

Sexualized Violence Against Lesbians

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Lesbians are specifically targeted for human rights violations around the world because they are women and because they are sexual minorities. These abuses derive from sanctioned discrimination based on gender and sexual orientation and are often in the form of sexual violence, such as rape, forced sodomy, or sexual slavery as punishment for not conforming to sexual and gender norms. Consistent violations of lesbians exist worldwide. Yet, these abuses escalate during times of internal or international armed conflict because of tolerated use of women's bodies as weapons of war, and the targeting of sexual minorities as scapegoats for the underlying problems of conflict. The result is that lesbians become particularly vulnerable to backlash and physical attacks in the chaos of conflict.

A norm condemning gender-based violence has arisen in international law over the last two decades. Its development has provided worldwide recognition of a right for women to be free from violence directed at them because of their female gender. This standard has been codified in international human rights texts and instruments, including the Convention for the Elimination of All Forms of Discrimination Against Women (G.A. Res. 34/180, UN GAOR Supp. No. 46) and the Declaration on the Elimination of Violence Against Women (G.A. Res. 48/04, 48 UN GAOR Supp. No. 49). The norm provides an existing legal basis in international human rights law for protection from and prosecution for violence motivated by a women's gender.

Historically, international legal standards relating to human rights violations against women have excluded specific protections for lesbians for violations of bodily integrity motivated by sexual orientation. In United Nations (UN) Forums from Beijing to Durban, governments and women's human rights advocates have systematically written out references to sexual orientation from proposed human rights texts that address issues of women and gender.

Lesbians have found no separate safeguard or vehicle for prosecution for violations of bodily integrity motivated by sexual orientation in human rights law. At present, no international human rights text, treaty, or

declaration explicitly confirms non-discrimination in human rights on the basis of one's sexual orientation, nor affords a right to be free from violence directed against them based on their sexual orientation. Existing international human rights texts contain the broad concept of non-discrimination in human rights, with many of them including specific enumerations of characteristics upon which an individual cannot be discriminated against in accessing the human rights covered by the text. None of these texts explicitly includes sexual orientation. Some treaty monitoring and human rights bodies have interpreted certain provisions to extend limited protections to individuals regardless of their sexual orientation. Nonetheless, these interpretations are inconsistent and leave a legal gap of protection for lesbians in international human rights law for violations of bodily integrity.

The foundational text for international human rights law, the Universal Declaration of Human Rights (UDHR), supports the premise that "all human beings are equal in dignity and rights, without distinction of any kind." The UDHR contains an enumeration of race, gender, religion, and language. Many international human rights law academics argue that although the UDHR does not explicitly list sexual orientation, the language is broad enough that it can be interpreted to encompass non-discrimination on the basis of one's sexual orientation. This theory was recently tested and failed. At the 59th session of the United Nations Commission on Human Rights (UNCHR), Brazil introduced a resolution on "Human Rights and Sexual Orientation" that proposed adopting a resolution affirming that the rights enumerated in the Universal Declaration of Human Rights were not to be denied an individual on the basis of their sexual orientation.

Affirming the inadmissibility of discrimination as a fundamental principle, the resolution expressed "deep concern at the occurrence of violations of human rights all over the world against persons on the grounds of sexual orientation." Consideration of the resolution was postponed by a narrow vote until the 60th session of the Commission. In March 2004, although 20 countries—Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom, and Northern Ireland—took very strong positions in support of the Brazilian resolution, proposal vote on the resolution was again postponed until the 61st session of the Human Rights Commission because of sharp dissent.

The Brazilian resolution proposal offered an opportunity to clarify, explicitly, that the basic, fundamental rights enumerated in the UDHR could not be denied an individual because of their sexual orientation. Failure of this proposal to pass, or even be openly debated at two sessions of the UNCHR, demonstrates that there is lack of universal acceptance of non-discrimination in human rights on the basis of sexual orientation. Many

international human rights organizations, including Amnesty International, have expressed concern with this lack of universality, stating that “[A]doption [of the Brazilian proposal] is the only way to end the intolerable exclusion of lesbian, gay, bisexual, and transgender people from the full protection of the UN system.”

