

# UN Commission on Human Rights: Brazilian Resolution on Human Rights and Sexual Orientation

## Government Briefing Kit

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### Summary of Recommendations:

Specifically, we are asking States to make this resolution a priority, and support it to the greatest extent possible, by:

- co-sponsoring the resolution (all States can co-sponsor);
- voting in favour of the resolution (if a member of the CHR);
- speaking out in favour of the resolution, during the high level segment of the CHR, during informal negotiations, and during oral interventions and debates;
- supporting the inclusion of gender identity, and speaking publicly in support of this issue during the high level segment, during debate and/or by entering explanations of vote, as appropriate;
- being proactive in encouraging other States in your region, or with whom you have ties, to support the resolution.

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## Introduction

### **Who we are:**

- We are writing to you on behalf of a coalition of international NGOs and domestic organisations from every geographic region represented on the UN Commission on Human Rights (“CHR”), to urge you to support the Brazilian resolution on sexual orientation.
- This briefing kit was prepared through the joint efforts of an international Steering Committee struck at a consultation in Rio de Janeiro, Brazil in December 2003. The Steering Committee consists of representatives from Action Canada for Population and Development (ACPD), Amnesty International, ARC International, the Brazilian Committee, Human Rights Watch, the International Commission of Jurists, the International Gay and Lesbian Human Rights Commission, the International Lesbian and Gay Association, the International Research Centre on Social Minorities, and the International Working Group on Sexuality and Social Policy.
- The Steering Committee has been liaising with a growing network in support of the resolution, involving representatives from about 40 countries including Egypt, Kenya, Nigeria, South Africa, Uganda, Zimbabwe, China/Hong Kong, Fiji, India, Israel, the Republic of Korea, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, Croatia, Russia, Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Australia, Austria, Belgium, Canada, France, Germany, Italy, the Netherlands, New Zealand, Sweden, Switzerland, the UK and the USA.

### **Background to the Resolution:**

- In April 2003, the Brazilian delegation to the UN CHR introduced a historic resolution on “human rights and sexual orientation” (Resolution L.92).<sup>2</sup>
- This resolution affirms the universality of human rights and the basic principle that lesbians, gays and bisexuals are entitled to the same human rights protection as other human beings.
- The resolution was co-sponsored by a broad range of States, including Austria, Belgium, Brazil, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.
- At the 59th session of the CHR, a motion to take no action on the resolution was rejected, but the CHR ultimately voted to defer discussion of the resolution until the 60th Session in 2004. The issue is therefore likely to be prominent at this year’s CHR.
- Lesbians, gays, bisexuals and transgendered people face persistent human rights violations on a daily basis, and this resolution is urgently needed. We know that your country is respectful of human rights principles and we trust that we can count on you to uphold the universality of human rights. At the very least, we hope that no State will oppose the resolution, which would send a devastating message that lesbians, gays, bisexuals and transgendered people are not worthy of basic human rights and that those who abuse our human rights can do so with impunity.

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<sup>2</sup> E/CN.4/2003/L.92, “Human rights and sexual orientation”.

## **Basic Principles underpinning the Resolution**

### **About the resolution**

The Brazilian resolution does no more than affirm the basic principle that lesbians, gays and bisexuals are human beings and are entitled to be protected from human rights abuses.

The language is a simple and clear recognition that lesbians, gays and bisexuals are seen as equal members of the human family and entitled to the human rights protection accorded to all human beings.

### **No new rights**

A resolution on human rights, sexual orientation and gender identity would not define any new rights or novel standards. Instead, the resolution simply reaffirms the principles that lie at the core of international human rights treaties, and that have underpinned numerous decisions and reports by treaty bodies, UN Special Rapporteurs and the UN Commission on Human Rights itself.

### **Universality and non-discrimination**

As recognised in the Vienna Declaration and Program of Action, human rights are universal, indivisible, interdependent and interrelated. The Vienna Declaration further provides that “human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments” and that “the universal nature of these rights and freedoms is beyond question.”<sup>3</sup>

The principles of universality and non-discrimination are intrinsically intertwined. The integrity of human rights and the work of the CHR itself are undermined if human rights can be denied to any marginalised group.

The resolution consolidates non-discrimination principles and underlines the universality of human rights. The drafters of the Universal Declaration of Human Rights stated explicitly that they considered the non-discrimination principle to be the basis of the Declaration, and the principles of non-discrimination and equality form part of the core values underpinning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Lesbians, gays, bisexuals and transgendered people come from all races, cultures and religions. They are entitled to protection against discrimination on the ground of their sexual orientation to the same extent as on the grounds of their race, gender or religion. Like human rights, human identity is indivisible, and the UN CHR cannot ultimately fulfil its mandate to protect human rights if a core component of human identity is left unprotected.

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<sup>3</sup> Vienna Declaration and Programme of Action, UNGA, A/CONF.157/23 (12 July 1993) at paras. 1, 5.

## Why a resolution?

The resolution recognises that all are entitled to live in a society that fits (rather than excludes) their experiences, to see themselves written into (rather than out of) culture, knowledge, and society, to live free from discrimination and abuse based on sexual orientation and gender identity.

Regrettably, not all States accept the universal application of human rights principles to lesbians, gays and bisexuals. This lack of recognition creates a climate in which such intolerance and abuse can thrive unchecked. It is essential for the Commission to adopt a resolution affirming that human rights cannot be denied on the basis of sexual orientation or gender identity. Such a resolution is important not only to assist the UN in addressing violations that are often concealed in stigma and silence — but also to uphold the basic principle that human rights must be enjoyed equally by all people.

Adoption of the resolution will send a message that the UN's own work in addressing human rights violations must be carried out in the spirit of core human rights principles, without discrimination and with respect for the equal dignity of all.

Conversely, rejection of the resolution would send a message that lesbians, gays and bisexuals are seen as less than human, and therefore not deserving of basic human rights. This would undermine the principle of universality by suggesting that some human beings are less worthy of human rights protection than others. Such a dangerous message would undermine the integrity of the CHR as a human rights body, and would establish a negative precedent that could be used to deny the human rights of any minority which can be depicted as unpopular or less than human.

## Why now?

Many States from regions around the world have now begun to recognise that the human rights abuses regularly perpetrated against lesbians, gays, bisexuals and transgendered people cannot be reconciled with human rights principles. Consistent with rulings by international, regional and domestic tribunals, criminal sanctions are being repealed, and laws are being enacted to protect lesbians, gays, bisexuals and transgendered people from discrimination.

