

## NOT YOUR AVERAGE SEX STORY: Critical Issues in Recent Human Rights Reporting Related to Sexuality

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**T**his commentary explores recent trends in human rights reporting related to sexuality. It argues that the health, human rights and sexuality movements have much to learn from one another and that an enhanced dialogue between and among these communities would be beneficial. To consider and evaluate some of the ways documentation of sexuality-related violations has taken cues from and contributed to expansion in both form and content of traditional human rights reporting, this commentary focuses on four recently-published human rights reports grounded in sexual orientation and non-conforming gender identity and behaviors. While these reports are not the first to address these topics, each makes a new contribution to the expanding canon of human rights reporting that addresses the ways rights and sexuality are actively linked, especially within the context of non-normative sexual orientations, gender identities and practices.<sup>1</sup> It is also important to note that the attention to non-normative sexual orientations and

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gender identities and practices is just one stream of an expanding flow of human rights reporting that addresses the way that rights and sexuality engage with each other.<sup>2</sup>

As the author of two of these reports, I have learned first-hand about some of the challenges and added burdens faced by different kinds of organizations in their integration of activism and abuses related to health and sexuality. One of the central challenges in reports on non-traditional sexual behaviors and identities is that their authors have the added burden—beyond those imposed in many human rights reports—of having to make visible, and in fact human, a disfavored and often invisible set of people, identities and practices. The benefit, however, of having to overcome this challenge is that the reports can become key tools for the people made visible by them—people for whom human rights as an organizing framework might be new and for whom the notion of having and being worthy of rights might be a radical and life-changing concept.

Additional challenges in these areas include the idea that human rights organizations have been slow to integrate sexuality into their ongoing advocacy and research. A number of factors are responsible for this, including the fact that they too often required convincing of the importance of documentation of these abuses. In addition, the human right to health has not fully been taken on board by human rights organizations.<sup>3</sup> Sexuality and health activists, too, were sometimes slow to see the value of a human rights framework to their advocacy and documentation. Some organizations have even recoiled from taking on issues that they thought would create risk of governmental or social threat. Consider three examples: certain U.S.-based mainstream feminist women's organizations have been cautious in welcoming lesbians or lesbian issues for fear of homophobic reactions from their own members; some rights organizations have been skittish about addressing sexuality for fear that they would lose their status as legal nongovernmental organizations if they were to defend the rights of those seen as criminals by their governments; and some sexual health organizations have chosen to avoid addressing aspects of sexual and reproductive rights for fear of backlash if they were to provide condoms or information about abortion.

This overview of the four reports—three from NGOs operating internationally and one from a local national NGO—first details trends in contemporary rights reporting, then summarizes the focus of the four reports, and closes with some lessons learned from these reports and their implications for future work. The cumulative effect of this analysis reveals some key openings and areas for growth, principally in regard to the links between health and human rights in the area of sexuality. From these links and gaps a number of key premises for future work can be derived, particularly pertaining to the need for more concentrated dialogues and inter-disciplinary work, especially in the relationship between sexual health and sexual rights.<sup>4</sup> The commentary concludes that those who work in health or sexual health communities could benefit from fully integrating a human rights analysis in their programs and services, and that critiques of medical establishments and abuses related to health and sexuality should be better woven into the fabric of human rights reporting.

### **New Patterns and Trends in Human Rights: Surfacing Sexuality and Health**

Human rights reporting has three basic goals: to specify abuses, to identify perpetrators, and to call for action designed to remedy both the violations and the climate that allowed them. Historically, human rights publications have focused on violations that take place in public sites (such as police stations, prisons or state hospitals) and those that are carried out by agents of the state. Documentation has tended to focus on perpetrators who are state agents, such as police, military or prison officials.