In the absence of a clear international norm affirming non-discrimination in access to human rights protections on the basis of sexual orientation, lesbians are limited to utilizing international standards addressing gender equality in human rights protections. This, however, only addresses half of the source of violations against lesbians because, although they are women targeted for abuses because of their gender, they are also sexual minorities targeted for abuses based on their sexual orientation. Lesbians face two overlapping levels of marginalization and discrimination, based on gender and sexual orientation, making them particularly vulnerable to sexual human rights violations. Utilizing human rights texts aimed at gender parity or violence does not provide sufficient legal protection.

In 2000, the United Nations Security Council passed Resolution 1325 (UNSC 1325) as a result of a strong global women’s rights lobby raising awareness about the disproportionate impact of armed conflict on women in terms of increased, unchecked human rights violations of bodily integrity. UNSC 1325 sought to remedy the total exclusion of women, whose bodies were targeted, appropriated, and abused during war, from participating in the peace process and to afford an opportunity for women to shape legal protections for physical security in their post-conflict societies. Lesbians, as women, were afforded the prospect of directly participating in developing legal standards for protections against violations of their human rights that were motivated by discrimination against sexual orientation.

Women have been included in peace processes more often since enactment of UNSC 1325, including participation in negotiations, peace agreements, and implementation of post-conflict reconstruction laws and policies. Nonetheless, their inclusion is still sparse. Recent examples of armed conflict demonstrate that it takes a forceful global lobby of women’s rights organizations to ensure that women are integrated in the post-conflict peace-building process. It is unlikely, with so few women participating generally, that the specific concerns for protection of lesbians will be addressed. Sexuality, particularly sexual orientation, is a controversial topic in many societies. Lesbians are not likely to be asked to participate by their own communities because of domestic discrimination against non-conforming sexual minorities. The result is that lesbians do not find a place at the peace table. Enactment of UNSC 1325 has facilitated inclusion of some gender specific protections in an increasing number of peace agreements as a result of the mandate.

Ultimately, in application, the resolution fails to provide a real chance for lesbians to take part in the development of legal standards of protection, leaving them without defense or remedy in international human rights law for violations that are specific to them—sexual violence motivated by their sexual orientation.

Women around the world are targeted for human rights violations of bodily integrity because of their gender, these abuses often taking the form of sexual violence. For lesbians, this is compounded by an additional layer of discrimination based on sexual identity or orientation. Prejudice against lesbians because of their sexual orientation is a key cause of physical violations of their human rights because it reduces respect for their dignity as people and legitimizes assaults against them as a targeted group. Facing these multiple forms of discrimination increases lesbian vulnerability to corporal violence and makes more difficult the possibility to obtain prosecution for any violations committed against them. It is the combination of discrimination on the basis of gender and sexual orientation that puts lesbians at a higher risk for human rights abuses directed against their body and their sexuality.

Violations of human rights are generally derived from sanctioned forms of prejudice and discrimination in society. Violations of women's human rights are rooted in a global culture of gender discrimination that effectively denies women equality and legitimizes the appropriation of their bodies for social or political ends. This discrimination serves as the foundation for gender-based violence against women, and for human rights violations of bodily integrity, such as rape.

Gender-based discrimination includes regulation of women's sexuality. Regulation is maintained through particular legal responses or strict constraints on women imposed by cultural standards, such as: forced marriages and childbirth, honor killings, or perpetuation of the belief that women are a sexual resource to be used at will, with or without their consent. Regulation is also maintained through harsh punishment for non-compliance with certain sexual and gender norms.

Lack of respect for and non-recognition of sexuality as a human right impairs and nullifies a woman's fundamental freedom to own and control her sexual identity. When a woman's sexuality does not conform to the majority view, as Ana Elena Obando argues, she is often seen as a legitimate target for retribution, raising her risk of abuse and human rights violations by a regulating society. The punishment makes an example of the woman, reinforcing the norms for all women in the society, not just the woman targeted for the mistreatment. The Special Rapporteur on Violence Against Women comments that "[U]nless women come to be seen as individual beings with rights to determine their

sexuality, their inferior social position will continue to permit violence against them.”

Human rights violations of women for non-conforming to sexuality or gender identity norms have been increasingly documented by independent experts appointed by the Commission on Human Rights including the Special Rapporteur on Violence Against Women, Extrajudicial Executions, Torture as well as the Special Representative on Human Rights Defenders. The UN Special Rapporteur on Violence Against Women has reported that

[C]ommunities police the behavior of their female members. A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished . . . in most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women, who choose options which are disapproved of by the community . . . to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment The final report of the Special Rapporteur on Violence Against Women in 2003 recommended appointment of a Special Rapporteur on Sexual Orientation to investigate the growing violence against lesbians and sexual minorities.

