “a number of gay men decided to form a gay rights organization, which they named Alternatives-Cameroun.”

The Youth Coalition has been at the forefront of international networking to raise sexuality issues—and in their case, the especially contentious ones of young people’s sexuality and sexual rights.

6) Multiple strategies

An additional case study in the Guide relates to mobilization and advocacy against “honor” crimes in Muslim contexts. We consider it separately because almost all core tools are applied. “Honor”-related violence is a situation in which socio-cultural norms accepted by the community clash with human rights principles. Mobilization, advocacy and documentation are often challenging because of cultural and religious beliefs. Although the Muna Hawatmeh story describes abuses related to her sexual orientation, “honor” violence is heterogeneous: Victims include all kinds of “non-conforming” women (and sometimes men). Also, “honor” crimes are

Quotes from our Partners

[P]ublic awareness campaigns are effective ways to increase the visibility of “honor”-related violence. From Pakistan to the Kurdish diaspora, activists promote a similar message: “There is no ‘honor’ in killing”.

—Anissa Helie, former coordinator, Women Living Under Muslim Laws

not geographically or culturally circumscribed. . . .killings have been documented in places as varied as Afghanistan, Israel, Bangladesh, Brazil, Britain, Ecuador, Egypt, Iran, Iraq, Italy, Jordan, Lebanon, Norway, Pakistan, Palestine, Persian Gulf countries, Peru, Sweden, Syria, Turkey, Uganda, Venezuela, the West Bank, and Yemen.”¹³⁶

In the Muslim context, advocates have used multiple strategies to combat honor killings. These have ranged from challenging discriminatory interpretation of religious and cultural norms¹³⁷ to community mobilization.

In contexts where the problem is often unrecognized or misrepresented and political space does not allow the issue to be addressed, gathering evidence and facts is critical.

“Relying on newspaper reports or court cases is not sufficient, especially as many “honor” killings are disguised as suicides or accidents.” Only with documentation can activists truly communicate the scope of the problem.

Where honor crimes are legally recognized, legislative advocacy is necessary. For advocates seeking legal reform, analysis of domestic law is crucial. Strategies vary where, for example, customary law takes precedence over formal judicial systems, or where judicial provisions may be lenient towards perpetrators. In Jordan, a country with otherwise low crime rates, so-called “honor” killings comprise one-third of all violent deaths¹³⁸ and domestic laws are lenient on perpetrators of such crimes. As a result, the average sentence for extra-judicial murders of a female relative is only seven and a half months imprisonment. Jordanian activists are pursuing multiple strategies, including working towards¹³⁹ reforming articles in the Penal Code which protect perpetrators. They have collected over 13,000 signatures favoring legal reform, secured support of prominent religious leaders and members of the royal family, and have engaged in extensive media lobbying. Journalist Rana Husseini remains cautiously optimistic:

“I am encouraged by the social awareness that now exists in Jordan, compared to ten years ago.”

Activists are also making use of international human rights instruments. These include working with Special Rapporteurs—who have recognized “honor killings” as a form of extrajudicial execution—and lobbying the United Nations General Assembly.

In 2004, the GA passed a resolution entitled “Working towards the elimination of crimes against women and girls committed in the name of honor.”¹⁴⁰ In other contexts, advocates are using relevant regional human rights instruments, for example, the Inter-American Convention or, in the African region, the African Charter for Women’s Rights or the African Charter on the Rights and Welfare of the Child.

Conclusion

It is our hope that the strategies, stories, and other resources contained in this Guide will provide the kind of detailed background guidance, practical information and educational tools to help activists around the world more consistently incorporate sexual rights into their advocacy efforts, design and deliver new programming around sexuality-related rights issues, explore new methods of engaging in human rights work, and strengthen alliances and coalition efforts.

The Guide has introduced a wide range of sexuality-related rights issues, with a particular focus on LGBTI rights. We have seen how human rights are intimately related, and how abridging one can quickly lead to infringements on broader civil and political liberties as well as economic, social and cultural rights. We have examined international human rights instruments, and the ways these have been successfully used—as well as misused vis-à-vis LGBTI and sexual rights.

We have also looked at Global Rights’ core tools in the context of sexuality-related human rights violations, exploring how these can be successfully employed in local, national, and international efforts to address sexual rights. And we have a deeper understanding of—and appreciation for—the harms faced by LGBTI and sexual rights activists, many of whom work in dangerous and hostile environments. While the stories of abuse may enrage and infuriate, we hope that ultimately they will inspire readers to take action. It is only through sharing challenges as well as triumphs, mistakes as well as best practices, that we can all become better defenders and protectors of human rights.