However, three prominent shifts in recent human rights advocacy and reporting have expanded this traditional focus. Each of these has had an immediate bearing on health and sexuality and each provides a backdrop for investigating and documenting abuses related to sexuality:

1. Recognition of abuses committed by “non-state actors,” such as family or community members, corporations and other businesses, and health care personnel in private settings;

2. Attention to violations that take place in the private sphere, including within homes, private businesses or private health care facilities; and
3. Attention to economic, social and cultural rights, including rights to health and education.<sup>5</sup>

Alongside these shifts lies a major development in the landscape of sexuality and human rights: Recent human rights reporting has named and legitimized experiences of marginalized groups and populations with disfavored sexual practices and gender behaviors, and this reporting has made visible some of the very people who have the least access to human rights and civil liberties, or who have limited access to the range of rights needed to achieve the highest attainable standard of health.

In the last fifteen years, there has been great progress in this reporting, which covers topics now understood to fall under the rubric of “sexual rights.” While this term is somewhat new, it speaks to the range of diverse and not always consistent topics related to sexuality that surfaced in various social movements during the past two decades, including women’s health, reproductive rights, lesbian, gay, bisexual and transgender (LGBT) issues, and anti-violence advocacy. Both mainstream and smaller human rights groups have started to issue reports and case actions calling for government action to end abuses related to sexuality. Most often, in documentation on abuses related to sexual orientation, reporting has focused on calling for an end to imposition of the death penalty, torture, or arbitrary imprisonment of people who are or who are perceived to be lesbian, gay, bisexual and transgender.<sup>6</sup>

During the 1990s, a few international human rights groups slowly began to heed the call of activists to document the experiences of people and communities targeted for both egregious abuses *and* day-to-day harassment. They began to place the experiences of LGBT people squarely within the context of traditional rights analyses and fostered utilization of the human rights framework by the very communities whose lives they were documenting. More recently, non-conforming gender behaviors and identities

have become the subject of rights documentation. However, while the abuses of health care personnel have become intermittently attended to in rights reporting, the overall role of the health system in perpetuating the marginalization of these populations has not been explored, nor has health as a right, and not merely a site of discrimination, been fully taken on board.

### **Lessons From Recent “Sexual Rights” Reports in the Field of Sexual Orientation and Gender Identity**

The four aforementioned human rights reports utilize the models of the trends cited above and build upon them. Each focuses on sexual orientation, non-conforming gender behaviors and identity, or both. All explore previously undocumented themes, and all begin to articulate a connection to health and sexuality. For the people whose stories and experiences of abuse lay the foundation of the “material,” these reports offer the utility of the human rights framework to address and rectify abuse. On a practical level, they offer tools and resources that these communities might not have previously accessed. Each report makes a contribution by playing to different “strengths” of rights discourse: traditional state responsibility; broader state responsibility for climates of hate; gender specificity; and shedding light on abuses that were previously invisible.

Most critically, though, they reveal the strengths and the added burden of sexuality-based documentation in comparison to traditional human rights reporting: documentation must render visible the very communities who sometimes seek safety in invisibility; it must define, normalize and set cultural context for these communities; and it must humanize the people often seen as sexually marginal or not worthy of human rights protections because of their relationship to sex or gender. While each of these speaks to certain aspects of health (whether in terms of forced psychiatric treatment, HIV/AIDS advocacy, or notions of “normal” or “healthy” behaviors related to gender), none explicitly articulates a commitment to utilizing a comprehensive health and human rights approach in its analysis.

***Crimes of Hate: Conspiracy of Silence: Torture and Ill-Treatment Based on Sexual Identity***

While using a conventional “violations” human rights approach, *Crimes of Hate* was published by Amnesty International (AI) in 2001 as part of an international membership campaign against torture.<sup>7</sup> This report presents a global overview of torture directed at people because of their sexual identity, and marks the first time Amnesty International committed resources for a full publication on these issues and made sexuality and human rights concerns a primary focus of an international campaign.<sup>8,9</sup> AI also uses the definition of torture to cover abuses by state agents, including health officials, and by private actors, such as family members, when the state is responsible for not punishing or being complicit in the abuse. In presenting the torture and ill-treatment of people who are or who are perceived to be gay, the report becomes useful as a tool for LGBT communities as well as for policy makers and activists who might not be grounded in sexual politics. Abuses are clearly presented as worthy of state attention and provision of redress.