When societal norms stipulate what human beings can and cannot do with their bodies (that is, super femininity; no same-sex sexual relations), punishment for violating these norms is likely to be in bodily terms, as well. Accordingly, the penalty for women who do not conform to gender and sexuality standards is sexual violence such as rape, forced sodomy, and sexual slavery. Lesbians, as more obvious gender and sexuality non-conformers, are targeted more frequently and severely for sexualized, physical violations of their human rights.

The interim and final reports (UN Doc. A/56/156, July 3, 2001 and UN Doc. E/CN.4/2002/76, December 27, 2001) of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment in 2001 detailed specific allegations of abuses perpetrated against lesbians, including rape, as a means of intimidation and social regulation. In 2003, Human Rights Watch reports that the Special Rapporteur on Torture stated that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed discrimination on the grounds of sexual orientation may often contribute to the process of dehumanization of the victim, which is often a necessary pre-condition for torture and ill-treatment to take place.”

Because lesbians, as women, face an additional layer of discrimination based on sexual orientation, their vulnerability to human rights violations is heightened. This risk is solidified in societal acceptance of sexualized violence as a legitimate way to regulate women’s sexuality.

Amnesty International reports that millions of lesbians across the globe face imprisonment, torture, violence, and discrimination in their countries because of their sexual orientation. The discrimination experienced by lesbians in their home country resembles and is comparable to the forms of discrimination the Special Rapporteur on Torture has recognized as leading to torture or cruel, inhuman, and degrading treatment. Lesbians face persecution on the basis of their sexual identity, for articulation of desires and for engaging in sexual practices that violate cultural, community, or state norms.

States around the world assert and exert power domestically over women's sexuality, claiming they have a vested interest based on population control, cultural preservation, and the general morality of society. For example, the International Gay and Lesbian Human Rights Commission (ILGC) reports that in Turkey, the state subjects women to forced examinations of their virginity, an intrusive interview and physical exam of their "virtue," when they reach marrying age. The penalty for being found to have engaged in sexual relations outside of marriage ranges from being ostracized to physical beatings.

Author Mubarak Dahir reports that states with strict societal and political regulations have long used their local gay and lesbian populations as public "whipping posts" to chill all kinds of dissenting voices at home. Torture and rape are used as an extreme but widespread means for regulating sexuality, enforcing gender norms, and quieting dissent. Police and military, as enforcers of these societal norms, exercise enforcement power by raiding gay areas and publicly rape lesbians who are caught in these establishments in order to "teach them a lesson" or to "cure" them of their nonconforming sexuality. The ILGC reports that in Mozambique, for example, military troops conducted a raid of three local bars known for "lesbian activity." Five women were taken into custody and subsequently reported being "sentenced" to work in a brothel.

Discriminatory domestic laws single out sexual minorities for criminalization by outlawing their intimacy, their ability to advocate for equality and often their very existence. These laws support and sanction violence, abuse, and repression against lesbians and gays in their home countries. Currently, approximately 100 countries criminalize sexual relations between persons of the same sex with penalties ranging from imprisonment to death. In other countries, vaguely worded and sweeping laws against "indecent behavior" are used to penalize individuals, whose only crime is looking, dressing, or behaving in ways that do not conform to gender and sexuality norms. These laws foster a domestic climate of intolerance, which increases the risk of sexual attacks and other abuses against women believed to be, or who actually are, lesbian.

In states with discriminatory laws proscribing sexual orientation or activity, additional laws may explicitly exclude lesbians and gays from protection. Even broadly worded laws may be selectively interpreted not to apply to sexual minorities, precluding them from legal safeguards because of their sexual orientation. The legal system as a whole may refuse or fail to protect lesbians specifically because of its own biases against women and/or against sexual minorities. Moreover, lesbians may be especially hesitant to challenge or pursue protection under domestic law for fear of negative consequences that would result from calling attention to themselves or their sexual orientation. For example, in 2002, 61 countries had imprisoned lesbians or gay men because of their public sexual identity and 9 countries still had the death penalty for engaging in same-sex sexual relations (Afghanistan, Arab Emirates, Chechnya, Iran, Mauritania, Pakistan, Saudi Arabia, Sudan, and Yemen).

