



SEXUAL MINORITIES AND THE WORK OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON TORTURE

A paper submitted by the
International Gay and Lesbian Human Rights Commission
to Sir Nigel Rodley, Special Rapporteur

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This paper addresses the worldwide situation of sexual minorities, including lesbian, gay, bisexual, and transgender (LGBT) people, with a view to the mandate and work of the United Nations Special Rapporteur on Torture. It is divided into three sections.

The first section addresses the content and meaning of “sexual minorities” and related terms, and suggests how those identities may relate to other categories recognized as particularly prone to torture.

The second section catalogs some of the forms of torture and inhuman treatment recently documented to have been inflicted upon members of sexual minorities, and upon LGBT people in particular. Specific examples are included for the information of the Special Rapporteur and his office, although we are aware that the Special Rapporteur will not mention country-specific instances in his report to the General Assembly.

The third section lists factors contributing to the widespread instances of torture previously listed, and proposes remedies.

I. IDENTITY, DISCRIMINATION, AND TORTURE

We understand sexual minorities to comprise people whose rights are violated based on their real or perceived sexual practices with consenting adults, or their experience or expression of their own gender. Sexual minorities, including lesbian, gay, bisexual, and transgender (LGBT) people, face discrimination and stigma in most societies around the world. *This discrimination resembles and is comparable to the forms of discrimination the Special Rapporteur has already recognized as leading to torture in other cases—including gender, race, and national status.*

What is the specific character of this discrimination? Several points are useful to bear in mind.

1) The people we call “lesbian,” “gay,” and “bisexual” share a particular experience of their own sexual desires, as potentially directed toward a person of the same gender. They have transformed these experiences, desires, and practices into a social identity, a *sexual orientation*, which serves as a marker of individual selves and of a group.

Similarly, the people we call “transgender” share a particular experience of their own selves as gendered: a sense that their psychological gender is different from that to which they were assigned at birth. They have also transformed this experience into a social identity, a *gender identity*, although its names and exact nature (“transvestite” or *travesti* in parts of Latin America, *hijra* and *kothi* in India, “transgender” in North America and Western Europe) may differ from culture to culture.

Sexual orientation and *gender identity* are thus social identities, comparable to race or ethnicity, around which human beings can organize themselves—and around which hatred and prejudice can adhere.

2) However, not all men who have sex with men, or women who have sex with women, share a sense of “sexual orientation,” or would willingly define themselves as gay or lesbian. Not all persons persecuted for their consensual sexual behavior among adults fall into those identity categories. Therefore, those terms exemplify the category of sexual minorities as targets of persecution: they do not exhaust it.

People face persecution and abuse worldwide not only on the basis of identity, but because they engage in sexual or bodily practices, or articulate desires, which violate cultural, community, or State norms. The persecution of LGBT people needs to be seen as a part of this broader context.

3) The persecution of LGBT people should thus be understood on a continuum with the persecution undergone by others making comparable claims to autonomy and freedom. Abuse of single women or widows, like abuse of LGBT people, is directed at those who violate powerful norms surrounding reproduction and marriage. Abuse of sex workers, like abuse of LGBT people, is directed at those who deploy their sexuality in non-conforming situations and ways. Abuse of women who fail to conform to dress codes, like abuse of transgender people, is directed at those who violate norms for the expression of gender. These forms of persecution are not reducible to one another: but, in crucial ways, they connect. Moreover, the same forms of silencing through shame—the same social forces which keep women from reporting abuses directed at them, for example—apply to, and enshroud, the violations LGBT people undergo. Particular efforts of outreach to their communities—and particular endeavors to ensure their safety-- are often necessary to unearth the truth.

4) *Torture is an extreme but widespread means for regulating sexuality, and enforcing gender norms.* When norms stipulating what human beings can do with their bodies are violated, the retaliation is particularly likely to be in bodily terms. Those asserting their bodily control and sexual autonomy—the core claims that sexual minorities, by their very existence, make--may therefore be particularly likely to face punishment in the form of physical abuse, rape, and other forms of torture.

II. FORMS OF TORTURE, ABUSE, AND INHUMAN TREATMENT FACED BY SEXUAL MINORITIES

This section offers categories and instances of the abuses to which LGBT people, as well as other sexual minority groups, are subject.

Abuse and ill-treatment by police and other authorities

LGBT people in many countries of the world suffer both arbitrary arrest and physical abuse at the hands of police. Police often have extralegal motives for engaging in abuses against sexual minorities. These include:

- ❖ Extorting money;
- ❖ “Social cleansing” campaigns which involve intimidating and/or violently punishing “undesirables” so that they will leave a certain area;
- ❖ Enforcing social norms of desirable sexual and/or gender behavior by punishing those who deviate.

If legal regimes do not fully account for such abuse, they nonetheless often enable it. Laws which contribute to a climate of abuse include:

- ❖ Laws criminalizing consensual sex between persons of the same sex (so-called “sodomy laws”);
- ❖ Laws criminalizing other forms of consensual sexual activity, including sex work;
- ❖ Laws (often loosely written) criminalizing public behavior in the name of morals, “decency,” or “public scandal.”

Such laws create a legal framework which both stigmatizes alternative sexualities, and encourages close and often brutal police regulation of public and private behavior.

The effects of “sodomy laws”

In 1998, Human Rights Watch and IGLHRC documented, in the case of Romania, a persistent pattern in which people arrested under that State’s sodomy law were subjected to severe beatings and physical abuse.¹ Such abuse is not confined to Romania: it remains widespread around the globe. The following cases are illustrative, not remotely exhaustive.