The UN Human Rights Committee has affirmed that the non-discrimination guarantees of the ICCPR extend to the ground of sexual orientation, and treaty bodies and special procedures have consistently recognised sexual orientation issues within their respective mandates.

Despite this substantial progress, however, human rights violations against lesbians, gays, bisexuals and transgendered people persist, and many States recognise the need to speak out clearly to safeguard the human rights of lesbians, gays, bisexuals and transgendered people.

The time has come to consolidate the progress that has been made, by adopting a resolution which clarifies that lesbian, gay, bisexual and transgendered rights are human rights, and should be explicitly included in the work of the CHR.

## Evidence of Abuses of the Human Rights of Lesbians, Gays, Bisexuals and Transgendered People

Despite substantial progress towards recognition of the equal rights of lesbians, gays, bisexuals and transgendered people both internationally and in countries around the world, lesbians, gays, bisexuals and transgendered people are subject to persistent human rights violations because of their actual or perceived sexual orientation and gender identity.

Throughout the world, lesbians, gays, bisexuals and transgendered people experience harassment, humiliation, verbal and physical abuse. More than 80 countries still maintain laws that make same-sex consensual sexual relationships between adults a criminal offence, and in at least 8 countries the maximum penalty is death.<sup>4</sup> In other countries, vaguely-worded and sweeping laws against “public scandals” or “indecent behaviour” are used to penalise people whose only crime is looking, dressing, or behaving differently from rigidly enforced social norms. In many countries, people detained on the basis of their sexual orientation or gender identity are tortured and ill-treated in police custody. Many people face violence in their own communities and families because of their sexual orientation or gender identity. Additionally, some countries treat homosexuality as a medical or psychological disorder and lesbians and gay men have been targeted for medical experimentation and forced psychiatric treatment designed to 'cure' their homosexuality.<sup>5</sup>

These persistent human rights violations have been well documented by UN Special Rapporteurs. For example:<sup>6</sup>

- Radhika Coomaraswamy, Special Rapporteur on violence against women, concluded in her 1997 report<sup>7</sup> that community restrictions on women’s sexuality result in a range of human rights violations, including flogging, stoning and death, for women who have relationships outside marriage, ethnic, religious or class communities or outside heterosexual expectations. In 2002, she acknowledged that lesbians are “punished severely” in the context of family violence, providing as an example the multiple rape of a lesbian in Zimbabwe resulting in her pregnancy.<sup>8</sup>
- Similarly, Asma Jahangir, Special Rapporteur on extrajudicial, summary or arbitrary executions, included a specific section in her 1999 annual report on the right to life and sexual orientation, in which she reported being “deeply concerned by numerous and consistent reports of persons having been killed or sentenced to death because of their sexual orientation.”<sup>9</sup> Her 2000, 2001, 2002 and 2003

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<sup>4</sup> IGLHRC, *Where Having Sex is a Crime: Criminalization and Decriminalization of Homosexual Acts (2003)*, [www.iglhrc.org](http://www.iglhrc.org); ILGA, *World Legal Survey*, [www.ilga.org](http://www.ilga.org).

<sup>5</sup> Amnesty International, *Crimes of hate, conspiracy of silence. Torture and ill-treatment based on sexual orientation* (2001).

<sup>6</sup> For an excellent review of sexual orientation recognition at the UN, see Suki Beavers, *Sexual Orientation and the UN: Human Rights over Homophobia* (January 12, 2004).

<sup>7</sup> E/CN.4/1997/47 (1997) at 3.

<sup>8</sup> E/CN.4/2002/83 (2002) at 29.

<sup>9</sup> E/CN.4/1999/39 (1999) at 21.

reports similarly expressed concern about prison killings of gay men, death threats and murders based on sexual orientation.<sup>10</sup>

- In his 2001 interim and final reports,<sup>11</sup> Sir Nigel Rodley, then UN Special Rapporteur on torture, detailed human rights abuses against sexual minorities:

“Torture and discrimination against sexual minorities

17. For some years, the Special Rapporteur has received information regarding a number of cases in which the victims of torture and other cruel, inhuman or degrading treatment or punishment have been members of sexual minorities. He notes that a considerable proportion of the incidents of torture carried out against members of sexual minorities suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault in order to ‘punish’ them for transgressing gender barriers or for challenging predominant conceptions of gender roles.

18. The Special Rapporteur has received information according to which members of sexual minorities have been subjected, inter alia, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.”

The report goes on to detail specific allegations of torture and other cruel, inhuman or degrading treatment perpetrated against lesbians, gays, bisexuals and transgendered people, including rape by police or prison authorities, state indifference to mistreatment by members of the general prison population, forcible confinement in medical institutions, “aversion therapy”, including electroshock treatment, and threats by authorities to disclose sexual orientation or gender identity as a means to intimidate lesbians, gays, bisexuals and transgendered people and deter them from pursuing their legal or constitutional rights.

The findings of these and other Special Rapporteurs are consistent with human rights abuses documented in every region of the world. Just some examples include:<sup>12</sup>

- In Saudi Arabia, nine young men were sentenced to lengthy prison terms and hundreds of lashes for homosexual behaviour; 24 Filipino workers were sentenced to flogging and deportation for homosexual behaviour; a transgendered person was sentenced to 100 lashes for moral deviancy;

<sup>10</sup> E/CN.4/2000/3 (2000) at 21, 22, 25, and 37; E/CN.4/2001/9 (2001) at paras. 49ff; E/CN.4/2001/9/Add.1 (2001) at para. 175; E/CN.4/2002/74 (2002) at paras. 17, 21-22, 148; E/CN.4/2002/74/Add.2 (2002) at 56-57, 82, 86; E/CN.4/2003/3/Add.1 (2003) at 160; E/CN.4/2003/3 (2003) at 20; E/CN.4/2003/3/Add.2 (2003) at 23; E/CN.4/2003/3/Add.4 (2003) at 14.

<sup>11</sup> A/56/156 (3 July 2001); E/CN.4/2002/76 (27 December 2001).

<sup>12</sup> Amnesty International, *Crimes of hate, conspiracy of silence: torture and ill-treatment based on sexual identity* (2001); Andrew Reding, *Sexual Orientation and Human Rights in the Americas*, World Policy Institute at New School University, New York (2003); Human Rights Watch and IGLHRC, *More than a name: State-sponsored homophobia and its consequences in Southern Africa* (2003).