Societal prejudice against sexual minorities is affirmed in domestic law. Physical, and particularly sexual, violence is sanctioned by social stigma and the perceived need to punish sexual deviance. This domestic environment of discrimination against sexual minorities encourages unchecked human rights violations and violence against lesbians.

Discrimination, abuse, and lack of legal redress at the domestic level have forced lesbians to seek out the typically broader protections of international human rights law. Amnesty International reports, "Frustrated by the impunity, indifference and institutionalized prejudice they encounter in their own countries, lesbian survivors and their advocates have increasingly turned to international human rights bodies [for protection]."

Within the last two decades, women's rights advocates have laid a strong foundation for the critique of practices targeted at women's bodies and sexuality, through advocacy utilizing international human rights legal instruments. Yet, these advocates have shied away from promoting accountability for human rights violations against lesbians for fear that association of their movements with lesbianism would delegitimize their overall goals. In many ways, this fear has been actualized, as advocates who have raised respect for sexuality as a fundamental human right have been stigmatized and deemed purveyors of immorality, effectively silencing them. Those defending a woman's right to independence over her sexuality have found themselves repressed, marginalized, and physically abused. The Special Representative to the Secretary General on Human Rights Defenders, Hina Jilani, noted in 2001, "Of special importance [are] women's human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and public repudiation, not only by the State forces but by other social forces."

The result is that the international women's human rights movement has largely disassociated itself from addressing or advocating for protections for lesbians in order to preserve their ability to champion other women's issues not deemed as controversial. This was confirmed at the Fourth World Conference on Women in Beijing in 1995.

The goal of the Fourth World Conference on Women in Beijing was to develop a Platform for Action to comprehensively address and present recommendations for increased human rights protections for women globally. In a preparatory conference, Canada proposed that a paragraph be included in the Platform for Action that would address discrimination against women on multiple grounds, including sexual orientation. This paragraph was included in the draft text without opposition or discussion. At the beginning of the Beijing Conference, there remained four references to "sexual orientation" in the draft Platform for Action. Two references were broad "diversity" paragraphs, a third called on governments to take action to eliminate discrimination in employment based on sexual orientation. The fourth called on states to provide legal safeguards to prevent persecution or violence on the basis of sexual orientation. Ultimately, after much lobbying from conservative and religious groups, all references were debated together and ultimately omitted from the final Platform for Action because of lack of consensus.

The result of Beijing, and subsequent international human rights forums, is that lesbians are disenfranchised from the global women's human rights movement that has gained considerable ground in establishing international norms condemning gendered violence against women. Lesbians have rarely been included or even mentioned in these human rights discourses about gender or sexuality. Instead, they have been grouped in the larger discussion of LGBT, which has obscured how profoundly human rights abuses against lesbians are shaped and determined by both gender and sexual orientation.

The international lesbian, gay, bisexual, and transgender movement has struggled to find legitimacy and protection in the international arena. This is, in part, due to the fact that sexual minorities, as a cohesive lobbying voice at the global level, have been excluded from participation and development of human rights norms relevant to them. For years, non-governmental organizations devoted to or addressing the human rights of sexual minorities were refused accreditation to UN human rights forums. In 1993, at the Vienna World Conference on Human Rights, three lesbian and gay organizations became the first ever to be knowingly accredited to an international human rights forum.

Exclusion from the international women's rights movement and, until recently, from UN human rights forums, has precluded lesbians from being

able to develop clear, separate international norms or legal standards of protection against human rights violations of bodily integrity motivated by their sexual orientation.

As a result of efforts by the worldwide women's human rights movement, international human rights law has evolved to identify a global norm condemning gender-based violence against women. Over the past 15 years, a large body of international human rights texts have codified the norm, particularly in the United Nations system, interpreting gender-based violence as a violation of women's fundamental human rights, most notably in the 1980 Convention for the Elimination of All Forms of Discrimination Against Women. Conversely, the same cannot be said for sexual violence against lesbians deriving from discrimination on the basis of sexual orientation.

Presently, no international human rights text explicitly confirms the right to human rights protections regardless of an individual's sexual orientation. The language of some existing international human rights texts has been interpreted to extend certain of their protections to individuals regardless of their sexual orientation in limited circumstances. Yet, these interpretive applications of human rights protections to sexual minorities are limited. The concept of non-discrimination in human rights protections on the basis of one's sexual orientation has not yet reached the level of international norm.