In India, for example--where consensual homosexual acts are criminalized under Section 377 of that State’s penal code-- men identified by police as homosexuals are commonly arrested in public places and are often beaten. Section 377 constitutes a cognizable offense, meaning no judicial warrant is necessary for detention. This means, as well, that ordinarily no paper trail follows the arrest. Charges are rarely if ever filed: extortion, fueled by the stigma which public disclosure of homosexuality would bring, is

¹ See Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, pp. 79-81.

a common motive for the abuse. The People's Union for Civil Liberties-Karnataka in Bangalore, in a report *on Human Rights Violations Against Sexual Minorities in India*, gives examples:

- ❖ *On 22 April, 2000, 10 men were picked up [in a park] and taken to Vidhana Soudha police station [Bangalore], where they were verbally abused, some badly beaten up, all their money taken, and their addresses were taken with threats to inform their families and embarrass them.*
- ❖ *In another incident at Coles Park, a policeman beat up and chased away a number of people on the mere suspicion of being homosexual.*

“The police often abuse the men using filthy language, beat them up, and even subject them to sexual abuse,” PUCL-K reports.²

The consequences of the criminalization of homosexual behavior can be still more severe. In some cases the legal sentence itself can constitute torture. In Saudi Arabia, in April 2000, for instance, nine men were reportedly arrested for wearing the clothes of the opposite sex, and for “deviant sexual behavior.” The men were sentenced to 2,600 lashes each, to be carried out at intervals over a two-year period.³

The death penalty is still imposed for homosexuality in a number of countries under *shari'a* law. Frequent reports of its imposition come from both Afghanistan and Iran. In one execution, a *shari'a* court in Afghanistan ordered that three men convicted of sodomy be placed next to walls which would be bulldozed down upon them. The court commanded that the men remain buried for 30 minutes, then extracted if alive. Only one survived.⁴ Women are also victims of such extreme repression. Reports in February, 2001, indicated that two women in Puntland, Somalia faced execution for “unnatural behavior.”⁵

Other laws and factors contributing to torture and cruel and inhuman treatment

Other laws regulating sexual behavior, social norms, or gender can give a pretext for detention and for police brutality and inhuman treatment. In a situation of stigma and prejudice, a range of legal measures can be used to generate or justify violence against sexual minorities.

Police often raid or patrol places where sexual minorities are known to meet, and use violence to discourage them from meeting. In Turkey, for example, an activist writes, “Police . . . arbitrarily raid gay clubs, maltreat the people in the clubs, arrest transsexuals and shave their heads, and in some cases beat them up in the police vans and

² People's Union for Civil Liberties-Karnataka, *Human Rights Violations Against Sexual Minorities in India* (Bangalore, 2001), pp. 18-19.

³ See IGLHRC Press Release, April 2000: “Saudi Arabia: Alleged Transvestites Sentenced to Brutal Flogging.”

⁴ See Amnesty International, April 1998 (ASA 11/03/98), “Afghanistan: Flagrant Abuse of the Right to Life and Dignity.”

⁵ IGLHRC Action Alert, March 2001: “Somalia: Two Women Reportedly Sentenced to Death for ‘Unnatural Behavior.’”

stations. . . Complaints are ignored and police officers who are accused of beatings—and sometimes torture—are simply moved to other posts by the authorities.”⁶

In Egypt, in May 2001, at least 55 men were arrested in what was clearly a raid on a homosexual gathering place. However, since homosexual behavior is not criminalized under Egyptian law, they have instead been accused of “insulting revealed religions.” Their arrest was accompanied by a weeks-long campaign of vilification in the State-owned press, denouncing the men as “Satanists” practicing a bizarre cult. Relatives who have visited the men in prison inform IGLHRC that they observed clear physical evidence of torture, including the marks of beatings on their faces and hands.

Laws criminalizing sex work—or laws employed against it—allow a range of official abuse. They particularly affect transgender people, since in many communities sex work is the only employment which prejudice leaves available to them. But they are also often written so as to allow police to persecute any persons whose public behavior is perceived as deviant.

Cases are manifold. In Carabobo, Venezuela, police have engaged in a campaign against transgender people, in the name of eliminating sex workers from the city. Physical abuse is integral to this campaign. In one instance, on August 9, 2000, two transgender people were detained without a judicial warrant, forced to undress in the street, and severely beaten. They were then held in incommunicado detention for several days, without medical attention.⁷

Sexual abuse of sexual minorities by police is also common. LGBT people, and sex workers, are defined by their sexualities in the eyes of authorities; sexual violence thus is regarded as an appropriate punishment for deviance. Julia, a transvestite sex worker in Veracruz, Mexico, reports to IGLHRC that in December 2000 she and a friend were accused by a police officer of working outside their assigned area. (Police reportedly “regulate” sex work in Veracruz by charging each sex worker 100 MXP—10 USD -- in bribes to allow her to work in a designated area.) They were taken to a police car and raped.⁸

In Monterey, Mexico, two 14 year-old boys were detained by police in January 2001 simply because they were walking in a neighborhood frequented by gay men. They were offered a choice between having oral sex (“*guaguis*”) with the officers and being taken to the police station and charged. One of the boys gave in.⁹

Finally, people arrested for other alleged offenses may still be subject to severe ill-treatment by homophobic authorities, on the basis of their sexuality or gender identity. In Chicago, in the USA, a gay man who was arrested in February 2000 after an altercation with his landlord reported that he was severely abused by police who “handcuffed him by his elbows to a hook on the wall. Allegedly, while one officer

⁶ Kursad Kahramanoglu, “Turkey,” in *Equality for Lesbians and Gay Men: A Relevant Issue in the EU Accession Process* (ILGA-Europe, 2001), p.77. IGLHRC has on file numerous personal testimonies on police abuse against gay men and transgender people in Turkey.

⁷ See IGLHRC Action Alert “Republica Bolivariana De Venezuela: They Will Not Stop At Murder: State Abuse Against Transgender People Continues,” as well as AI Index 53/09/00 UA 247/00.