- In London, UK, a nail-bomb explosion in a gay bar killed three people and injured dozens of others;
- In Peru, Venezuela and Costa Rica, hundreds of lesbians, gays, bisexuals and transgendered people have been detained in police raids on gay bars;
- Lesbians, gays, bisexuals and transgendered people detained by police in Ecuador have been tortured and sexually assaulted, and activists have received death threats related to their sexual orientation or gender identity;
- In Chile, 19 people were killed in the bombing of a disco's gay night;
- In Afghanistan, men convicted of sodomy have been sentenced to death and executed by being buried alive under rubble as walls are toppled on them;
- In the U.S., Fredrick Mason, a black gay man was tortured by police officers in Chicago, who uttered racist and homophobic insults;
- In Russia, a lesbian seeking protection from police after assaults and homophobic threats by a neighbour was repeatedly raped by a police officer who threatened to arrest her if she did not comply;
- In Egypt, police raided the Queen Boat discotheque in Cairo and arrested 52 gay men on charges of the "habitual practice of debauchery". The 52 men were tortured in detention, and jailed continuously until their trial. This case has been condemned by the Working Group on Arbitrary Detention;<sup>13</sup>
- In Zimbabwe, two members of a gay and lesbian group were arrested and handcuffed leaving a club. At the police station, one was threatened by a police officer who waved a gun at her, saying "our President doesn't like people like you". The other was beaten on the legs and chest. Police threatened to put them in with the male prisoners, saying "you will be the guys' wife today", unless they paid a fine for "public indecency";
- In Nepal, community groups report regular incidents of assault and torture of lesbians, gays, bisexuals and transgendered people, including at the hands of police, family-members and members of the general public;
- In February, 2004, a Belgian gay man, Sébastien Nouchet, was sprayed with gasoline by neighbours, who then turned him into a human torch.<sup>14</sup>

In view of these widespread and recurring human rights abuses, which have been documented both by human rights NGOs and recognised by Special Rapporteurs and other Special Procedures, we urge States to be proactive in supporting the Brazilian resolution and affirming the human rights of lesbians, gays, bisexuals and transgendered people.

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<sup>13</sup> Egypt, Working Group on Arbitrary Detention Opinion no. 7/2002, E/CN.4/2003/8/Add.1 (2003) at 68.

<sup>14</sup> *Le Monde* (February 3, 2004).

## Recognition by UN Mechanisms of Lesbian, Gay, Bisexual and Transgendered Human Rights

In recent years, there has been an emerging consensus by *all* the UN Treaty Bodies and numerous Special Procedures recognising the ongoing violations of the human rights of lesbians, gays, bisexuals and transgendered people, and the importance of measures to address these rights violations.

The Commission on Human Rights has itself three times adopted resolutions<sup>15</sup> which affirm the right to life of all persons, including on the ground of sexual orientation.

In addition, the following treaty bodies have all explicitly interpreted their treaty protections to include sexual orientation:<sup>16</sup>

- the Human Rights Committee;<sup>17</sup>
- the Committee on Economic, Social and Cultural Rights;<sup>18</sup>
- the Committee Against Torture;<sup>19</sup>
- the Committee on the Rights of the Child;<sup>20</sup> and
- the Committee on the Elimination of Discrimination against Women.<sup>21</sup>

The Committee on the Elimination of Racial Discrimination has also adopted<sup>22</sup> a background paper prepared by Theo van Boven, member of the Committee, which affirmed that “many persons are suffering in a double sense as victims of accumulated discrimination: race and gender, race and sexual orientation, race and being handicapped, race and age etc.”<sup>23</sup>

Similarly, violations on the basis of sexual orientation have been acknowledged and condemned by a wide range of Special Rapporteurs, Independent Experts, Special Representatives, and Working Groups, including:

<sup>15</sup> E/CN.4/RES/2000/31, E/CN.4/RES/2002/36 and E/CN.4/RES/2003/53.

<sup>16</sup> For an excellent review of sexual orientation recognition at the UN, see Suki Beavers, *Sexual Orientation and the UN: Human Rights Over Homophobia* (January 12, 2004), on which this section is based.

<sup>17</sup> See in particular *Toonen v. Australia*, CCPR/C/50/D/488/1992 (4 April 1994) and *Young v. Australia*, CCPR/C/78/D/941/2000 (18 September 2003), *infra*.

<sup>18</sup> General Comment No. 14: The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (11 August 2000) at para.8; General Comment 15: The right to water, E/C.12/2002/11 (2002) at para. 13.

<sup>19</sup> CAT/C/SR.538 (2002) at para. 44ff. See also Conclusions and recommendations of the Committee Against Torture: Venezuela, CAT/C/CR/29/2 (2002) at para. 10(d); Concluding Observations: Egypt, CAT/C/XXIX/Misc.4 (2002) at paras 5(e), 6(k); Concluding Observations/Comments of the Committee Against Torture: Brazil, A/56/44 (2001) at para 119.

<sup>20</sup> General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4 (2003), at para. 6; General Comment No. 3, HIV/AIDS and the rights of the child, CRC/GC/2003/3 (2003) at paras. 3-4.

<sup>21</sup> CO CEDAW Sweden, A/56/38 (2001) at paras. 321, 334; CO CEDAW Ireland, A/54/38 (1999) at para. 162; CO CEDAW: Canada, A/52/Rev.1 (1997) at para. 310; CO CEDAW New Zealand, A/49/38 (1994) at para. 612, CO CEDAW: Netherlands, A/49/39 (1994) at paras. 253, 270, 300, 316; CO CEDAW: Mexico, A/53/38 (1998) at para. 420, CO CEDAW: Kyrgyzstan, A/54/38 (1999) at para. 128.

<sup>22</sup> Adopted by the CERD on 26 August 1999 (Report of the CERD 29/09/99, A/54/18).

<sup>23</sup> E/CN.4/1999/WG.1/BP.7, appended to Decision 5 (55) on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

- the Special Rapporteur on violence against women, its causes and consequences;<sup>24</sup>
- the Special Rapporteur on extrajudicial, summary or arbitrary executions;<sup>25</sup>
- the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment;<sup>26</sup>
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;<sup>27</sup>
- the Special Rapporteur on freedom of expression;<sup>28</sup>
- the Special Representative of the Secretary-General on the situation of human rights defenders;<sup>29</sup>
- the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;<sup>30</sup>
- the Special Rapporteur on the right to education;<sup>31</sup>
- the Working Group on Arbitrary Detention;<sup>32</sup> and
- the Special Rapporteur on the independence of judges and lawyers.<sup>33</sup>

Given the widespread recognition by UN Treaty Bodies and Special Procedures that lesbian, gay, bisexual and transgendered rights are human rights, the following synopsis provides a brief overview of this recognition, but does not purport to be comprehensive:

- In 2000, 2002 and 2003, the Commission on Human Rights included sexual orientation in its resolutions on extrajudicial, summary or arbitrary executions.<sup>34</sup> In addition, the CHR resolution on the death penalty in 2002 urged States that still have the death penalty “to ensure that ... the death penalty is not imposed for non-violent acts, such as ... sexual relations between consenting adults.”<sup>35</sup>
- Almost 10 years ago, in 1995, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution recognising that “men who are homosexuals” are amongst those “persons suffering from disadvantaged economic, social or legal status” who “are more vulnerable to the risk of HIV infection owing to the lack of full enjoyment of their fundamental rights”, and calling upon States to take measures to combat this discrimination and ensure the full enjoyment of the rights of these disadvantaged groups.<sup>36</sup>

<sup>24</sup> E/CN.4/1999/68 (10 March 1999); E/CN.4/2003/75 (2003).