Notes

132. Interview with Lohana Berkins by Alejandra Sardá, Buenos Aires, January 24, 2007.
133. In analyzing this we will make reference to the Global Rights Methodology Manual, 2006.
134. As Alejandra Sardá notes, a very striking fact revealed by a survey conducted by the organization ALITT in 2005 “is how fragile and short travesti lives are. Respondents were asked to name any friends who had died in the last 5 years: 302 travestis came up with 420 names. 70% of those deceased were between the ages of 17 and 41.”
135. See, among others, the communication *Young v. Australia*.
136. E. Hassan, “Women victims of honor killing,” *Yemen Observer*, January 28, 2006.
137. See above p 92-93.
138. A. Soussi, “Women challenge ‘honor’ killings,” *Christian Science Monitor*, March 2, 2005.
139. K. Kinoti, “A review of *Gender, Sexuality and the Criminal Laws in the Middle East and North Africa*,” Women for Women’s Human Rights—New Ways, AWID (April 2005).
140. UN General Assembly Third Committee, 59th session.



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Appendices

A. International and Regional Human Rights Organizations and LGBTI/Sexual Rights Advocacy

(Note: this list, that does not pretend to be exhaustive, does not include domestic organizations working on LGBTI and sexual rights)

Action Canada for Population and Development (ACPD) www.acpd.ca

ACPD is an international human rights advocacy organization based in Ottawa, Canada. ACPD's efforts focus on international development, along with sexual and reproductive rights. The organization's advocacy efforts are directed domestically to the Canadian national government; and internationally to the UN Human Rights Council and other treaty bodies.

African Partnership for Sexual and Reproductive Health and Rights of Women and Girls (AMANITARE) www.rainbo.org/amanitare

AMANITARE is a regional federation, coordinating and facilitating the efforts of various African groups working for sexual and reproductive rights, and women's rights. The federation is operated by RAINBO (The Research, Action, and Information Network for the Bodily Integrity of Women), which is based in London and New York.

AMANITARE seeks to facilitate the interaction of various sexual rights groups in Africa, as well as conducting research and documentation of human rights abuses, and coordinating advocacy efforts at the African Union and other regional bodies.

Amnesty International www.amnesty.org

A worldwide non-governmental organization (NGO), with over two million members and supporters from over 150 countries. The organization is governed by an International Council, made up of members from all national sections. Amnesty is primarily an advocacy organization, with most of its efforts focused on protecting the rights enshrined in the Universal Declaration of Human Rights. Amnesty makes

a point of being non-political, and accepts no funds from governments.

OutFront! is a program within Amnesty International USA that works specifically on human rights abuses against LGBT individuals and communities (http://www.amnestyusa.org/Our_Issues/LGBT_Human_Rights/page.do?id=1011002&n1=3&n2=36).

A website of Amnesty International lesbian, gay, bisexual and transgender network is available at <http://www.ai-lgbt.org/>

Allied Rainbow Communities International (ARC International) www.arc-international.net

A Canada-based international organization dedicated to promoting LGBTI rights and advocacy on LGBTI, sexual and women's rights at UN level. The organization characterizes itself as project-driven, and its main role as "liaising and fostering positive communications" among various LGBTI rights groups. ARC International also issues annual reports and various thematic reports on LGBTI rights.

Asia-Pacific Network of Sex Workers (APNSW) www.apnsw.org/apnsw.htm

An organization dedicated to defending the human rights of sex workers. APNSW conducts advocacy and training on behalf of sex workers, including lobbying for the reformation or repeal of anti-prostitution laws, and working to protect the health of sex workers.

A primary focus of APNSW is protecting the rights of transgender sex workers, who are often targets of police brutality and other forms of abuse.

Asia Pacific Rainbow (APR)

Started as e-mail list following the meeting of LGBT delegates at the 5th International Congress on AIDS in Asia-Pacific (ICAAP) in 1999, it is now a network aimed at the improvement of quality of life of LGBTIQ people in the Asia Pacific area, promoting raising awareness and acceptance as well as strengthening and mobilizing LGBTIQ communities in the area, with a focus on HIV/AIDS issues.

Behind the Mask www.mask.org/za

A non-profit organization that publishes a news website on LGBTI issues in Africa. The group's mission is to use activist journalism to help bring LGBTI issues into the mainstream of African society and politics.

Coalition of African Lesbians

A regional network of LGBT rights groups, with a secretariat based in Namibia. The network was recently formed—in 2005—and does not yet have its own website. The group's main activities include: conducting regular Lesbian Leadership Institutes in various African nations, developing support materials for local LGBTI rights groups, and building partnerships for lobbying and advocacy at the national, regional, and global levels.

Creating Resources for Empowerment in Action (CREA)

www.creaworld.org

CREA is a women's human rights organization based in New Delhi and New York, whose activities are primarily focused on the Global South. CREA recruits and trains women for positions of leadership in politics and the human rights movement. The organization also conducts several institutes on women's rights, reproductive rights, and sexual rights; and engages in public education and advocacy.