This lack of universality is devastating to lesbians. It limits their access for protection under international human rights law for sexual violence committed against them to legal standards that address motivations based on gender alone. Gender-based norms are not adequate to protect against human rights violations motivated by sexual orientation. Standards condemning gender-motivated violence offer some opportunity for redress to lesbians because a woman can claim that the violation is motivated by perceived need to regulate her sexuality because she does not conform to existing gender or sex norms. But realistically utilizing these norms for protection is not feasible for lesbians because their existence is criminalized and there is legitimate fear of reprisal for calling attention to themselves or their sexual orientation.

Lesbian women cannot effectively use a system to claim that their rights have been violated if the system itself does not recognize a right to be free of human rights violations. You can not use a system claiming that your rights have been violated if the system itself does not recognize that you have a right to be free of violations. Without a specific standard providing for non-discrimination in human rights protections on the basis of an individual's sexual orientation, or a specific international norm condemning sexual violence against women because of their sexual orientation, lesbians are left without a clear avenue for legal redress

or protection in international human rights law for violations of their bodily integrity.

Human rights protections are primarily enforced at the domestic level. For lesbians, this is problematic for a variety of reasons. As previously mentioned, the majority of states are discriminatory against non-conforming women. Moreover, most states do not have specific laws that prohibit abuse or discrimination on the basis of actual or perceived sexual orientation. A few individual states have enacted domestic laws that include some limited security for lesbians and sexual minorities. Three—South Africa, Ecuador, and Brazil—have even included protection from abuse and discrimination on the basis of one's sexual orientation expressly in their Constitutions.

In addition, the majority of states around the world have discriminatory laws, which criminalize same-sex relations or sanction intolerance of sexual minorities. As mentioned previously, many domestic laws, which provide protection against violence, generally are often selectively not applied to sexual minorities. Together these factors contribute to a failure to provide real protection against or legal redress for violations of bodily integrity motivated by an individual's sexual orientation at the domestic level.

A number of international human rights treaties and texts contain the concept of non-discrimination in human rights protections. Many of these texts enumerate classes of persons or characteristics upon which discrimination in human rights is prohibited (for example, race, gender, religion, national origin, political opinion). None of these texts explicitly enumerates sexual orientation. Some human rights texts include what can be deemed a broad catch-all enumeration, such as "other social group." In limited circumstances, these "catchall" enumerations have been read to encompass sexual orientation. Yet, the concept of extending non-discrimination in human rights protections to sexual minorities (regardless of sexual orientation) is not universal. Where a human rights text spells out specific rights or protections, those listed are not automatically applicable to sexual minorities. The impact on lesbians is an inconsistent application of human rights protection for sexual abuses directed at them because of their sexual orientation.

The United Nations Charter preamble "reaffirms faith in fundamental human rights, in dignity and worth of the human person and in the equal rights of men and women." Article 55 of the Charter seeks promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." The Charter provides the basis for the human rights work of the entire UN system. In addition, the Universal Declaration of Human Rights (UDHR) states that "everyone is entitled to all the rights and freedoms set forth in

this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, property, birth or other status.” The UDHR provides the basis for the work of the Commission on Human Rights.

Neither the Charter nor the UDHR specifies sexual orientation as a characteristic upon which discrimination in human rights is expressly prohibited. The broad language of the UDHR could be understood to cover any distinction, including sexual orientation. Nevertheless, it has not yet been construed to prohibit violations based on an individual’s sexual orientation. This omission precludes lesbians from claiming a legally redressable violation of one of the human rights listed, including the right to security of person; or the right to be free from torture; cruel, inhuman, or degrading treatment; or punishment.

The Declaration on the Elimination of Violence Against Women states that “violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.” Moreover, the declaration asserts that states have an obligation to “exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” The Declaration specifically identifies a right to liberty and security of person, and right to be free from torture, both of which could encompass sexual violence. However, the Declaration’s application is limited to violence that is motivated by a woman’s gender. Clearly this covers sexual violence that is historically and overwhelmingly directed against women, such as rape. But what is not so clear is how the Declaration is applicable to instances where the sexual violence is primarily or exclusively motivated by a woman’s non-conforming sexual orientation. As of yet, the Declaration has not been applied to such a situation.

Other international human rights texts contain broad language that has been construed to extend certain protections to sexual minorities. These interpretive applications are limited to providing a basis for seeking asylum, interference with a right to privacy, and a general prohibition against discrimination.