⁸ Interview with Julia by Alejandra Sarda, IGLHRC, in Veracruz, Mexico, February 2001.

⁹ Interview with Hugo and David by Alejandra Sarda, IGLHRC, in Monterey, Mexico, February 2001.

walked away (but did not leave the room) the other . . . sodomized him with a billy club, ramming his head against the wall as he did so.”¹⁰

Similarly, in Cordoba, Argentina, Vanesa Ledesma, a transgender sex worker, was arrested after an altercation on February 11, 2000. Cordoba police have a long record of violence toward transgender people. On February 16, police announced her death in detention, attributing it to “cardiac arrest.” Ledesma had no heart condition; an autopsy showed strong evidence of severe physical torture.¹¹

Conditions of detention

In police lockups, pre-trial detention, and penitentiaries, sexual minorities are often subjected to conditions of particular inhumanity and deprivation.

For example, Amnesty International has reported that, in early July 2000, two transgender people in Venezuela “were detained by police in Valencia for eight days without a judicial order. During their detention, they were held in extremely poor conditions. They had to sleep on the floor and to buy food as the meals they were given contained worms.”¹²

Mass arrests during “social cleansing” campaigns may mean conditions of severe overcrowding in police lockups. In one case, in Monterey, Mexico, 20 transvestites were kept for five nights in a cell measuring 3 square meters; they were denied both food and blankets. In another case 32 arrestees were kept in a cell meant for 4.¹³ In Veracruz, Mexico, a tranvestite arrested in December 2000 spent 36 hours in a cell measuring 5 square meters, with 10 other transvestites.¹⁴

Authorities may condone or encourage abuse of LGBT prisoners by other inmates. In Romania, gay men are routinely isolated by other prisoners, who will not eat from the same containers or share any items or possessions with them—often with deleterious effects on the victim’s health and diet.¹⁵

Sexual abuse and sexual violence against sexual minorities are widespread in detention, often with the knowledge and encouragement of guards and authorities. Gay or effeminate men are often singled out to be raped by other prisoners; guards may even identify them to prisoners for that purpose.¹⁶ In the US, criminal justice officials commonly voice their acceptance of sexual violence in custody as a form of punishment.¹⁷ (For example, the Attorney General of the US state of California recently urged

¹⁰ Amnesty International, Action Appeal, February 15, 2001 (AI INDEX: AMR 51/027/01): “USA: Homophobic torture and other ill-treatment.”

¹¹ IGLHRC Action Alert, March 2000: “Argentina: HIV+ Transvestite in Police Custody, Dead Under Suspicious Circumstances.”

¹² See IGLHRC Action Alert, May 2001: “Republica Bolivariana De Venezuela: They Will Not Stop At Murder: State Abuse Against Transgender People Continues,” as well as AI Index 53/09/00 UA 247/00.

¹³ IGLHRC Action Alert, April 2001: “Police Officers Attack Gay Men, Lesbians and Transvestites in Monterrey, Nuevo Leon, Mexico.”

¹⁴ Interview with Karen by Alejandra Sarda, IGLHRC, in Veracruz, Mexico, February 2001.

¹⁵ Interviews by Scott Long, IGLHRC, with numerous present and former prisoners in Romania, 1992-97; see also Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*.

¹⁶ Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, pp. 18-21, 27-29, and 82-84.

¹⁷ See Human Rights Watch, *No Escape: Male Rape in US Prisons* (2001).

punishing a suspect by placing him in "an 8-by- 10 cell that he could share with a tattooed dude who says, 'Hi, my name is Spike, honey.'" ¹⁸ Women are also targeted. A lesbian inmate in the US state of California was placed in a men's unit where she was constantly visible to male inmates, even in showers and toilets; a guard sold entry to her cell to male inmates, three of whom raped her. Another lesbian prisoner, in Illinois, was forced to perform oral sex on a male guard, who told her, "Damn, you need a good man." ¹⁹ Amnesty International has recently reported that, in Wayne County Jail in West Virginia in the US, homophobic as well as racist and sexist abuse has been heaped on prisoners, and that women prisoners—partly as a result of accusations that they were lesbian—were forced to parade topless in front of male inmates and male guards. ²⁰

Impunity

Non-state actors engage in violence, abuse, and ill-treatment of sexual minorities throughout the world. In many cases, as in some Latin American countries, they do so with the tacit encouragement or even participation of the State. In Brazil, for instance, activists have documented nearly 2000 murders of gay men, lesbians, bisexuals, and transgender people between 1980-2000. Many were aided and abetted by police. ²¹

Even where authorities are not directly involved in abuse, prejudice—either embodied in law, or on the part of criminal-justice personnel—can stand in the way of a due and adequate response.

In South Africa, with its extraordinarily high rate of sexual violence, lesbian women who have been raped have reported to IGLHRC that police have refused to investigate their cases due to the women's sexual orientation. ²² In Mexico, a non-governmental citizen's commission which investigated 125 murders of LGBT people between 1995-98, along with acts of non-fatal violence, found: "Once a victim is identified as gay or lesbian . . . the investigation that is mandated by law when a crime is committed against any of this country's citizens is then dismissed." ²³

Some jurisdictions, including many in the US, still accept a so-called "homosexual panic" defense: the proposition that sexual "advances" on a heterosexual man by a gay man elicit, and justify, a violent response. In January 2000, in Michigan in

¹⁸ Phillip Matier and Andrew Ross, "Lockyer Comes Out Swinging at Oilman," *San Francisco Chronicle*, May 25, 2001.

¹⁹ IGLHRC, *Written Out: How Sexuality is Used to Attack Women's Organizing*, pp. 45-47 ; see also Amnesty International, "Multiplying Jeopardy in US Custody: Discrimination Based on Gender, Race and Sexual Orientation," 1999, and Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in US State Prisons*, p. 188.