***More Than a Name: State-Sponsored Homophobia and Its Consequences in Southern Africa***

Human Rights Watch and the International Gay and Lesbian Human Rights Commission published *More Than a Name* in 2003.<sup>10</sup> In documenting a range of abuses in five Southern African countries (Botswana, Namibia, South Africa, Zambia, and Zimbabwe), the report frames the homophobic rhetoric of government and religious authorities as a state failure to respect, protect and fulfill human rights. The report argues that a political climate permissive of overt verbal attacks against LGBT people (and those whose appearance defies traditional gender stereotypes) presents an acute threat to anti-AIDS efforts and negatively affects the political participation and freedom of expression of people living with HIV/AIDS. Other contributions include analyzing how various forms of homophobia, including vituperative speech, curtail freedom of expression and self-presentation through dress codes and in young people’s education, particularly in their (in)ability to remain in school in the face of severe physical and verbal abuse.

### ***Written Out: How Sexuality Is Used to Attack Women's Organizing***

Too few LGBT human rights reports and case reports centrally locate women's experience. In 2000, however, the International Gay and Lesbian Human Rights Commission and the Center for Women's Global Leadership published *Written Out*, a report focused on the experiences of women. This LGBT/feminist partnership identified "lesbian-baiting" as a human rights issue that undermines the effectiveness of women's political advocacy.<sup>11</sup> It showed how government officials, the media, and religious and medical authorities attempt to discredit women deemed threatening by making allegations about their sexuality or their gender appropriateness. *Written Out* demonstrates that lesbian-baiting is experienced globally by a range of women in all contexts; whether through allegations about lesbian identity or about being "unhealthy," childless or unmarried (ideas sometimes judged equally negatively), the aim is to regulate women's behavior, expression, appearance and political activity.

### ***Human Rights Violations Against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore, India***

Within the universe of LGBT and sexual rights reporting, the experience of people behaving outside of traditional gender roles (and particularly those who identify as transgender) are often least understood, and violations go both under-reported and undocumented. The People's Union for Civil Liberties-Karnataka (PUCL-K) reports in *Human Rights Violations Against the Transgender Community* that "the dominant discourse on human rights in India has yet to come to terms with the production/reproduction of absolute *human rightlessness* of transgender communities." It is precisely this reality that the PUCL-K study seeks to defy: the report, by humanizing individuals who challenge their assigned gender roles, makes plainly visible egregious abuses that had been obscured and unremedied. Published by a national-level human rights organization, the report reflects the organization's interest in bringing about a "measure of recognition and respect for these communities."<sup>12</sup> It also seeks to use documentation to contribute to establishing a

social movement, including fostering cultural and political organizing around challenging behaviors and identities.

These reports reveal important aspects of reporting on and engaging with sexuality. This engagement with sexuality is focused on sexual orientation and gender identity, but it could also lead to implications for sexuality and human rights reporting more generally.

While all of these reports engage in traditional rights fact-finding styles and claims of objectivity, they speak to different audiences in order to serve different purposes. For example, to address law and policy change, studies must be presented in ways seen as legitimate by human rights, government and policy-making audiences. Yet, to be seen as useful by the people who are the subjects of the reports, they must also provide a more basic educational function. To this end, many reports add additional information in glossaries or appendices. For example, the appendix section of *Human Rights Violations Against the Transgender Community* contains a condensed presentation of rights under Indian law, a sample bail application, an international bill of gender rights, and, perhaps most interesting, a description of sex reassignment surgery. The resources here are of use for a range of communities, as the study offers tools to people at risk, as well as information useful for health personnel and policy makers.