<sup>25</sup> See Special Rapporteur’s Reports: E/CN.4/1999/39 at 21; E/CN.4/2000/3 at 21, 22, 25, 37; E/CN.4/2001/9 at paras. 49ff & E/CN.4/2001/9/Add.1 at para. 175; E/CN.4/2002/74 at paras. 17, 21-22, 148 & E/CN.4/2002/74/Add.2 at 56-57, 82, 86; E/CN.4/2003/3/Add.1 at 160, E/CN.4/2003/3 at 20, E/CN.4/2003/3/Add.2 at 23 & E/CN.4/2003/3/Add.4 at 14.

<sup>26</sup> A/56/156, 3 July 2001; E/CN.4/2002/76 at 11; E/CN.4/2003/68/Add.1; E/CN.4/2003/68/Add.2.

<sup>27</sup> E/CN.4/2004/49, 16 February, 2004, at paras. 32, 38-39.

<sup>28</sup> E/CN.4/1998/40, at 12; E/CN.4/2002/75/Add.1 at 35, n. 30.

<sup>29</sup> E/CN.4/2002/106 at 15, 17, 21, 25, 64, 73, 78; E/CN.4/2002/106/Add.1 at 34; E/CN.4/2002/106/Add.2 at 6, 37; E/CN.4/2003/104/Add.1, at 57; E/CN.4/2003/104/Add.1, at 86.

<sup>30</sup> E/CN.4/1995/78/Add.1, at 18; E/CN.4/1999/15/Add.1, at 4.

<sup>31</sup> E/CN.4/2001/52, at 26.

<sup>32</sup> Opinion 7/2002, E/CN.4/2003/8/Add.1 (24 January 2003).

<sup>33</sup> E/CN.4/1998/39 at para. 43; E/CN.4/2003/65, at 24.

<sup>34</sup> E/CN.4/RES/2000/31, E/CN.4/RES/2002/36 and E/CN.4/RES/2003/56.

<sup>35</sup> E/CN.4/RES/2002/77, at para. 4(c).

<sup>36</sup> E/CN.4/Sub.2/RES/1995/21.

- In 2001, the interim<sup>37</sup> and final<sup>38</sup> reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment detailed specific allegations of abuses perpetrated against lesbians, gays, bisexuals and transgendered people, including rape by police or prison authorities, forcible confinement in medical institutions, electroshock treatment, and threats by authorities to disclose sexual orientation or gender identity as a means of intimidation.
- The Special Rapporteur on violence against women, its causes and consequences has also affirmed<sup>39</sup> the principle of non-discrimination on the ground of sexual orientation and noted that the Office of the United Nations High Commissioner for Refugees has recognised that lesbians and gay men constitute "members of a particular social group" for the purposes of refugee recognition. This has been recognised in the domestic law of numerous States.
- The Special Rapporteur on extra-judicial, summary or arbitrary executions has consistently expressed concern at human rights abuses based on sexual orientation:

“The Special Rapporteur is deeply concerned by numerous and continuing reports of persons having been killed or sentenced to death because of their sexual orientation. ... The Special Rapporteur regrets that in some States homosexual relationships are still punishable by death. ... The Special Rapporteur further believes that criminalizing matters of sexual orientation increases the social stigmatization of members of sexual minorities, which in turn makes them more vulnerable to violence and human rights abuses, including violation of the right to life.”<sup>40</sup>

- On 16 February, 2004, the Special Rapporteur on the right to health issued his report to this year’s CHR, in which he affirms:<sup>41</sup>

“As has been noted, discrimination on the grounds of sexual orientation is impermissible under international human rights law. The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct.”

- The Committee on Economic, Social and Cultural Rights has affirmed the principle of non-discrimination on grounds including sexual orientation,<sup>42</sup> as has the Committee on the Rights of the Child.<sup>43</sup>

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<sup>37</sup> A/56/156 (3 July 2001).

<sup>38</sup> E/CN.4/2002/76 (27 December 2001).

<sup>39</sup> E/CN.4/1999/68 (10 March 1999); *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, E/CN.4/2003/75 (2003).

<sup>40</sup> E/CN.4/1999/39 at 21.

<sup>41</sup> E/CN.4/2004/49 (16 February, 2004) at paras. 32, 38-39.

<sup>42</sup> General Comment No. 14: The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (11 August 2000).

- Particularly noteworthy are two key decisions of the UN Human Rights Committee:

In *Toonen v. Australia*,<sup>44</sup> the Human Rights Committee in March 1994 interpreted the anti-discrimination provisions in the International Covenant on Civil and Political Rights to include sexual orientation as a protected ground;

In *Young v. Australia*,<sup>45</sup> in September 2003, the Committee upheld a complaint by a gay man who had been denied equal dependant benefits under the *Veteran's Entitlement Act* following the death of his partner of 38 years. The Committee referred to the *Toonen* decision and found that Australia had "violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation."

- The Working Group on Arbitrary Detention<sup>46</sup> affirmed that sexual orientation discrimination violates the international standards in art. 2(1) of the Universal Declaration of Human Rights, as well as arts. 2(1) and 26 of the International Covenant on Civil and Political Rights. In reaching this conclusion, the Working Group referenced the decision of the Human Rights Committee in *Toonen v. Australia*, and noted that the Human Rights Committee subsequently called on States not only to repeal laws criminalizing homosexuality, but also to include in their constitutions the prohibition of any discrimination based on sexual orientation.<sup>47</sup> The Working Group also relied on similar findings by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, and the Guidelines on International Protection issued by the Office of the United Nations High Commissioner for Refugees.
- This evolution in the recognition of lesbian, gay, bisexual and transgendered human rights has been reconfirmed and further strengthened by the official recognition of registered partnerships of UN staff in January 2004 by UN Secretary General Kofi Annan, who had already affirmed in August 2003 that lesbians and gays are covered by the Universal Declaration of Human Rights. On January 20, 2004, the Secretary-General issued a Bulletin<sup>48</sup> providing that partnership benefits will extend to UN employees in a legally-recognised domestic partnership in their country of origin.