²⁰ Amnesty International, Action Appeal, February 20, 2001 (AI INDEX: AMR 51/109/00): "Ill-treatment in West Virginia Jails."

²¹ Luiz Mott, *Causa Mortis: Homofobia; Violação dos Direitos Humanos e Assassinato de Homossexuais no Brasil – 2000* (Grupo Gay da Bahia, 2001), and Luiz Mott, *Assassinato De Homossexuais: Manual de Coleta de Informação & Mobilização Política Contra Crimes Homofóbicos* (Grupo Gay da Bahia, 2000); see also Luiz Mott, *Epidemic of Hate: Violations of the Human Rights of Gay Men, Lesbians, and Transvestites in Brazil* (IGLHRC, 1996).

²² These accounts are now being researched and documented by Human Rights Watch and IGLHRC in preparation for a forthcoming report on homophobia in southern Africa.

²³ "Comisión Ciudadana Contra Los Criminales de Odio por Homofobia, Conferencia de Prensa, Mayo 6, 1998." Report by Citizen's Commission prepared for press conference.

the US, a man was convicted of the lesser charge of manslaughter, rather than murder, after convincing the court that sexual advances excused his cold-blooded shooting of a gay man.²⁴ In Hungary, activists have documented that charges of assaulting gay men are often dismissed or reduced by courts.²⁵

Other legal provisions may exclude LGBT people from ordinary forms of legal protection. A 1999 court decision in the Republic of Korea—reflecting a widespread legal understanding of rape—for example, determined that men (including gay men) and transgender persons cannot be victims of rape, since the crime is defined as a forcible sexual act by a “biological” man upon a “biological” woman.²⁶

The law also may fail to protect LGBT people against violence within the home or within relationships, even when such protections are available to heterosexuals. Domestic violence statutes in many US states do not make anti-violence protective orders available to partners in same-sex couples.²⁷ One report in the US notes, “Many police still do not respond appropriately to LGBT individuals who reach out for protection in a domestic violence situation. Police often minimize the abuse between two people of the same sex, or allow their own bias about the legitimacy of same sex relationships to obscure their better judgment. Additionally, police and other professionals often harbor stereotypes about who is most likely to be the abuser (i.e. the more ‘butch’ looking one, the physically larger one . . . the older one, etc.) and spend little time trying to screen and assess the actual truth. These deficits together often result in inappropriate police behavior, such as arresting the victim, arresting both partners (and even placing them together in a single holding cell, where the abuse can continue), or ignoring the situation altogether.”²⁸

Retaliation for reporting human rights violations

The Special Rapporteur’s work has shown that torture and ill-treatment are employed to make examples of people who speak out against abuses. Sexual minorities are often invisible in society, and their voices silenced. Hence the retaliation they endure when they indeed speak out can be intense.

In Cordoba, Argentina, Vanesa Piedrabuena, a transgender sex worker, has campaigned for a full investigation into the death of Vanesa Ledesma in police detention. Police have steadily harassed her as a consequence. Most recently, on February 17, 2001, five armed police officers broke into her house, beat her, and pointed a gun to her head, threatening her with death if she persisted.²⁹

²⁴ “Youth to Get Sentenced in Teen Killing,” *The Detroit News*, March 22, 2000.

²⁵ Bea Sandor, “Report on Discrimination Against Lesbians, Gay Men, and Bisexuals in Hungary,” unpublished report prepared by Habeas Corpus Working Party, Hatter Society for Gays and Lesbians, and Labrisz Lesbian Association, Hungary, 2001.

²⁶ Report by the Korean lesbian group Kiri Kiri to the International Gay and Lesbian Human Rights Commission, 1999.

²⁷ National Coalition of Anti-Violence Projects (USA), “Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence” (1998), at <http://www.lambda.org/dv97.htm>

²⁸ National Coalition of Anti-Violence Projects (USA), “Lesbian, Gay, Bisexual, and Transgender (LGBT) Domestic Violence in 1999.”

²⁹ Information communicated by Vanesa Piedrabuena to Alejandra Sarda, IGLHRC, February 2001.

In Guatemala, advocates have campaigned against police brutality and extortion directed at sex workers. These advocates have themselves been targeted for further brutality. On March 22, 2001, in Guatemala City, Guatemala, officers in police patrol car 11-003 physically as well as verbally assaulted Israel Orrego. Orrego is coordinator of the Rosalinda project, an educational campaign for sex workers (many of them female transvestites). Next day, a female volunteer working for the same project was also assaulted and beaten by police, who also searched her underclothes and genital area. On April 18, 2001, transvestites on the street in Guatemala City were severely beaten by police, who told them: “Now go and submit more complaints.”³⁰

In Argentina, on March 11, 2001, Nadia Echazu and three other transvestites were arrested by police officers working at Police Precinct 25 in Buenos Aires. Ms. Echazu, a transgender activist, has publicly denounced police brutality. She and the others were kicked repeatedly, including on the heads and faces, beaten with police sticks, and threatened with death by officers who stated, “It is time to eliminate those who give the institution a bad name.”³¹

Marta Lucia Alvarez Giraldo, a prisoner in the Colombian penitentiary system, has petitioned the Colombian government since 1996 for the right to conjugal visits with her lesbian partner. As a consequence of her petitions—which culminated in an appeal to the Inter-American Commission on Human Rights in 1999-- on October 21st, 1999, Marta was transferred from the Bucaramanga Women's Prison to El Socorro Circuit Jail, a men's facility. Not only was she surrounded by prisoners of the opposite sex and threatened with sexual violence, she was housed in filthy, damp cells without clean drinking water. International attention eventually led to her transfer back to a women's facility.³²

Medical abuses

Pathologizing sexual difference

The World Psychiatric Association (WPA) removed homosexuality from the roster of disorders in its Diagnostic and Statistical Manual-III (DSM-III) in 1971. The World Health Organization (WHO) followed suit, removing homosexuality from its International Classification of Diseases-10 (ICD-10) in 1992. Not all national professional psychiatric associations have done likewise, however. In some countries, homosexuality remains classified as a disorder, opening the possibility of forced incarceration and forced treatment, including shock therapy and other forms of “aversion therapy.”