CREA collaborates with TARSHI (see below) in operating the Southeast Asia Resource Center on Sexuality, and has published several books and articles on sexual rights in general.

Fédération internationale des ligues des Droits de l'Homme (FIDH)

www.fidh.org

The FIDH is the federation of more than 150 human rights leagues in more than 100 countries. The International Secretariat is based in Paris. The FIDH works in areas of mobilization, capacity building, advocacy within the international and regional (especially at the level of Council of Europe and the African Union) systems. The FIDH is particularly committed in the areas of women rights and human rights defenders. It has been supporting litigation and advocacy on regional, international and domestic levels on issues of discrimination on grounds of sexual orientation and gender identity.

Human Rights Watch (HRW) *www.hrw.org*

The largest U.S.-based human rights organization. The primary activity of Human Rights Watch is fact-finding and reporting on human rights abuses around the world. HRW also advocates for policy change with various national governments and inter-governmental organizations.

Human Rights Watch established in 2004 a Lesbian, Gay, Bisexual and Transgender Rights program. As with each of their programs, the focus is on research, documentation, and reporting of abuses in the area of LGBTI rights (Links to several of the reports can be found in Appendix B), as well as advocacy at international, regional and national level to promote LGBTI rights. There is a section on the website dedicated to the LGBTI rights program, which includes reports, press releases, and calls to action (*www.hrw.org/doc/?t=lgbt*). HRW also has programs on the related topics of Women's Rights and HIV/AIDS.

International Commission of Jurists (ICJ) *www.icj.org*

An organization composed of eminent legal practitioners and scholars, focused on promoting and protecting human rights through the rule of law. The organization is focused on insuring that international law develops in accordance with human rights principles; and that those principles are implemented on the national level. The Commission itself is composed of 60 jurists, and is governed by an International Secretariat based in Geneva, Switzerland. The Commission also organizes a network

of autonomous national legal organizations, in 62 countries. In addition to advocating for human rights in national and international legal systems, the ICJ also hosts various conferences and seminars.

Starting from 2006 ICJ works on sexual orientation and gender identity, focusing on strategic litigation and legal monitoring of international and regional human rights law.

International Gay and Lesbian Human Rights Commission (IGLHRC)

www.iglhrc.org

IGLHRC is a U.S.-based NGO, with the broadly defined mission of working to secure the human rights of all people who are discriminated against on the basis of sexual orientation or expression, gender identity or expression, and HIV/AIDS status.

IGLHRC's strategies include emergency response to human rights violations through documentation and reporting, and community organizing; providing training and technical assistance to local LGBTI communities and organizations; and building coalitions among organizations focused on LGBTI rights and traditional human rights organizations. IGLHRC operates several offices around the world, including the Africa Program in Johannesburg, South Africa; and the Latin America and Caribbean Program in Buenos Aires, Argentina.

International Lesbian and Gay Association (ILGA) www.ilga.org

ILGA is a federation of local and national groups working for LGBTI rights. Its administrative offices are located in Brussels, but its 560 member organizations are located on every continent and in 90 different countries around the world. ILGA's organizations are focused mainly on advocacy efforts, aimed at both national governments and international organizations. ILGA also support actions and mobilization to advance LGBTI rights.

ILGA-Europe www.ilga-europe.org

European region of ILGA, working for equality of LGBT people at European level. ILGA-Europe focuses on advocacy in European countries as well as on regional organizations (European Union, Council of Europe, Organization for Security and Co-operation in Europe). ILGA-Europe produces reports and documents, a newsletter, and organizes a yearly conference.

International Service for Human Rights (ISHR) www.ishr.ch

ISHR, based in Geneva, is a service organization for human rights defenders in all fields, working on all issues related to human rights. The organization publishes the Human Rights Monitor, an annual review of developments in the international human rights system, as well as other more issue-specific publications. Additionally, ISHR conducts training for human rights advocates; and operates a Human Rights Defenders Office, working to protect human rights advocates in hostile environments.

A major initiative within ISHR is the Women's Human Rights Defenders Campaign, which includes in its mission advocacy for the rights of LGBTI activists.

International Women's Health Coalition (IWHC) www.iwhc.org

IWHC, based in New York, is an international coalition of organizations working on the issues of women's health and reproductive rights, and sexual rights. IWHC strongly supports an affirmative understanding of sexual rights as fundamental human rights. IWHC advocates for sexual rights with the U.S. government and the United Nations. IWHC also supports and trains local organizations and advocates in Africa, Latin America, the Middle East, and South Asia.