The 1951 Refugee Convention has been interpreted by the UN High Commissioner for Refugees to include lesbians and gays under a “particular social group,” thus providing a basis for seeking asylum for persecution in a home country on the basis of an individual’s sexual orientation. This is limited to providing a basis for seeking asylum.

The International Covenant on Civil and Political Rights [ICCPR, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. No. 16 at 52, UN Doc. A/6316

(1966)] and the International Covenant on Economic, Social, and Cultural Rights [ICESCR, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. No. 16 at 49, UN Doc. A/6316 (1966).] have been read by the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights to extend a right to privacy to sexual minorities, and a right to be free of general discrimination because of one's sexual orientation.

In 1994, the Human Rights Committee decided *Toonen v. Australia*, a case of a gay rights activist that challenged a criminal prohibition on homosexuality. Tasmania retained old criminal prohibitions on homosexual activity, even though the law was not enforced regularly. All other Australian jurisdictions had decriminalized homosexual sex and the government of Australia was openly critical of Tasmania's maintenance of such laws. *Toonen* argued that the Tasmanian laws criminalizing homosexuality interfered with the right to privacy that was articulated in Article 17 of the ICCPR. He also argued that Article 26 of the Covenant, which prohibits discrimination "on any ground such as . . . other status" included sexual orientation and that the Tasmanian homosexuality law violated this provision. The Human Rights Committee held that the law did violate his right to privacy as articulated in Article 17, but that "other status" was not inclusive of sexual orientation. However, the Committee did find sexual orientation fell under the enumeration of "sex," thus extending the Covenant's prohibition against general discrimination to *Toonen*. Subsequent to *Toonen*, Amnesty International reports that both treaty-monitoring bodies called on governments to end domestic discrimination based on sexual orientation in the form of criminalization of homosexuality and discrimination in employment.

The problem with *Toonen* is that it is a limited ruling. It relates to criminal laws that infringe on the right of privacy or those that selectively apply to homosexual activity (discriminatory application). The reading of *Toonen* does not extend the right to liberty and security of person, or the right to be free from torture or cruel, inhuman, and degrading treatment or punishment articulated under the Covenant to sexual minorities or interpret these provisions to be applicable where violations are motivated by an individual's sexual orientation.

A more recent reading of the applicability of the ICCPR to sexual orientation by the Human Rights Committee was issued in General Comment 28 on protecting the equal rights of women and men. The Committee stated that criminal laws targeting sexual minorities for their private conduct, as well as laws limiting or regulating women's sexuality, would violate the right of privacy enumerated in the ICCPR and could supply a basis for violations of more fundamental rights enumerated therein. Directly, the reading is limited to situations where a right to privacy has been interfered with. The additional inference is vague and

does not have clear application to violations of physical security of lesbians. No such interpretation or application has yet occurred.

The Convention on the Elimination of Discrimination Against Women (CEDAW) defines discrimination against women as any “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil or any other field” (G.A. Res. 48/04, 48 UN GAOR Supp. No. 49 at 217, UN Doc. A/48/49 (1993), Article 1).

The Convention has been interpreted by the CEDAW Committee to include sexual rights of women. The difficulty in its application to lesbians is that there is no definition of sexual rights included in the text of the Convention. Moreover, sexual rights have traditionally been understood to be limited to the right to access and to determine reproductive health. One could argue that discrimination against sexual rights would include violence against lesbians that is motivated by discrimination against their sexual orientation. Such discrimination is actualized in violence against lesbians and directly interferes with their exercising their right to their sexuality. Nonetheless, this provision has never been clarified in such a manner. Article 5 of the Convention notes that governments are responsible for taking appropriate measures to eradicate cultural stereotypes that subordinate women. One could also argue that Article 5 could apply to stereotypes about sexual identity that raise a woman’s risk to violence. Nonetheless, the provision has not been explicitly interpreted to apply to stereotypes of gender and sexuality that lesbians may portray, nor does the provision speak to protection from violence that may generate from those stereotypes.

Regional human rights treaties and bodies have interpreted some broad provisions to have limited application to sexual orientation. Three cases from 1981 to 1993 challenged criminal prohibitions on homosexuality under the European Convention on Human Rights. The European Court of Human Rights struck down the laws in all three cases claiming that the criminal laws violated the right to privacy enumerated in the Convention. This reading is similarly limited like *Toonen*.