Moreover, the World Health Organization's ICD-10 still retains a diagnosis of “ego-dystonic homosexuality,” a condition in which the patient suffers from anxiety or discomfort about his or her sexuality. This diagnosis can allow families to commit young

³⁰ See IGLHRC Action Alert, “Guatemala: Right to Freedom from Arbitrary Arrest,” May 2001.

³¹ Information received by IGLHRC from ALITT (Asociacion Lucha por la Identidad Travesti y Transexual), Argentina, March 2001.

³² IGLHRC Action Alert, December 1999, “Colombia: Lesbian Inmate Subjected to Punitive Sanctions and Inhuman Treatment, in Response to Petition Claiming Her Rights.”

persons who are just “coming out” and experiencing guilt or uncertainty. Feelings which are the result of stigma and prejudice thus can be used to justify and further its effects.

Finally, psychiatric professional bodies in many countries, including the US, retain a diagnosis of “gender identity disorder.” It is particularly applied to young people whose dress or behavior are considered inappropriate to their gender. In a representative US case, one young woman was incarcerated in mental institutions—where she was subjected to physical and sexual abuse—from the ages of 14-18, on the basis of “choice of clothing, friendship patterns, and career goals” which doctors saw as inappropriate for a girl.³³

Medical authority can allow inhuman treatment to masquerade behind benign intent: and the pathologization of homosexuality furthers such abuse. In the US, a Russian lesbian—having already undergone involuntary psychiatric confinement and electroshock therapy in her homeland—was denied asylum by an appeals board on the grounds that the treatment was curative in intent: “Such ‘therapy’ was based on the belief that lesbians is a mental illness... which can be treated or cured... We must conclude that it was an intent, albeit misguided and inappropriate, to treat a supposed mental illness.”³⁴

Medical personnel can be enlisted in other forms of physical abuse. In Romania, persons suspected of homosexuality were routinely subjected to compulsory, intrusive and degrading medical examinations of anus and penis to determine whether penetration had taken place. Similar examinations have reportedly been performed on men arrested in Egypt.³⁵

Denial of medical treatment

Prejudice against LGBT people often ensures that they are denied effective medical treatment. A doctor in Argentina recounts how, in State hospitals there, doctors and nurses routinely leave transvestites to wait for hours in emergency wards, even if there are no other patients. Colleagues have told this doctor that they do so in the hope transvestites will go away. Transvestites are regularly sent to male wards and forced to wear male clothing while hospitalized. In one instance, a transvestite was raped by four male patients on her first night of hospitalization. Nurses met her complaints with mockery.³⁶

A transvestite in Buenos Aires, Argentina, suffering from stab wounds, was taken to a public hospital, where she was given a bed but no medical assistance. A doctor said,

³³ “Testimony of Daphne Scholinski,” in IGLHRC, *The International Tribunal on Human Rights Violations Against Sexual Minorities*, 1995. See also Daphne Scholinski with Jane Meredith Adams, *The Last Time I Wore a Dress*, New York: Penguin, 1997.

³⁴ Ryan Goodman, “The Incorporation of International Human Rights Standards into Sexual Orientation Asylum Claims: Cases of Involuntary ‘Medical’ Intervention,” *Yale Law Journal*, October 1995. The Board’s ruling was eventually overturned by the US Ninth Circuit Court of Appeals: see IGLHRC Press Release, June 1997: “Ninth Circuit Court rules on lesbian asylum case: Persecution is persecution.”

³⁵ See Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, p. 87, and IGLHRC Action Alert, May 2001: “Egypt: Witch Hunt Underway: Dozens of Men Arrested, Held Incommunicado.”

³⁶ Interview by Alejandra Sarda, IGLHRC, with Dr. Sergio Maulen, Buenos Aires, February 2000.

“We are too busy to deal with Peruvian faggots.” Refused antibiotics, she died two months later.³⁷

Pre-operative transgender persons in detention or prison are often denied hormonal treatments. Prisoners and detainees who are HIV-positive are denied medication in many countries, producing a severe threat to life. One prisoner in pre-trial detention in the US reportedly lost 30 lbs. and became extremely ill when his HIV medications were withheld.³⁸ The common practice of isolating and segregating HIV-positive inmates not only increases the stigma they face within detention systems, but makes information about their conditions still more difficult to obtain. At one prison in Mississippi in the US, where HIV-positive prisoners were segregated in housing without air conditioning, fed spoiled food, and denied medical treatment, inmates who complained were threatened with retaliation.³⁹

Such denial of treatment is also common in detention facilities for immigrants. Based on its own work with LGBT asylum seekers, IGLHRC has informed the US Immigration and Naturalization Service that “Some detainees in INS facilities have complained of not being given their HIV medications for longer than a week. They also allege that medications are provided in an inconsistent manner and with no consideration as to time and food.”⁴⁰

III. FACTORS CONTRIBUTING TO TORTURE OF SEXUAL MINORITIES, AND PROPOSED REMEDIES

Neither the causes named nor the measures delineated in this section make any claim to be comprehensive. A broad and effective response to the worldwide pattern of torture and ill-treatment of sexual minorities can only emerge from extensive conversations with the affected communities and groups. This section will only address two complexes of contributing factors: the *legal frameworks* which, by singling out sexual minorities and enabling their detention, create (in many cases) the immediate conditions for torture and abuse; and the *social stigma* which both supports and is supported by those laws.