International Working Group on Sexuality and Social Policy (IWGSSP)

The IWGSSP is a global forum of researchers and activists, which conducts policy-oriented research and analysis of sexuality-related policies. The group's mission also includes facilitating linkages among local, regional and global initiatives.

Intersex Society of North America (ISNA) www.isna.org

ISNA is a North American organization devoted to systemic change to end secrecy and shame for intersex people, and to stop unwanted genital surgery on people born with anatomy which is not considered "standard" for male or female. ISNA provides information, advice and references for people seeking information on intersex issues.

The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) www.cladem.org

CLADEM is a regional network of women's organizations, dedicated to defending women's rights. CLADEM's primary activities are reporting of rights abuses both to national governments and at the international level and advocacy and lobbying at the UN and the Organization of American States (OAS).

Within its overall framework of women's rights, CLADEM puts a special emphasis on sexual and reproductive rights.

**Latin American and Caribbean Women's Health Network
www.reddesalud.org**

A network of various organizations throughout Latin America, working on a variety of women's rights issues—including sexual and reproductive rights. The network and its member organizations operate training programs, and are involved in various advocacy efforts, including monitoring the implementation of the International Conference on Population and Development agreements by Latin American governments.

**Mulabi—Espacio Latinoamericano de Sexualidades y Derechos
www.mulabi.org**

Mulabi is a regional organization in Latin America established in 2006. Mulabi's mission is to bring together activists from the Global South with different sexual, gen-

der, ethnic, national (and other) identities, in order to work on issues related to sexualities and rights from critical and celebratory perspectives—including the promotion of autonomy and empowerment among those most excluded on the basis of their sexuality—as well as to circulate Latin American perspectives on these issues.

Mulabi's primary activities are organizing dialogues and workshops as well as lobbying and advocacy at the UN and OAS level.

Organisation Mondiale Contre la Torture (OMCT) www.omct.org

The World Organization against Torture (OMCT) is the largest coalition of NGOs working on fight against torture, arbitrary detentions, summary executions, disappearances, inhuman, cruel and degrading punishments and treatments. In their work, the OMCT focuses on advocacy with international treaty bodies, protection of human rights defenders and assistance to victims, economic, social and cultural rights. It also promotes campaigns to urgent situations. The OMCT has been engaged in protection of LGBT human rights defenders and in campaigns against torture and other forms of violence against LGBT people.

Population Council www.popcouncil.org

An international NGO working to promote sexual and reproductive health through a variety of programs. The Population Council is headquartered in New York, but has offices in Latin America, Asia, the Middle East and Sub-Saharan Africa. The Council's various programs include HIV/AIDS prevention and treatment, promotion of contraception, and the Poverty, Gender, and Youth program.

Red de Latinoamerica y el Caribe de Personas Trans (Red Lactrans) www.redlactrans.org/

Network of travesti, transgender and transsexual activists, groups and organizations created in 2004 covering 18 countries in Latin America and the Caribbean. Red Lactrans is a network for information, mobilization and denounce to support trans people in the region.

Regional Resource Centers

Several regional resource centers have been established to provide training, contacts, and other resources to organizations and individuals working to protect sexual rights. They conduct workshops, trainings and online discussions and offer several publications. The centers are primarily funded by the Ford Foundation.

- ◆ **Africa Regional Sexuality Resource Center (www.arscr.org)**
- ◆ **Latin-American Center for Sexuality and Human Rights (www.clam.org.br)**
- ◆ **South and Southeast Asia Resource Center on Sexuality (www.asiasrc.org)**
- ◆ **European Sexuality Resource Center (www.sexualityresources.eu/index.htm)**

Safra Project www.safraproject.org/about.htm

The Safra Project is a resource project working on issues relating to lesbian, bisexual and/or transgender women who identify as Muslim religiously and/or culturally

(Muslim LBT women). The Safra Project was set up in October 2001 by and for Muslim LBT women. The issues faced by Muslim LBT women, and the (combination of) prejudices based on sexual orientation, gender identity, gender, religion, race, culture and immigration status that they experience, are unique and currently insufficiently addressed. The word *safra* is related to the words for “journey” and “discovery” in many languages such as Arabic, Farsi and Urdu. The Safra Project does not seek to provide ultimate answers or solutions, and is not a faith group. The project ethos is one of inclusiveness and diversity.

Southeastern European Queer Network (SEE Q)

www.queer.ba/seeqeng.htm

SEE Q is a network of LGBTIQ organizations and activists from the former Yugoslavia formed in 2003 with the purpose of addressing human rights violations against LGBTIQ individuals and communities at regional and international level, as well as strengthening the regional cooperation of LGBTIQ activists and organizations. SEE Q currently focuses on lobbying, advocacy and public policy.