Other regional texts have expressly provided for protection from discrimination on the basis of sexual orientation, most predominantly in the European system and relating to employment. For example, the Commission on the European Community includes in its Charter on sexual discrimination in the workplace specific condemnation of discrimination against lesbians, gays, bisexuals, and transgender individuals (Charter of Fundamental Rights of the European Union, 2000 O.J.). Article 5 of the

American Convention on Human Rights, which includes the right to humane treatment, has been used to defend lesbian prisoners.

Although many international human rights treaties and texts contain the concept of non-discrimination in human rights, they do not explicitly include sexual orientation, which would extend the protections contained therein to protect lesbians against human rights violations of bodies. Although some broad language has been interpreted to be inclusive of sexual minorities, the extension of the concept of non-discrimination in human rights protections to sexual orientation is not universal. These interpretive applications are also limited to providing a basis for asylum, interfering with a right to privacy, and general discrimination. They do not apply to a right to be free from sexual violence. The result is a lack of legal protection in international human rights law for violations of bodily integrity against lesbians that are sexualized and motivated primarily by their sexual orientation.

In 1995, the Beijing Platform for Action called for gender equality, recognizing that women were still subject to a disproportionate percentage of human rights violations worldwide. The UN system subsequently collected information documenting, specifically, the impact of conflict on women, in particular, in the escalation of human rights violations of bodily integrity. The documentation chronicled a lack of redress for such violations and a missed opportunity in the post-conflict reconstruction period to provide for legal prosecution. The reconstruction period also offers a chance to involve women in the development of laws and policies that would provide for women's physical security but which, all too often, was not being fulfilled. In 2000, the United Nations Security Council passed Resolution 1325, which mandated women's equal participation in all aspects of peace processes, including negotiations leading up to peace, drafting of peace accords, and implementation of laws and policies in the post-conflict reconstruction period. The mandate created the prospect for all women who have been targeted, especially for egregious human rights violations of sexual nature during times of war, to create new legal standards in the post-conflict society to protect their physical security and provide for legal prosecution for violations of their rights and their bodies.

The purpose of UNSC 1325 is to counter the specific impact war has on women, most specifically in gender-based violence. The objective fails, however, to acknowledge the distinct impact of war on lesbians. The omission of lesbian experience from the historical development of the resolution means that it does not seek to specifically remedy the situation of lesbians who face increased violations during times of conflict. UNSC 1325 speaks broadly of requiring all women's participation.

Domestic discrimination, criminalization, and violent repression against sexual minorities effectively precludes lesbians from the opportunity to participate and thus to develop legal standards that would protect them specifically from sexual violence in the post conflict society.

Some of the lesbian experience, in conflict, is merely a continuation of the discriminatory and abusive treatment lesbians received prior to war. Nonetheless, this experience is distinct from women generally because lesbians are targeted more frequently for sexualized violence prior to conflict because they face multiple layers of prejudice based on gender and sexual orientation. A second distinction lies in the fact that, once the conflict begins, lesbians are at heightened risk for increased sexual violence because they are targeted as sexual minorities.

As women, lesbians are singled out for systematic rape and forced sexual servitude in times of war. The Independent Experts' Assessment commissioned by UNIFEM found that sexual violence and exploitation of women is inextricably linked to conflict. Women's bodies are used as pawns between warring factions where the breakdown of law and order contributes to an environment in which the sexual violence against women flourishes because it is legitimized as a necessary by-product of conflict. Many young women, as Rehn and Sirleaf observe, are forced to watch their families be killed and then are abducted and forced to live in sexual servitude or to have children by their abductors.

In addition, lesbians as sexual minorities can become scapegoats for the underlying problems associated with the conflict. As such, they are targeted for additional human rights violations in the form of sexual violence. Part of the increase can be attributed to the fact that societies crack down on nonconformists during times of stress. For women, this means imposition of harsher regulations of their gender and sexuality, the effect of which falls disproportionately on lesbians for being more obvious nonconformists. Another attributable aspect of the increase is that police and military increase their arbitrary regulations of discriminatory laws aimed at sexual minorities in an attempt to impose some control on a lawless and chaotic society. And finally, unlike other women, lesbians are more prone to violations because they are without the societal protections of husband or family. Together, these factors contribute to a dramatic increase in human rights violations of sexual nature directed at lesbians during times of conflict, even above that of heterosexual women in their same communities.