Laws criminalizing sexual minorities, or contributing to stigma

Discrimination against sexual minorities is widespread in nearly every country in the world—embodied both in fact and in law. Some laws criminalize sexual minorities, identified by practice or perception. Even where only sporadically enforced, they create a class of suspect or imputed felons, seen as without rights by agents of the law. Other

³⁷ Interview by Alejandra Sarda, IGLHRC, with Angela Vanni, attorney representing the victim’s estate, Buenos Aires, February 2000.

³⁸ Information on the case of David Wyllie, received by IGLHRC from his sister, Lucy Vaughn, June 17, 2000.

³⁹ Amnesty International USA News Release, June 13, 2000: “HIV/AIDS Infected Prisoners Threatened With Retaliation By Guards While Conditions of Confinement Deteriorate.”

⁴⁰ Letter from IGLHRC to Ellen Gallagher, Immigration and Naturalization Service, August 11, 2000, on file.

laws encode discrimination and create a class of second-class citizens. All these laws are enabled by social stigma. They also enable and confirm that stigma.

Sodomy laws

So-called “sodomy laws,” criminalizing consensual same-sex sexual behavior between adults, are on the books in at least 90 countries around the globe.⁴¹ Such laws are written in varying ways. They may expressly prohibit homosexual acts or sexual acts between persons of the same sex; or they may in more general terms criminalize “sodomy” or “unnatural acts,” including some acts between heterosexual couples. Sometimes these laws penalize only men, sometimes men and women.

As documented above, such laws provide a pretext for arrest and abuse. Their power does not exclusively lie in the prison terms they stipulate. In the Indian city of Bangalore, reportedly not a single person has been booked for homosexual acts in 20 years. Nonetheless, police still make arrests, often followed by beatings and extortions. India’s sodomy statute provides a pretext for detention. Still more seriously, it creates the perception that homosexuals are persons without rights. This stigmatized status means that abuse, by State or non-State actors, continues with little fear of intervention. The Joint Commissioner of Police, Dr. Ajai Kumar Singh, told the *Bangalore Weekly*, “Where is the question of harassment or atrocity? These are not cases of human rights violation because these groups are not legally recognized.”⁴²

Laws criminalizing transgender identity

Many States still prohibit sex reassignment surgery—the most comprehensive way in which transgender people can assert control over their own gender identity. Moreover, many States make it illegal for transvestites or transgender people to change their State identity cards and papers to reflect the gender they have assumed. This disparity between their appearance and their official identity throws transgender people into a legal and social void, where simple acts such as renting apartments, opening bank accounts, travelling and driving become impossible. They are thus shunted into a shadow realm of illegality.

Likewise, some jurisdictions retain laws expressly directed at the expression of transgender identity. In Argentina, for instance, four provinces—Mendoza, Cordoba, Buenos Aires and Santa Fe—penalize “wearing the clothing of the opposite sex” in their penal codes. Such laws are an open encouragement to abuse.

Discrimination affirmed in law

Laws and policies also encode discriminatory treatment based on sexual orientation or gender identity—thereby creating a class of people whose existence may not be criminalized, but whose citizenship is clearly second-class. Such laws may take multiple and subtle forms. They may proceed by omission or elision—by omitting sexual

⁴¹ See IGLHRC’s fact sheet, “A Global Overview: Criminalization and Decriminalization of Homosexual Acts.”

⁴² PUCL-K, *Human Rights Violations Against Sexual Minorities In India*, pp. 22-25.

orientation or gender identity from existing discrimination protections. Or they may actively assert unequal status. The United Kingdom retains a legal prohibition on state agencies' dissemination of materials providing a favorable view of homosexuality.⁴³ Similar legislation in Austria which applied to private citizens and carries criminal penalties was only recently repealed. In both countries, gay and lesbian publications have been confiscated as a result. Still more seriously, exchanges of accurate information about minority identities, and education in tolerance, are seriously hampered.⁴⁴

Other forms of State policy can confirm the legal subordination of a sex- or gender-identified class. In Thailand in 1996, for instance, the Ministry of Education attempted (unsuccessfully) to ban homosexuals from enrolling in any teacher-training college nationwide.⁴⁵ Public health policies—including compulsory HIV-testing policies which single out gay men—may also contribute profoundly to stigma.

Laws providing scope for arbitrary arrest and harassment

Many States and jurisdictions retain legislation in which the ambiguity of language allows broad scope for arbitrary arrests based on police prejudice. These laws may refer, vaguely and sweepingly, to offenses which “cause public scandal”; to “hooliganism”; to “loitering”; or to “indecent behavior.” They are widely if not principally used in discriminatory fashion against sexual minorities whose appearance or demeanor elicits police or public disapproval.

In Cordoba, Argentina, for example, the local Code of Misdemeanors prescribes up to 10 days in jail for those who “disturb others, affecting their decorum through gestures or words in public places.” If the “offense” takes place at night, the penalty rises to 20 days in jail. A similar provision punishes those who “in public places utter words, make gestures or adopt corporal postures that are contrary to public decency.” And another provision penalizes “offenses that would provoke public scandal” with 10 days in jail.

In Monterey, Mexico—another city where abuses against LGBT people have reportedly been widespread—separate provisions in local laws penalize “scandal in public places” (with no definition of “scandal”); “obscene exhibitions in the streets and public places”; “exhibitionist acts that constitute an attack upon morals and good customs”; and “any and every act against morals and good customs.” And the Federal Penal Code of Mexico criminalizes “obscene exhibitions” (Article 200.2), and “scandalous incitations to carnal commerce” (Article 200.3).⁴⁶

Amid the dearth of definitions for such elastic terms, police are at liberty to interpret the laws as they will. And the prejudice which directs their understandings often makes detention a preliminary to abuse and torture.