It is unusual for human rights reports to elaborate in ways that seek to define and explain the subjects themselves. However, since LGBT experiences and, indeed, sexuality and gender generally, tend not to be well understood in mainstream communities, full elaboration of who the victims and survivors are becomes as important as what happens to them. Precisely because of many readers' lack of familiarity with the subject matter, there is conscious and self-reflective reference to language and exploration of culture. *Crimes of Hate* and *More than a Name*, for example, both have detailed glossaries potentially useful for those learning the differences between "gender identity" and "sexual orientation" or between "transgender" and "transsexual."

An analysis of "identity-based discrimination," which allows for a focus on the experiences of people who are



targeted for abuses because of who they are or who they are seen to be, provides a foundation for this work.<sup>13</sup> However, such an analysis may require a detailed description of a group and an elaboration of their social and cultural context. This is evident in *Human Rights Violations Against the Transgender Community*, which presents a brief sociological history of Kothi and Hijra transgender communities in Bangalore and attempts to provide contemporary explanations for how and why many people in these groups decide to become sex workers. The report also explores the structural underpinnings of HIV-infection risks in these communities.

Human rights documentation reveals the horrors of abuses directed at individuals or groups of people. But in addition to the abuses, some sexual and human rights reports also demonstrate resistance and the agency of the people targeted and do not rely solely on narratives of passive subjugation or victimization. In *Written Out*, as in the other reports discussed here, there is reference both to organizing efforts and the risks facing human rights defenders precisely because of their activism.

### **Conclusions, Gaps, and Future Directions**

Just as there are positive trends in developments in sexual rights and LGBT documentation, there are also gaps and challenges. While this commentary has looked narrowly at one issue in the context of sexuality, it remains true that the documentation of most human rights and LGBT organizations has not expanded beyond sexual orientation and violence. Two exceptions are in relation to the right to health in the context of HIV/AIDS (where Human Rights Watch reporting has begun to address the overlap of attacks on sex workers and people who work with men-having-sex-with-men in India, for example) and in regard to the right to education for people marginalized because of their gender or sexuality.<sup>14</sup> However, even human rights reporting related to sexuality remains grounded in explorations of violations of rights, and is not concerned with the development of analyses of more affirmative rights claims. Whether based in human rights, LGBT, or feminist sexuality advocacy, too few organizations are grappling to determine how they can engage with more positive human rights

claims related to sexuality, including the right to safe and satisfying sexuality, or the somewhat ambiguous “right to pleasure” that some advocates seek to promote.

In addition, there is a great need for exploration of sexuality and reproductive rights, including in the areas of informed choice, forced sterilization, and family planning policies that preclude discussion or restrict information about condoms, contraception, abortion or adoption, as well as in assisted reproduction for all people, including those with non-conforming sexual or gender identities. These explorations require collaboration between health and human rights communities in order to foster laws, policies, and practices that are sensitive to the needs of sexually marginalized communities. To be most relevant and effective, these advances also require dialogue with those engaged in rights to food, housing, safe working conditions and other health-related issues.

Also of critical importance is the question of how to integrate both gender and women’s experience more thoroughly throughout sexual rights reporting, including and especially in terms of sexual orientation. Human rights, LGBT and women’s organizations must more proactively seek to uncover the experiences of women with non-heteronormative behaviors, such as women who have sex or intimate relations with women, lesbians, and non-gender conforming women, particularly because so many violations take place within “private” contexts, including within the family or health care settings, and are never reported to authorities.

There are many movements represented in sexual rights discourse; their constituents often have different agendas, and they often use the language of rights in myriad ways. The literature addressing sexuality and rights is neither cohesive nor consistent in its definitions and analyses. Advocates use language and write about “sexual rights” in a range of ways.<sup>15</sup> Not all advocates for these rights issues need to use the same language, but for strategic purposes we need to become more familiar with one another’s movements and the ways we use language. We need to understand context-specific needs and differences: sophisticated, inter-disciplinary health and rights-oriented documentation and reporting are crucial tools for this education process.

From virginity testing to mandatory HIV testing of people in marginalized groups, the links between governments, health authorities, sexuality, health, and human rights abuses must be better addressed. Advocates across these disciplines must foster better understanding of sexuality-based violations in terms of physical and mental integrity and the explicit connection to all rights related to health.