Over the past four years, UNSC 1325 has facilitated an overall increase in women's participation in peace processes. Yet, the Independent Expert Assessment commissioned by UNIFEM and the Secretary General's report

submitted to the 48th session of the Commission on the Status of Women, support the conclusion that women are still largely absent from the peace table and peace agreements are often silent about accountability for gendered human rights violations committed during war. As a substantially marginalized subgroup of women, lesbians are nonexistent in the various levels of the peace processes. Discrimination and violence against sexual minorities at the domestic level prevents lesbians from actively participating in peace negotiations or being present at the peace table.

Absence from the peace table equates to silence in negotiations and accords and to no development of laws or policies about accountability for specific human rights violations of bodily integrity that lesbians, in particular, experience and which are motivated by prejudice based on sexual orientation. Thus, any legal standards derived under the UNSC 1325 mandate end up failing to fill the international legal gap of protection for sexual violence against lesbians.

The Report of the Secretary-General submitted for consideration at the 48th session of the Commission on the Status of Women emphasized that “[W]hile women’s mobilization for peace has commonly occurred alongside . . . official peace negotiations, women continue to be largely absent from formal negotiations” (UN Doc. E/CN.6/2004/10, at 5). Negotiating teams are often entirely composed of or dominated by leaders of warring factions, excluding women because they are not military leaders or political decision makers.

One of the misguided assumptions of UNSC 1325 is that inclusion of gender perspectives into peace processes will effectively encompass the varied subgroups of women. This can only be true if the representation of women at the peace table is as varied as the local community. Amnesty International reports that, although ethnicity, religion, and political variances have been more readily incorporated into the representation of women, the controversiality of women’s sexuality still precludes representation of lesbians.

As women, lesbians often have fewer opportunities for public action, freedom of movement, and expression of opinion. As lesbians, they are less likely to have the kind of public presence that traditionally is recognized as legitimate in their own countries or on the global level such that they would be invited to participate in peace negotiations. Fear of violence based on attribution of sexual behavior, identity, and orientation represent a wide range of obstacles to their political participation. The capacity of women who resist gender norms to participate in the political, social, and cultural life of their communities, Amnesty International also observes, is obstructed by pervasive hostility and the well-founded fear of being the object of violence because of the potential attribution of homosexual

orientation. Social stigma, political marginalization, and sanctioned violence against their non-conforming sexuality, thus precludes lesbians from lobbying for their own inclusion in peace negotiations.

The Secretary-General's Report of 2004 aptly states that "The absence of women from the peace table results in insufficient attention to and reflection of their concerns in peace agreements." Peace agreements can supply a framework for legal revisions or creation of a new constitution and can include provisions for the ongoing protection of women's physical security, as well as accountability for violations of their human rights. Without women present to protest, impunity arrangements for warring factions become standard to peace agreements, relieving all accountability for previous human rights violations, including those specifically directed against women.

The lack of women generally from the peace table means that it is unlikely specific concerns for future physical security for lesbians will be adequately addressed in any peace accords. To date, no woman who has actively participated in the drafting of a peace agreement has been an open lesbian or a woman who publicly advocated for lesbian concerns. Unfortunately, this silence in a peace accord about the heightened need for physical security of lesbians serves to perpetuate and legitimize the continued sexual violations of lesbians in the post-conflict society.

Gender-specific provisions have been included in an increasing number of peace agreements as a result of the UNSC 1325 mandate. Despite this progress, the majority of these provisions fail to include protections relevant to lesbians. In the end, UNSC 1325 fails to create a real opportunity for development of legal standards to protect against sexual violence against lesbians that is motivated by their sexual orientation, making their experiences and their existence entirely invisible.

The enactment of UN Security Council Resolution 1325 supplied a window of opportunity to fill the gap of protection in international human rights law for specific sexual violation of lesbians around the world. Its application fails, however, because it does not provide a definite vehicle for ensured participation of lesbians in peace processes. In the absence of a specific mandate within UNSC 1325 to respond to or remedy the specific impact of conflict on lesbians, exclusion of lesbians from peace processes precludes their input into any legal standards implemented in the post conflict society. The result is to leave lesbians without a real opportunity for new legal standards for protection against sexual violence motivated by their sexual orientation.

Compounding this problem is the lack of an explicit international legal norm that provides sexual minorities with full access to international human rights protections. The absence of a specific standard for human rights protection for sexual minorities, or a norm condemning sexual violence against

lesbians, equates to global tolerance for the sexualized and prejudiced violence targeted at lesbians worldwide.

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