In view of the comprehensive recognition by UN Treaty Bodies and Special Procedures of the human rights of lesbians, gays, bisexuals and transgendered people, it is no longer open to question whether sexual orientation is protected by existing treaties: the only question is whether the Commission on Human Rights will vote to recognise this reality by formally including issues of sexual orientation within its mandate.

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<sup>43</sup> General Comment No. 3: HIV/AIDS and the Rights of the Children, CRC/GC/2003/3 (17 March 2003).

<sup>44</sup> *Toonen v. Australia*, CCPR/C/50/D/488/1992 (4 April 1994),

<sup>45</sup> *Young v. Australia*, CCPR/C/78/D/941/2000 (18 September 2003).

<sup>46</sup> Working Group on Arbitrary Detention, Opinion 7/2002, E/CN.4/2003/8/Add.1 (24 January 2003).

<sup>47</sup> Concluding observations of the Human Rights Committee (Poland), CCPR/C/79/Add.110 (29 July 1999) at para. 23.

<sup>48</sup> ST/SGB/2004/4.

## Support across cultures, regions and religions

All too often, those who oppose the equal application of human rights norms to lesbians, gays, and bisexuals seek to portray homosexuality as a product of some “other” culture or religion.

Our sexual orientation is as much a part of our identity as our race, our faith, or our gender. As the Vienna Declaration and Programme of Action recognises, human rights are indivisible and interrelated, and it is meaningless to accord human rights protection to one part of our identity, such as our race, sex or religion, but to deny it to another part of our identity, such as our sexual orientation or gender identity.

Lesbians, gays, bisexuals and transgendered people experience the world differently depending on their sex, race, age, class, dis/ability, culture, religion, language and other factors. The struggle against one form of oppression cannot in practice be separated from the many other struggles for equality in which members of our communities – and the international community generally - are engaged.

This brief itself is the product of input from lesbians, gays, bisexuals and transgendered people – and our heterosexual family-members, friends and supporters – from every continent, of diverse races and religions, in every geographic region on the CHR.

### Support across regions

It is inherently divisive, isolating and inaccurate to position the issue as that of one culture “versus” another, since this overlooks the reality that lesbians, gays, bisexuals and transgendered people come from all walks of life, from all faiths, all countries, all cultures and all religions.

This is eloquently expressed in the **Johannesburg Statement on Sexual Orientation, Gender Identity and Human Rights**. This statement was adopted on February 13, 2004 at a meeting of African lesbian, gay, bisexual, and transgender organizations, involving fifty-five participants from twenty-two groups representing sixteen countries across the continent, and reads in full:

“To **African member governments** of the United Nations Commission on Human Rights and of the United Nations:

We write to you as a coalition of African lesbian, gay, bisexual, and transgender organizations. If we do not sign the names of our organizations to this document, it is because of the climate of repression and fear that we face every day. We represent sixteen countries across the whole continent of Africa. We speak to you as fellow Africans, concerned that our continent develop and realize its full potential, steady in hope for African democracy, aware that repression and fear are inconsistent with peace and freedom, conscious that democracy and development can only be attained by mobilizing the energies of all Africa’s peoples.

We say to you: We, African lesbians, gays, bisexuals, and transgender people, do exist - despite your attempts to deny our existence. We are part of your countries and constituencies. We are watching your deliberations from our home communities, which are also your home communities. We demand that our voices be heard.

We ask you to support a resolution before the Commission on sexual orientation, gender identity, and human rights.

Across Africa, we face human rights abuses which threaten our safety, our livelihoods, and our lives. That we are targets of such abuse proves that we exist—states do not persecute phantoms or ghosts. It also proves the necessity for action to safeguard our real situations and our basic rights.

African lesbians, gays, bisexuals, and transgender people confront harassment from police; abuse by our neighbours and our families; and violence and brutality—sometimes punitive rape—on the streets. We are discriminated against in the workplace. Some of our families force us into marriages against our will, in the hope of changing our inmost selves. Some of us, among them the very young, are evicted from our homes because of prejudice and fear.

Our intimate and private lives are made criminal. Laws punishing “unnatural acts” or “sodomy” are enforced against us. Political leaders say these laws defend African “cultural traditions”—even though, without a single exception, these laws are foreign imports, brought by the injustice of colonialism.

We are denied access to health care and basic health information targeted to our lives and needs. We are blamed, unjustly, for the spread of HIV/AIDS (known by experts to be, in Africa, primarily transmitted by heterosexual sex); at the same time, we are omitted from HIV prevention programs. The brave contributions we have made to HIV prevention and treatment—doing outreach to our own communities and educating them in the face of state neglect or persecution—are ignored or actively harassed.

Schools teach intolerance, contributing to a harassment that denies young people whose sexualities or gender identities do not “conform” the basic right to an education. We are targets of media propaganda campaigns that call us “foreign,” “diseased,” “evil,” or “sick.” Political leaders promote hatred against us to solidify their own political situations. We are kept in silence and denied the right of reply.

At the same time, we have and have always had a place in Africa. Despite the pressure of prejudice that politicians and self-styled popular leaders promote, many of our families do not succumb; many of our neighbours, co-workers, and friends continue to love and to support us. Many of our communities continue to affirm that we are an integral part of their web of relationships. Many traditional cultures still are governed by those principles of welcoming and belonging that have always been central to African life; they do not allow themselves to be distorted by the politics of exclusion, and preserve our rightful place in the gathering. Many African religious leaders from many denominations speak to us of love and inclusion, not hatred and revenge. And, on our continent, South Africa, at the end of its long liberation struggle, became the first country in the world to include, in its post-apartheid constitution, “sexual orientation” as a status protected from discrimination.

In supporting the resolution on sexual orientation, gender identity, and human rights, you will be true to the real African tradition—which, in culture after culture, before colonialism cast its stultifying shadow, recognized the interrelationship and interdependency of us all.

We urge you to support this resolution.