⁴³ The UK government has attempted but failed to achieve repeal of the statute, Section 28 of the 1988 Local Government Act.

⁴⁴ For a discussion of the effect of comparable policies of silence in the educational system—which encourage hatred and abuse among students—see Human Rights Watch, *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in US Schools* (2001).

⁴⁵ International Gay and Lesbian Human Rights Commission, *Emergency Response Network*, Vol. 6, No. 2.

⁴⁶ Information collected by Alejandra Sarda, IGLHRC, during mission to Monterey and to Ciudad Mexico DF, February 2001.

Laws criminalizing sex work

Many of the provisions cited above, and comparable provisions around the world, were devised as means of regulating and controlling sex work. Other laws expressly criminalize persons engaged in sex work. Some laws prohibit it altogether; others prohibit solicitation in public. In Monterey, Mexico, for example—where “performing sex work in public” is illegal—homosexuals have been arrested under the provision on no more basis than a condom found in a man’s pocket.⁴⁷

Still other laws regulate sex work by (for example) criminalizing it outside certain districts. In Veracruz, Mexico, for example, a 1943 law on “Prostitution and Social Prophylaxis” allows sex work only in “houses situated in tolerance areas.” The result, however, is that sex workers seen outside those areas—whether engaged in work or not—are subject to police abuse, including not only arrest but torture and rape. (See the case of Julia, cited above.)⁴⁸

Such laws do not counter exploitation: they contribute to it. Despite stated intentions to the arrest, harassment and torture of sex workers themselves. Indeed, State authorities, and in particular police, are perhaps the principal agents in the exploitation and abuse of sex workers in almost every jurisdiction. Ending the legal foundation for such abuse is a first step to ensuring that people engaged in sex work are recognized as endowed with rights, and protected fairly and fully by the law.

Social stigma

Stigma and prejudice underlie laws and extend beyond them, constituting the most powerful factors contributing to abuses, and to impunity for abuses, against sexual minorities. The depth of hatred is suggested by the verbal insults by authorities which LGBT people have reported. In Romania, for example, police have routinely verbally abused suspected homosexuals as *poponarii* or *curistii* (both terms refer to anal sex, and are extremely abusive).⁴⁹ In Mexico, people arrested by police report being called “*pinche puto*” or “*chingaderas, pendejos, leandros*”; a lesbian was told, “We are bringing you here because you are a dirty lesbian,” and a transsexual was told upon arrest, “*Pinche jota, you will never have children.*”⁵⁰

Statements by political figures can contribute to such climates. In Zimbabwe, the President periodically engages in vituperative denunciation of homosexuals, calling them “people without rights” or “worse than dogs and pigs.” Research conducted by IGLHRC and Human Rights Watch in July –August 2001, for an upcoming report on State-sponsored homophobia in southern Africa, indicated that there is a direct relation between such public statements, and the frequency of harassment and abuse directed at

⁴⁷ Interview by Alejandra Sarda, IGLHRC, with “Roberto P,” Monterey, Mexico, February 2001.

⁴⁸ Information collected by Alejandra Sarda, IGLHRC, during mission to Monterey, February 2001.

⁴⁹ See Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, passim.

⁵⁰ IGLHRC Action Alert, April 2001: “Police Officers Attack Gay Men, Lesbians and Transvestites in Monterey, Nuevo Leon, Mexico.”

individuals. One instance will suffice: in the spring of 2000, shortly after a gay demonstration offended President Mugabe during a London visit, a 16-year-old gay man was sitting with a friend in a Harare shopping centre; he wore a scarf with a Union Jack pattern. Two police cars drove up, one from civil police and one with officers who identified themselves as belonging to the Central Intelligence Organization (CIO), or State security force. The men were accused of being “homosexuals in the pay of British homosexuals.” They were taken to separate places and severely beaten.⁵¹

In September, 1999, President Joseph Museveni of Uganda publicly instructed police to round up homosexuals. At least five men were arrested by police and security forces. All five were tortured, and one was raped, before they were released and managed to flee the country.⁵²

In Namibia, President Sam Nujoma told university students on March 19, 2001 that “The Republic of Namibia does not allow homosexuality, lesbianism here. Police are ordered to arrest you and deport you and imprison you.” A wave of similar statements by ruling party officials followed. In early May, Special Field Force police in Katutura township in Windhoek rounded up men who were wearing earrings, and tore them from at least two men’s ears. One of the officers reportedly told his superior afterward that he was acting in response to the President’s expressed will.⁵³

These attitudes and utterances clearly contribute to the torture of LGBT people. They can also interfere with effective prevention and response. In Egypt, where 55 men have been detained and tortured after a police raid, homophobia and religious intolerance have combined to discourage lawyers from accepting the defense of the accused, or outside medical personnel from attempting to intervene. The stigma of coming forward to represent members of a despised group—or to offer adequate and non-degrading medical examinations of persons of LGBT identities or practice-- forestalls fundamental measures which all systems recognize as essential to preventing or even proving torture.

Prejudicial attitudes are self-evidently not restricted to senior statesmen. They are widespread among officials in criminal justice systems. The head of the national criminal police in Zambia, for example, told IGLHRC—in what appeared to be a confused recollection of a sensational US news story—that “homosexuals are prone to murder their victims and cannibalize them.”⁵⁴ A Romanian prosecutor told IGLHRC that “It is absolute craziness to expect there to be the same law for normal people and for faggots!”⁵⁵ A police commissioner in Bangalore made plain to Indian human rights monitors that he regarded homosexuality as “an animal-like behavior.”⁵⁶

Such attitudes not only encourage torture by State officials. They also encourage impunity for abuses by non-State actors. Fear of exposure before a prejudiced public, and suspicions of inaction or even retaliation from the State, can discourage many

⁵¹ Interview by Scott Long, IGLHRC, with Tendai Nengomasha, August 2000, Harare.