Talking About Reproductive and Sexual Health Issues (TARSHI)

www.tarshi.net

TARSHI is a regional organization (South Asia) focused mainly on advocacy for sexual and reproductive rights. TARSHI conducts public education initiatives, as well as direct advocacy through organized demonstrations. TARSHI also operates the Sexuality and Rights Institute (www.sexualityinstitute.org) and the South and Southeast Asia Resource Center on Sexuality (www.asiasrc.org).

TransGender Europe (TG-EU) www.tgeu.net/

TG-EU is a European network of transgender organizations aiming at increasing visibility of trans people, combating discrimination based on gender identity and expression, sharing information on the legal and social situation of trans people in European countries. TG-EU established during its first Council in Vienna in 2005 a platform of rights for trans people in the continent.

Women for Women’s Human Rights—New Ways (WWHR) www.wwhr.org

This organization began as a national NGO, working for women’s rights in Turkey. It has expanded to become an international organization, conducting lobbying and advocacy efforts at the United Nations, as well as providing education and training for women’s rights activists. In 2001, WWHR founded the Coalition for Sexual and Bodily Rights in Muslim Societies (www.wwhr.org/musluman_toplumlarida_dayanisma_agi.php), a network of groups working for sexual rights in Muslim countries from North Africa to Southeast Asia.

Women Living Under Muslim Laws (WLUML) www.wluml.org

WLUML is an international network formed in 1984 providing support, information and a space for women who live in social contexts or legal systems shaped on

laws and customs said to derive from Islam. The network has extended to more than 70 countries worldwide. WLUMML builds bridges across identities, with a particular focus to marginalized women, including women who suffer from exclusion or criminalization on the basis of their sexuality. WLUMML focuses on networking, capacity building, publication and media, and collective project development.

Women's Human Rights Net (WHRnet) www.whrnet.org/

WHRnet is a project of the Association for Women's Rights in Development (AWID, at www.awid.org/) whose goal is providing information and analysis on women's rights and global issues, with particular focus on UN and regional systems of human rights, and the challenge of fundamentalism.

World Association for Sexual Health www.worldsexology.org

An umbrella organization of five regional federations, promoting sexual health through advocacy, networking, and research. All of the federations share similar programs of working for sexual health and sexual rights in both the scientific and political arenas. The individual federations are:

- ◆ North American Federation of Sexuality Organizations (www.nafso.org)
- ◆ Latin American Federation of Sexology and Sexual Education (www.flases.org)
- ◆ European Federation of Sexology (www.europeansexology.com)
- ◆ African Federation for Sexual Health and Rights (info@actionhealthinc.org)
- ◆ Asia and Oceania Federation of Sexology (www.geocities.com/afsafs01)

World Organization Against Torture (OMCT) www.omct.org

A coalition of international organizations fighting against torture and cruel, inhuman, and degrading treatment. The organization's International Secretariat (based in Geneva) submits reports to various IGOs, including the UN and Council of Europe. OMCT's primary concern in the area of sexual rights is in the area of violence against women—including the practices of rape, genital mutilation, forced abortion and marriage, and human trafficking and forced prostitution within the definition of "torture." Their Violence Against Women program includes research and documentation, training, and advocacy efforts.

The Youth Coalition www.youthcoalition.org

An international organization of people ages 15 to 29, focused on advocacy efforts for the sexual and reproductive rights of young people. YC's advocacy is mainly directed towards IGOs and treaty bodies, with delegates also representing the sexual rights of young people at international conferences such as the five- and ten-year reviews of the ICPD (International Conference on Population and Development). The organization also conducts training for youth advocates through various workshops and training resources located on their website. YC is based in Ottawa, Canada.

B. Main Sources (documents, reports, databases, etc.)

1. Declarations of Rights/Principles

International Bill of Gender Rights (IBGR)

<http://inquirer.gn.apc.org/GDRights.html>

Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

<http://hei.unige.ch/~clapham/hrdoc/docs/siracusa.html>

The Yogyakarta Principles

<http://www.yogyakartaprinciples.org>

2. Definitions of Rights

Articulation of Queer Rights (Alternative Law Forum)

<http://www.altlawforum.org/PUBLICATIONS/Sexuality/377>

Health, Empowerment, Rights, and Accountability Action Sheets

<http://www.iwhc.org/docUploads/HERAActionSheets.PDF>

International Planned Parenthood Federation Charter on Sexual and Reproductive Rights

<http://www.unfpa.org/swp/1997/box8.htm>

Recognizing the Identity and Rights of Trans People (Recommendations from Press for Change)