Signed by representatives from:

Botswana	Senegal
Burundi	Sierra Leone
Ethiopia	Somalia
Ghana	South Africa
Kenya	Swaziland
Namibia	Tanzania
Nigeria	Uganda
Rwanda	Zimbabwe”

Countries as diverse as Mexico, Brazil, South Africa, Israel and New Zealand have protected lesbians, gays and bisexuals in anti-discrimination legislation or jurisprudence. In 2004, all 25 states of the **European Union** will be required to protect lesbians, gays, bisexuals and transgendered people in their national employment legislation.

Brazil’s leadership in this area is evidenced by its sponsorship of the resolution. Other **Latin American** countries, including Costa Rica, Guatemala, Peru, Uruguay, Paraguay, Venezuela and Mexico, expressed support for the resolution last year by rejecting the ‘no action’ motion. In December, 2000, in the Santiago Declaration of the Regional Preparatory Conference for the Americas, the Group of Latin American and Caribbean States (GRULAC) affirmed their commitment to addressing sexual orientation discrimination and other factors which aggravate racism and related intolerance.<sup>49</sup>

In the Third Preparatory Committee to the World Conference against Racism, Brazil also proposed language recognising “sexual orientation” discrimination, which was supported by a number of States including Argentina, Ecuador and Guatemala.<sup>50</sup> At the WCAR, Colombia affirmed the needs of gays, lesbians, transsexuals and bisexuals in its plenary address,<sup>51</sup> and Mexico stated its commitment to non-discrimination, including on the ground of sexual orientation.<sup>52</sup> Ecuador, on behalf of Brazil, Chile, Canada, Guatemala and Ecuador made a statement that “[m]any precedents within the United Nations system establish that sexual orientation is a human rights issue.” Referring to the Universal Declaration of Human Rights and the Santiago Declaration, Ecuador continued:<sup>53</sup>

“The universality of human rights is fulfilled by addressing abuses and by protecting the victims of discrimination. These precedents demonstrate that the United Nations already recognizes that sexual orientation is a human rights issue.”

Mexico made a statement on behalf of GRULAC, affirming:<sup>54</sup>

“Many delegations in the Group also consider that sexual orientation ought to be listed as a cause of aggravated or multiple discrimination. ... We shall also make good on commitments we made at the regional conference in Santiago.”

<sup>49</sup> WCR/RCONF/SANT/2000/L.1/Rev.4, 20 December 2000).

<sup>50</sup> A/CONF.189/5/Corr.1 (2001).

<sup>51</sup> See [www.un.org/WCAR/statements/colombiaS.htm](http://www.un.org/WCAR/statements/colombiaS.htm).

<sup>52</sup> See [www.un.org/WCAR/statements/mexicoE.htm](http://www.un.org/WCAR/statements/mexicoE.htm).

<sup>53</sup> A/CONF.189/12 (2001) at 109.

<sup>54</sup> A/CONF.189/12 (2001) at 120.

**Latvia**, participating in a World Conference for the first time as an independent State, included discrimination on the basis of sexual orientation in its plenary address.<sup>55</sup> **Croatia** has consistently supported sexual orientation issues in international fora, and co-sponsored the sexual orientation resolution at last year's Commission on Human Rights.

In **Asia**, Japan and the Republic of Korea also supported the resolution in 2003 by voting against the 'no action' motion. The active nature of the Asian lesbian, gay, bisexual and transgendered communities was apparent from the strong Asian participation in the recent International Lesbian and Gay Association's World Conference in the Philippines in November 2003. As Claudia Roth, German Member of Parliament and Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Foreign Office, noted in her keynote speech to the conference:

"In Asia there is a lot of change currently taking place for lesbians, gay men, bisexuals and transgender people:

- Recently Taiwan held the first Tonghzi pride parade in the Chinese-speaking world with a lot of international media attention. The Taiwanese government used the occasion to announced plans to legally recognize same sex partnerships – which would make Taiwan the second jurisdiction on the Asian continent, after Israel, which gives some legal recognition to such partnerships.
- This summer the government of Singapore announced that it would no longer discriminate against lesbians and gays in public service. The government gave as reason for its change of heart that discrimination is unattractive for keeping talented people in the country and thus bad for business.
- In India a coalition of activist groups has challenged the infamous Section 377 that criminalizes same sex sexual activity in the Delhi High Court. This sodomy law dates back to British colonialism. It is important for Europeans to remember that not so long ago our governments and societies exported homophobia to colonial and tribal societies through law and missionaries."<sup>56</sup>

The resolution on extrajudicial, summary or arbitrary executions adopted at last year's Commission calls upon States to investigate promptly and thoroughly "all killings committed for any discriminatory reason, including sexual orientation".<sup>57</sup> This resolution was supported by **a broad range of States from all regions**, including Argentina, Armenia, Australia, Austria, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, Costa Rica, Croatia, Cuba, France, Germany, Guatemala, India, Ireland, Japan, Mexico, Paraguay, Peru, Poland, Republic of Korea, South Africa, Sri Lanka, Swaziland, Sweden, Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Zimbabwe.

<sup>55</sup> <http://www.un.org/WCAR/statements/latvE.htm>, per H. E. Dr. Vaira Vike-Freiberga, President of the Republic of Latvia.

<sup>56</sup> Roth, 22<sup>nd</sup> International Lesbian and Gay Association (ILGA) Conference, Manila, Philippines, (November 18, 2003); available at:

[www.auswaertiges-amt.de/www/de/aussenpolitik/menschenrechte/beauftragte/beitraege/031118.pdf](http://www.auswaertiges-amt.de/www/de/aussenpolitik/menschenrechte/beauftragte/beitraege/031118.pdf).

<sup>57</sup> E/CN.4/RES/2003/56.

## Religious support

Just as there is support in all regions for ending sexual orientation discrimination, so too no division can be meaningfully drawn between homosexuality and religion. Many faiths embrace the equal dignity and worth of lesbians, gays, bisexuals and transgendered people, and many lesbians, gays, bisexuals and transgendered people are themselves people of faith.