⁵² Amnesty International, Action Appeal, March 27, 2001: “Uganda: Fear for Safety of LGBT people.”

⁵³ *The Namibian*, May 2, 2001; communication to Scott Long, IGLHRC, by Michaela Figueira of the Legal Assistance Centre, Namibia, May 2000.

⁵⁴ Interview by Scott Long, IGLHRC, with Colonel C. Musonda, Head of the Criminal Division of the Zambian National Police, August 2000, Lusaka.

⁵⁵ Interview by Scott Long, IGLHRC, with Prosecutor Ioan Ciofa, June 1997, Iasi, Romania; see Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, p. 47.

⁵⁶ Interview by PUCL-K with Santosh Hegde, Bangalore Police, November 29, 2000; in PUCL-K, *Human Rights Violations Against Sexual Minorities in India*, p. 23.

members of sexual minorities who have suffered violence from reporting the cases to the authorities.

Article 10 of the CAT mandates States Parties to “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel.” Consistent with this, States should educate all personnel in criminal justice systems, and other relevant systems, in attitudes essential to prevent and punish torture, including an understanding of vulnerable groups. Many communities have undertaken just such educational programs. In Rio de Janeiro, Brazil, for example, police officers have successfully been trained in this spirit by LGBT activists. Such programs merit emulation.

Recommendations:

Consistent with international legal precedents, including the UN Human Rights Committee’s findings in *Toonen v Australia*, States which have not done so should eliminate laws criminalizing consensual sexual acts between adults. These laws include so-called “sodomy laws” as well as laws against adultery or pre- or extramarital sexual relations, and any other laws (including those punishing acts which “offend good morals” or “cause public scandal”) which can be used to penalize the expression of lesbian or gay identity, or the exercise of other basic rights by lesbian, gay, bisexual, or transgender people.

States should eliminate laws prohibiting sex reassignment surgery, or preventing post-operative transgender people from obtaining State identity documents and papers reflecting their chosen, rather than birth, gender. States should eliminate all laws penalizing the expression of transgender identity, such as laws criminalizing persons “who wear the clothes of the opposite sex.”

States should eliminate laws penalizing persons who engage in sex work, as well as laws regulating or restricting their freedom of movement. States should establish legal standards and protections against exploitation and abuse of persons engaged in sex work.

States should enact anti-discrimination legislation offering comprehensive protections against unequal treatment based on sexual orientation and gender identity. These protections should involve all areas of life, including but not restricted to housing, employment, and the family; they should protect against unequal treatment by non-State actors as well as by the State; they should include penalties for discrimination as well as provisions for redress.

States should review and revise existing laws and policies with a view to eliminating provisions which cause, perpetuate, or extend discrimination on the basis of sexual orientation or gender identity.

Lesbian women face discrimination, abuse, and torture as women, as well as lesbians; and the intersection of these identities means that a response must be grounded in both. States should review and revise existing laws and policies to ensure the elimination of all forms of discrimination against women. In the particular realm of responses to torture and ill-treatment, States should ensure non-discriminatory rules of evidence for women in rape and torture cases, the availability of gender-specific health responses to survivors, and all other measures necessary to make both equal justice and full assistance available to women.

States should review and revise existing laws and policies on sexual violence, to allow it to be prosecuted as rape and, where appropriate, in cases of State agency or complicity, as torture. Laws should also be reviewed and revised with a view to ensuring that (consistent with the definitions of rape established by the ICTR in *Prosecutor v. Jean-Paul Akayesu* and by the ICTY in *Prosecutor v Delalic et. al.* and *Prosecutor v Furundzija*) rape is defined as penetration of the vaginal or anal cavities by any object, or penile penetration of the oral cavity, without reference to the sex of the victim.

States should name and identify as such all violations which are based on sexual orientation or gender identity, or motivated by gender-based hatred. They should create mechanisms for statistically recording acts of violence, in the process recognizing the specific forms of hatred which give rise to them.

States should ensure that full support is available—including all necessary legal and social services—to all people who are vulnerable to, or victims of, discrimination or violence due to their sexual orientation or gender identity.

States should identify and speedily remove or remedy any impediments, including economic, cultural, or social barriers, which prevent any persons from accessing social services, state benefits, or the criminal justice system equally or fairly.

States should also attend to their responsibilities to promote human rights, by creating cultures of respect for diversity and equality. States should ensure that educational systems at every level, as well as State media and all other systems for the dissemination of knowledge, promote understanding of human rights. Issues of sexual orientation and gender identity should be integral to this education, and framed so as to clearly condemn intolerance while promoting equality and respect for the rights of all peoples.

States should hold fully accountable any State employees or agents, as well as non-State actors, who harass, persecute, pursue, or violate the rights of persons because of their gender or sexual orientation. Personnel of every State agency, and in particular the criminal justice system, should be trained and sensitized in issues of gender and sexual orientation.

In all State institutions of extraordinary control, including the military as well as the penal system and psychiatric institutions, grievance and investigatory procedures should be established which protect the rights of all persons to justice and redress, as well as their confidentiality and safety. Prohibitions on discrimination based on sexual orientation or gender identity should be instituted. Sexual abuse should be expressly prohibited and punished. Privacy protections and protections against verbal degradation should be safeguarded, and personnel in such institutions should receive particular training in addressing issues of sexual orientation and gender identity.

Organizations of medical, psychiatric, and other health professions should remove definitions which create, perpetuate or extend stigma on the basis of sexual orientation and gender identity; should train personnel in sensitive, competent, and comprehensive medical/health responses; should clearly condemn abusive practices directed at sexual minorities; and should investigate all allegations of malfeasance or neglect by members of health-provider communities, as well as all allegations that they have contributed to or been complicit with torture or cruel and inhuman treatment.

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