<http://www.pfc.org.uk/node/450>

World Association of Sexology—Declaration of Sexual Rights

http://www.worldsexology.org/about_sexualrights.asp

World Health Organization—Defining Sexual Health

http://www.who.int/reproductive-health/publications/sexualhealth/defining_sh.pdf

3. International Human Rights Bodies and Databases

African Commission on Human and People's Rights

<http://www.achpr.org/>

African Court on Human and People's Rights

http://www.fidh.org/rubrique.php?id_rubrique=359

African Union

<http://www.africa-union.org/>

Council of Europe

<http://www.coe.int>

Council of Europe/Commissioner for Human Rights

http://www.coe.int/t/commissioner/default_EN.asp

European Court of Human Rights (ECtHR)

<http://www.echr.coe.int/echr/>

European Union

<http://europa.eu>

HUDOC—Database of the case-law of the European Convention on Human Rights

<http://www.echr.coe.int/echr>

Inter-American Commission on Human Rights

(site includes direct links to databases of documents and reports)

<http://www.cidh.org/>

Inter-American Commission on Women

<http://www.oas.org/CIM/english/About.htm>

Inter-American Court of Human Rights

<http://www.corteidh.or.cr>

Inter-American Human Rights Database

<http://www.wcl.american.edu/pub/humright/digest/Inter-American/>

Inter-American Human Rights Digest

<http://www.wcl.american.edu/humright/hracademy/iadigest.cfm>

Office of the United Nations High Commissioner for Human Rights

(site includes direct links to various human rights charters and treaty bodies)

<http://www.ohchr.org>

Human Rights Council (HRC)

<http://www.ohchr.org/english/bodies/hrcouncil/>

HRC Special Procedures

<http://www.ohchr.org/english/bodies/chr/special/index.htm>

Human Rights Treaty Bodies

<http://www.ohchr.org/english/bodies/index.htm>

Organization of American States

<http://www.oas.org> OR <http://www.oea.org>

United Nations

<http://www.un.org/>

University of Minnesota Human Rights Library (Database)

<http://www1.umn.edu/humanrts/index.html>

CERSGOSIG

(Database on sexual orientation, gender identity and the law)

<http://www.cersgosig.org>

**4. International Human Rights Instruments
(Declarations, Treaties and Conventions)**

Universal Declaration of Human Rights

<http://www.un.org/Overview/rights.html>

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

<http://www.ohchr.org/english/law/cerd.htm>

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)

<http://www.ohchr.org/english/law/cmw.htm>

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

http://www.unhchr.ch/html/menu3/b/h_cat39.htm

Convention on the Rights of the Child (CRC)

<http://www.unhchr.ch/html/menu3/b/k2crc.htm>

Convention on the Rights of Persons with Disabilities

<http://www.un.org/disabilities/>

International Covenant on Civil and Political Rights (ICCPR)

http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

http://www.unhchr.ch/html/menu3/b/a_cescr.htm

International Conference on Population and Development (ICPD)—Program of Action

<http://www.un.org/popin/icpd/conference/offeng/poa.html>

**ICPD+5: Key Actions for the Further Implementation
of the ICPD Program of Action**

<http://www.unfpa.org/publications/detail.cfm?ID=276>

United Nations World Conference on Women—Program For Action

<http://www.un.org/womenwatch/daw/beijing/platform/index.html>

Regional Instruments

a. Africa

African Charter on Human and Peoples' Rights

<http://www1.umn.edu/humanrts/instree/z1afchar.htm>

African Charter on the Rights and Welfare of the Child

<http://www1.umn.edu/humanrts/africa/afchild.htm>

Protocol on the Rights of Women in Africa

http://www.achpr.org/english/_info/women_en.html

b. Americas

American Convention on Human Rights

<http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>

American Declaration of the Rights and Duties of Man

<http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm>

Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance (Draft, in the website section dedicated to the activities of the civil society)

<http://www.civil-society.oas.org/>

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women

<http://www1.umn.edu/humanrts/instree/brazil1994.html>

c. Europe

European Convention on Human Rights and Fundamental Freedoms (ECHR)

<http://www.hri.org/docs/ECHR50.html>

European Social Charter

<http://conventions.coe.int/treaty/en/treaties/html/035.htm>

5. International Jurisprudence on LGBTI Rights

United Nations

Toonen v. Australia

<http://hrw.org/lgbt/pdf/toonen.pdf>

'X' v. Colombia

[http://www.unhchr.ch/tbs/doc.nsf/0/51537efd406147c3c125730600464373?](http://www.unhchr.ch/tbs/doc.nsf/0/51537efd406147c3c125730600464373?Opendocument)

Opendocument

Young v. Australia

[http://www.unhchr.ch/tbs/doc.nsf/0/3c839cb2ae3bef6fc1256dac002b3034?](http://www.unhchr.ch/tbs/doc.nsf/0/3c839cb2ae3bef6fc1256dac002b3034?Opendocument)

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Regional Jurisprudence

a. European Court of Human Rights

The full text of the following decision may be found in the HUDOC database (see above)