The **Holy See** has itself acknowledged the discrimination and violence experienced by women on the ground of sexual orientation, and joined in a call for remedial action. In 2000, governments as well as the Holy See accepted without reservations a number of Agreed Conclusions at an intergovernmental meeting convened by the Economic Commission for Europe to provide a regional assessment for the 2000 review of the implementation of the Beijing Platform for Action. The Agreed Conclusions include:

- a call for States to “review and repeal laws that criminalize homosexuality, since such laws contribute to creating a climate which encourages violence against women who are, or are perceived to be, lesbians”;<sup>58</sup>
- a preambular affirmation that the universal human rights of women must be promoted, protected and realized “recognizing that many women face additional barriers because of such factors as their ... sexual orientation”;<sup>59</sup>
- a recognition that discrimination based on “sexual orientation” serves as a barrier that contributes to the exclusion of women from positions of leadership.<sup>60</sup>

During last year’s Commission, Pakistan on behalf of the **Organization of Islamic Conferences** (“OIC”) issued a letter claiming that the resolution “directly contradicts the tenets of Islam and other religions” and that “its adoption would be considered as a direct insult to the 1.2 billion Muslims around the world.” The OIC attempted to link sexual orientation with paedophilia, maintained that sexual orientation has “hardly ever” found a place in any UN document, and declared the resolution inconsistent with the goals of cooperation and understanding. On 26 February 2004, Pakistan on behalf of the OIC re-issued its letter in essentially identical terms in preparation for the 60<sup>th</sup> session of the Commission. Last year, **a coalition of lesbian, gay, bisexual and transgendered Muslim groups** responded directly to the assertions of the OIC, in the following terms:<sup>61</sup>

“We the undersigned represent more than 1,500 members who identify as Muslims and are lesbian, gay, bisexual, transgender or intersex. We are part of a global movement dedicated to empowering Muslim sexual and gender minorities.

This historic draft resolution on human rights and sexual orientation does not contradict the tenets of Islam and other religions, as you state in your memorandum. Its adoption would not be considered a direct insult to the 1.2 billion Muslim around the world. Islam is not a monolithic religion and the Organization of Islamic

<sup>58</sup> *Agreed Conclusions*, E/ECE/RW.2/2000/7, Annex I (4 February 2000), at 16.

<sup>59</sup> *Ibid*, at 5.

<sup>60</sup> *Ibid*, at 26.

<sup>61</sup> Al-Fatiha UK, Salaam, Salaam Halifax, Al-Fatiha Toronto Foundation (April 24, 2003).

Conferences does not represent the voices and the ideologies of a global Ummah (Muslim community). Muslims hold a diverse range of religious and political beliefs and our cultural heritage, racial background, gender, age and yes sexual orientation, often determine our ideology as human beings and as believers in our faith of Islam. Homosexuality in the Muslim World/Ummah is a reality today that too many people ignore or deny. ...

We fail to understand how opposing the basic human rights of a marginalized community and granting them human dignity will counter your larger objectives of promoting a fair and accurate vision of Islam, a religion whose core values are peace and justice. ... Additionally, your argument that “the concept of ‘sexual orientation’ has never been defined in the UN [and] has hardly ever found a place in the UN document,” is also incorrect. Numerous UN special rapporteurs and treaty bodies have regularly referred to instances of discrimination on the basis of sexual orientation in their reports and concluding observations.

From North Africa to the Middle East, from Indonesia and Malaysia to the shores of South Asia and the coast of North America, Muslims who are sexual and gender minorities are uniting and standing together under the umbrella of Islam. Our faith teaches us peace, love and social justice. These three core beliefs will ultimately guide our movement for equality and ultimately liberation for all sexual and gender minorities.

Today, we the undersigned call on the United Nations Commission on Human Rights to vote on and adopt the resolution calling for the recognition of the basic human rights and dignity of sexual and gender minorities. ... Not only would the adoption of the resolution on human rights and sexual orientation echo the sentiments expressed in international covenants, treaties and charters but it would also reflect the views of Islam, which inherently believes in dignity and justice for all.”

Many religious groups and individuals feel that they are called upon by their faith to promote the equal dignity of all people. The **Inter-Church Committee on Human Rights in Latin America** (“ICCHRLA”) includes Catholic, Anglican, Jesuit, Evangelical Lutheran, Presbyterian, Quaker and United Churches. In its report “Violence Unveiled: Repression against Lesbians and Gay Men in Latin America”, the Inter-Church Committee produced a report examining traditional acceptance of homosexuality among indigenous Latin American cultures, detailing current human rights abuses experienced by lesbians, gays, bisexuals and transgendered people in Latin America, and describing its theological perspective as follows:<sup>62</sup>

“Theologically, ICCHRLA approaches the need to break the silence around the deep seated and systematic violations against lesbians and gay men from a profound faith commitment to the intrinsic value of all human life. The particular scandal for churches in the face of the repression against sexual minorities is that Christian theology and church doctrines have often been used to promote, justify and legitimize discrimination and violence against gay men and lesbians.

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<sup>62</sup> Inter-Church Committee on Human Rights in Latin America, “Violence Unveiled: Repression against Lesbians and Gay Men in Latin America” (April 1996), at 5.

The religious roots of homophobia and the all too frequent religious justification of hatred against sexual minorities calls us to reflect on the less often heard affirmation of God's value, concern and love for all people. With that love comes God's justice and the rejection of all forms of repressive violence and death. Specifically, in the inclusive vision of God's justice, the call for abundant life and freedom from oppression embraces lesbians and gay men.

During the past decade, many churches and faith communities have been involved in deep and complex processes of rethinking doctrines and theologies which deny the dignity and integrity of sexual minorities and their right to live. As part of this process, in September 1995 the **World Council of Churches** (WCC) published a book written by Dr. Alan Brash, former deputy general secretary of the WCC, entitled "Facing Our Differences: The Churches and Their Gay and Lesbian Members". ...

ICCHRLA lifts up therefore two sets of criteria for the defence of the human rights of lesbians and gay men: on the one hand, the standards and obligations of international human rights laws, declarations and agreements; on the other hand, the ethical and theological affirmation of God's option for all who are oppressed, marginalized and excluded."

This year, an interfaith letter in support of the Brazilian resolution on human rights and sexual orientation has been developed and is being distributed by **Catholics for a Free Choice**. That letter reads in part:

"We recognize that the world's faith traditions have developed in different cultures and historical contexts, and that they may differ about the precepts that should govern our intimate and consensual behaviour. Yet we still strongly affirm the shared principles that liberty, bodily integrity, and life should be protected, and that human dignity should be respected.

No faith tradition endorses torture, or allows some human beings to be considered subhuman. Our faith traditions call us to defend all people against violence or abuse—and those are the basic rights at issue here, as people around the world face torture and endure inhuman treatment because of who they are.

We, as people of diverse faith traditions and organizations based in communities of faith,

- Believe in the essential dignity of the human person.
- Believe that torture, violence, and discrimination assault that dignity and cannot be justified.
- Believe that all human beings are equal in dignity and rights.

For these reasons we urge the United Nations Commission on Human Rights to support a resolution affirming that human rights are enjoyed by all, and cannot be denied on the basis of sexual orientation or gender identity."