B. v. France

Bączkowski and Others v. Poland

Dudgeon v. United Kingdom

Norris v. Ireland

Modinos v. Cyprus

Goodwin v. United Kingdom

Grant v. United Kingdom

Karner v. Austria

L. and V. v. Austria

Lustig-Prean and Beckett v. United Kingdom

Salgueiro da Silva Mouta v. Portugal

Smith and Grady v. United Kingdom

Van Kück v. Germany

E.B. v. France

b. Inter-American Court of Human Rights

Marta Alvarez v. Colombia (Decision of Admissibility)

<http://www.cidh.oas.org/annualrep/99eng/Admissible/Colombia11656.htm>

6. Guides/Manuals/Reports

(Note: this list does not pretend to be exhaustive)

Bringing Rights to Bear: An Advocate's Guide to the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights (Center for Reproductive Rights)

http://www.reproductiverights.org/pdf/pub_bp_brb.pdf

Institutional Memoir of the 2005 Institute for Trans and Intersex Activist Training (IGLHRC)

<http://www.iglhrc.org/files/iglhrc/LAC/ITIAT-Aug06-E.pdf>

LGBTI Organizing in East Africa: The True Test for Human Rights Defenders (Women for Women's Human Rights)

<http://www.whrnet.org/docs/LGBTI-Report.pdf>

Making the Mountain Move: An Activist's Guide on How International Human Rights Mechanisms Can Work for You (IGLHRC)

<http://www.iglhrc.org/files/iglhrc/reports/unguide.pdf>

Manual for Civil Society Participation in the Organization of American States and in the Summits of the American Process

<http://www.civil-society.oas.org/documents/Manual%20para%20la%20Participacion%20de%20la%20Sociedad%20Civil%20en%20las%20Cumbres%20y%20en%20la%20OEA%20-%20English%20-%20June%202022,%202006.pdf>

Permanent Council of the OAS—Working Group to Prepare a Draft Inter-American Convention Against Racism and All Forms of Intolerance

<http://www.oas.org/consejo/CAJP/RACISM.asp>

Rights and Desire: A Facilitator’s Manual to Healthy Sexuality

http://www.breakthrough.tv/pdf/rights_and_desire.pdf

Shari’a Implementation in Nigeria: The Journey So Far

<http://www.baobabwomen.org/Sharia%20&%20BAOBAB%20publication.pdf>

Using the Inter-American System for Human Rights—A Practical Guide for NGOs (Global Rights)

http://www.globalrights.org/site/DocServer/ENGLISH_-_REVISED_7-19.pdf?docID=423

http://www.globalrights.org/site/DocServer/Inter-American__Spanish__Final.pdf?docID=4924

Walking the Talk: Inner Spaces, Outer Faces—A Gender and Sexuality Initiative (International Center for Research on Women)

http://www.icrw.org/docs/2006_isofi.pdf

Working With Men, Responding to AIDS: Gender, Sexuality, and HIV—A Case Study Collection

http://synkronweb.aidsalliance.org/graphics/secretariat/publications/wwm1103_working_with_men.pdf

A Youth Activist’s Guide to Sexual and Reproductive Rights (Youth Coalition)

<http://www.youthcoalition.org/DEV/mambo2/images/stories/SRRGUIDE/srr%20guide%20final%20version.pdf>

7. Recent Reports on LGBTI Rights

(Note: this list does not pretend to be exhaustive)

Amnesty International

Stonewalled—still demanding respect. Police abuses against lesbian, gay, bisexual and transgender people in the USA

<http://www.amnesty.org/en/library/info/AMR51/001/2006>

Crimes of Hate, Conspiracy of Silence. Torture and ill-treatment based on sexual identity

http://www.ai-lgbt.org/ai_report_torture.htm (also available in Spanish, French, Arabic)

East Africa and the Horn of Africa: Defending the Defenders, a Human Rights Defenders Conference

<http://web.amnesty.org/library/Index/ENGAFR040012006?open&of=ENG-347>

Indonesia (Aceh): Torture of Gay Men by the Banda Raya Police

<http://web.amnesty.org/library/Index/ENGASA210042007?open&of=ENG-347>

Poland and Latvia: Lesbian, Gay, Bisexual, and Transgender Rights in Poland and Latvia

<http://web.amnesty.org/library/Index/ENGEUR010192006?open&of=ENG-347>

Uganda: Lesbian, Gay, Bisexual, and Transgender People Targeted

<http://web.amnesty.org/library/Index/ENGAFR590062006?open&of=ENG-347>

USA: New York City: Abuse of Transgender Women by New York City Police Officers

<http://web.amnesty.org/library/Index/ENGAMR511642006?open&of=ENG-347>

Human Rights Watch

Family, Unvalued: The Uniting American Families Act

http://www.hrw.org/campaigns/lgbt/uaf_act.htm

Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic

<http://hrw.org/reports/2004/jamaica1104/>

Hatred in the Hallways. Violence and Discrimination against Lesbian, Gay, Bisexual and Transgender Students in U.S. Schools

<http://www.hrw.org/reports/2001/uslgbt/>

In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct

<http://hrw.org/reports/2004/egypt0304/>

More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa

<http://www.hrw.org/reports/2003/safrica/>

Public Scandals: Sexual Orientation and Criminal Law in Romania

<http://www.hrw.org/reports97/romania/>

We Have the Upper Hand: Freedom of Assembly in Russia and the Rights of LGBT People

<http://hrw.org/backgrounders/lgbt/moscow0607/>

International Commission of Jurists (ICJ)

International Human Rights References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity

http://www.icj.org/IMG/UN_references_on_SOGI.pdf

References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity—The Inter-American Human Rights System

http://www.icj.org/IMG/Inter-American_HR_System.pdf

Sexual Orientation and Gender Identity in Human Rights Law, Jurisprudential, Legislative and Doctrinal References from the Council of Europe and the European Union

http://www.icj.org/IMG/European_Compilation-web.pdf

International Gay and Lesbian Human Rights Commission (IGLHRC)

More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa

<http://www.iglhrc.org/files/iglhrc/reports/safrighrc0303.pdf>

Off the Map: How HIV&AIDS Programming is Failing Same-Sex Practicing People in Africa

<http://www.iglhrc.org/files/iglhrc/otm/Off%20The%20Map.pdf>

The Rights of Transvestites in Argentina

http://www.iglhrc.org/files/iglhrc/reports/Argentina_trans.pdf

Sexual Minorities and the Work of the United Nations Special Rapporteur on Torture

<http://www.iglhrc.org/files/iglhrc/reports/torturereport.pdf>

Other

A Note on the Brazilian Resolution (Alternative Law Forum)

<http://www.altlawforum.org/PUBLICATIONS/Sexuality/brazil>

Building Alliances Globally to End Violence Against Women (CREA)

<http://files.creaworld.org/files/bellagio.pdf>

Gender and Sexuality: Overview Report 2007 (BRIDGE)

<http://www.bridge.ids.ac.uk/reports/CEP-Sexuality-OR.pdf>

Global Implications of U.S. Domestic and International Policies on Sexuality (IWGSSP)

<http://www.mailman.hs.columbia.edu/cgsh/IWGSSPWorkingPaper1English.pdf>

Human Rights Violations Against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore, India, September 2003 (Alternative Law Forum)

<http://www.altlawforum.org/PUBLICATIONS/PUCL%20REPORT%202003/view>

Inter-South Dialogues: Report of the Consultation on Reproductive Rights and Sexual Rights (CREA)

http://files.creaworld.org/files/Inter_south_dialogue.pdf

People's Panchayat on Resisting Stigma and Discrimination (Action Plus)

http://files.creaworld.org/files/peoples_panchayat.pdf

Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of

the Highest Attainable Standard of Physical and Mental Health (UN, Paul Hunt)

[http://daccessdds.un.org/doc/UNDOC/GEN/G07/120/50/PDF/G0712050.pdf?](http://daccessdds.un.org/doc/UNDOC/GEN/G07/120/50/PDF/G0712050.pdf?OpenElement)

[OpenElement](#)

Sexual Orientation in International Law (ILGA)

http://www.ilga.org/news_results.asp?LanguageID=1&FileID=1078&ZoneID=7&FileCategory=7

8. Recommendations and Resolutions of International Bodies

United Nations

General Assembly Resolution 60/251—Established the Human Rights Council

<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/60/251>

Council of Europe

Recommendation no. 924 (on discrimination against homosexuals)

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta81/EREC924.htm>

Recommendation no. 1117 (on the condition of transsexuals)

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta89/EREC1117.htm>

Opinion no. 246 (participatory status of international NGOs; referencing Resolution no. (93) 38)

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/eopi246.htm>

Organization of American States

CP/RES759 (1217/99) (“Guidelines for the Participation of the Civil Society Organizations in OAS Activities”)

<http://www.oas.org/consejo/resolutions/res759.asp>

CP/RES 840 (1361/03) (“Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities”)

<http://www.oas.org/consejo/resolutions/res840.asp>

AG/RES 2435 (XXXVIII-O/08) (“Human Rights, Sexual Orientation and Gender Identity”)

<http://www.oas.org/consejo/GENERAL%20ASSEMBLY/DOCS38AG/VOL38/ag04208e02.doc> (at p. 272)

Universal Declaration of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) 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.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



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