We trust that the CHR will heed the pleas of lesbians, gays, bisexuals and transgendered people, and others of faith and conscience, from regions, cultures and religions around the world, and recognise through the resolution that we do exist, that our appeal for recognition will not go unheard, and that we are entitled to be treated with equal dignity and respect.

## Importance of “Gender Identity” Inclusion

In addition to sexual orientation protection, we urge States to support the inclusion in the resolution of language condemning violence and discrimination on the basis of **gender identity**. We further ask States to publicly **express their support** for measures to address the discrimination faced by **transgendered people** – during the **high level segment**, during **debate** and/or by entering **explanations of vote**, as appropriate.

### **A need for protection**

Transgendered people are particularly at risk of hate-induced violence, abuse and - in some cases - murder. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted cases in which:<sup>63</sup>

- male-to-female transsexual women have been beaten intentionally, causing implants to burst and releasing toxic substances into their bodies;
- ill-treatment against sexual minorities is believed to have also been used in ‘social cleansing’ campaigns;
- members of sexual minorities have received inadequate medical treatment in public hospitals on grounds of their gender identity. Prisoners diagnosed as suffering from gender dysphoria are often said to be denied medical treatment for gender dysphoria, such as hormone therapy;
- Transsexual and transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men’s prisons.

Many other cases of violence and abuse directed at transgendered people have been documented, including:<sup>64</sup>

- In Argentina, an HIV-positive transgendered woman died in police custody, her body showing signs of torture;
- In Colombia, transvestites and other “disposables” have been tortured and killed by death squads as part of an exercise in “social cleansing”;
- In Vietnam, Nguyen Trong Tien was born biologically male with a female gender identity. She was consistently denied access to sex-reassignment surgery. Rejected by hospitals, she ultimately took matters into her own hands, and sought to slice off her penis with a razor blade. Over her protests, doctors reattached the penis, operating without anaesthetic and shouting derogatory comments all the while.<sup>65</sup>

<sup>63</sup> A/56/156 (3 July 2001); E/CN.4/2002/76 (27 December 2001).

<sup>64</sup> Amnesty International, *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual orientation* (2001).

<sup>65</sup> BBC News, “Vietnam man’s fight to become a woman” (27 September, 2003).

## What is gender identity?

“Gender identity” refers to a person’s deeply felt, internal sense of belonging to a gender, their sense of conformity or non-conformity between their biological and psychological gender. A person may have a male or female gender identity, with the physiological characteristics of the opposite sex.

Transgendered people exist in countries around the world and have fulfilled diverse cultural roles:<sup>66</sup>

“The Travesti in Brazil, the Bakla in the Philippines, the Tomboys in Thailand, Nadle among the Dine or Navajo, the Mahu of Hawaii and the Kothi in India all in their diversity contribute to the vitality of the human family. ... in many traditional and tribal societies men and women with different gender identities and sexual orientations played valued and valuable roles as healers and shamans.”

Gender identity is a profoundly rooted, fundamental aspect of the human personality. It should not be a basis for discrimination or abuse. Transgender people, because of their very visibility in many societies, face some of the worst abuses directed at those who do not conform to prevailing norms for appearance or expression. Murders or violent “social cleansing” campaigns based on gender identity are common in many countries. Violence and abuse are widespread. Such acute violations demand to be addressed.

## Relationship between gender identity and sexual orientation

Gender identity is both related to, and distinct from, sexual orientation. It is logical and just to include gender identity in a resolution and study dealing with the protection of lesbians, gays and bisexuals from discrimination and abuse, since gender identity is clearly closely linked to sexual orientation as a category of experience - and as a reason for abuse. Those who target lesbian, gay, bisexual, and transgendered people do not make fine distinctions between whether their victims are “gay” or “lesbian” or “transgendered.” They aim their violence not so much at categories as at conduct: they abuse people who are marked as different by their behaviour, dress, or appearance.

Despite many similarities in the abuse experienced by lesbians, gays and bisexuals, and by transgendered people, however, the term “sexual orientation” is insufficient to protect transgendered people - nor do UN documents show it consistently used to include gender identity. “Gender identity” is different from “sexual orientation”, which refers to a person’s capacity for same-sex or opposite-sex attraction. Some transgendered people may identify as lesbian, gay or bisexual; others are heterosexual.

The issue of violence and violations of the entire spectrum of human rights on the basis of gender identity requires specific consideration. Including specific reference to both sexual orientation and gender identity in the resolution will result in the CHR receiving specific information on and analysis of the differences and similarities between human rights violations and violence on the basis of sexual orientation and gender identity. Different language is necessary to adequately ensure recognition and protection on the basis of each of these different grounds.

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<sup>66</sup> Roth, 22<sup>nd</sup> International Lesbian and Gay Association (ILGA) Conference, Manila, Philippines (November 18, 2003).

## Recommendations:

We urge the Commission on Human Rights to adopt a resolution recognising that lesbians, gays, bisexuals and transgendered people are entitled to the full enjoyment of their human rights and fundamental freedoms without discrimination.

We are asking States to make this resolution a priority, and support it to the greatest extent possible, by:

- ✓ co-sponsoring the resolution (all States can **co-sponsor**);
- ✓ **voting in favour** of the resolution (if a CHR member);
- ✓ **speaking out in favour** of the resolution, during the high level segment of the CHR, during informal negotiations, and during oral interventions and debates;
- ✓ supporting the inclusion of **gender identity**;
- ✓ speaking publicly in support of measures to address the discrimination faced by **transgendered** people – during the **high level segment**, during **debate** and/or by entering **explanations of vote**, as appropriate;
- ✓ requesting that the Office of the High Commissioner for Human Rights **gather information** concerning human rights violations based on sexual orientation and gender identity, and make recommendations concerning the obligations of States to promote and protect human rights on these grounds;
- ✓ maintaining **strong language**: we urge States to work towards a strong and clear resolution. It is important not to water down the text to the point where the protections offered are rendered meaningless;
- ✓ **actively seeking the support of other States** to preferably (a) co-sponsor, (b) vote in favour of, or at least (c) not oppose the resolution.
- ✓ proactively **supporting NGOs** working to end discrimination against lesbian, gays, bisexuals and transgendered people.

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 In matters of human rights, there are no bystanders.

States face a choice: to affirm the universality of human rights, or - by failing to support the resolution - to implicitly endorse the ongoing human rights abuses regularly perpetrated against lesbians, gays, bisexuals and transgendered people in countries and regions around the world.

For some countries, we know that this choice will not be an easy one. But protection of human rights requires courage, integrity and leadership.

We hope we can count on your support.