This analysis of the current state of reporting on human rights and sexuality has demonstrated that the dialogue begun between the human rights and public health communities could be enhanced by attention to a range of sexuality and health issues, including censorship in sexuality education, forced pregnancy, rape and other forms of violence, as well as discrimination against people living with HIV/AIDS.

In this review, a number of critical issues have been brought to the forefront, including the ideas that sexual health and sexual rights communities are not capitalizing on common interests to the extent that they should, as both fields have much to contribute to each other. These communities must engage in more concentrated dialogue with human rights organizations, and vice versa. Both the health and sexual health communities could benefit from fully integrating a human rights analysis into their programs and services. Critiques of medical establishments and abuses related to health and sexuality should be better woven into the fabric of human rights reports.

As long as violence and discrimination against members of sexually marginalized groups continue unabated, there remains a great need to further document health and sexuality concerns in the language of rights so as to increase accountability and end impunity. At the same time, reporting is only one part of the arsenal of rights work, and its evolution is intertwined with inter-disciplinary efforts to better describe, research and educate others about the connections between harm, stigma, health, violence and discrimination.

## References

1. For examples of earlier reports, see, among other titles, Amnesty International, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation* (New York: Amnesty International USA, 1994) and

Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *Sexual Orientation and Women's Human Rights* (New York: Human Rights Watch, 1995).

2. See, for example, A. Miller, "Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection," and I. Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation—a Decade of Development and Denial at the UN" both in this issue of *Health and Human Rights*.

3. Recent shifts in the reporting and campaigning of two mainstream human rights organizations reveal examples of positive trends in attention to health-related rights. In expanding its mandate to include elements of economic, social and cultural rights, Amnesty International has begun to focus on violations of the right to health and Human Rights Watch has created a program on abuses related to HIV/AIDS.

4. See United Nations Economic and Social Council, Report of the Special Rapporteur on the Right to Health, E/CN.4/2004/49 (2004).

5. Each of these shifts has been influenced by decades of advocacy in the women's human rights movement, among others. The concept of "non-state actors" posits that states must be held accountable for preventing and remedying patterns of abuse committed by non-state actors. Rights to health and education, as well as some civil and political rights, have great resonance for a range of sexual rights, including those regarding reproductive health and the right to information.

6. Arbitrary imprisonment can occur through, for instance, sodomy laws or trumped charges of "public scandal."

7. Amnesty International, *Crimes of Hate: Conspiracy of Silence: Torture and Ill-Treatment Based on Sexual Identity* (New York, 2001). Violations-based approaches tend to focus on addressing abusive experiences as opposed to interventions that create positive contexts within which rights can be recognized.

8. Sexual identity is generally understood to encompass sexual orientation and gender identity and is often inclusive of sexual behavior.

9. In 1991, Amnesty International expanded the interpretation of its mandate to allow for work on imprisonment related to sexual orientation. In 1994, AI-USA published *Breaking the Silence: Human Rights Violations Based on Sexual Orientation* (see note 1), which has since been revised and published by AI-UK and AI-Germany. *Crimes of Hate*, which I co-authored with Ignacio Saiz, is the first report on sexual identity published by the London-based International Secretariat of AI.

10. Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa* (New York, 2003). Together, these organizations had also published reports in the 1990s. See, for instance, Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *Public Scandals: Sexual Orientation and Criminal Law in Romania* (New York: Human Rights Watch, 1997).

11. International Gay and Lesbian Human Rights Commission and the Center for Women's Global Leadership, *Written Out: How Sexuality Is Used to Attack Women's Organizing* (New York, 2001). While women in-

interviewed for this project were enthusiastic about telling their stories of lesbian baiting, many were concerned about how sexism within LGBT organizations or homophobia within feminist organizations would be treated. Writers, including myself, and editors paid particular attention to creating sensitive descriptions, as sometimes tense relationships were exposed and political allies were challenged to be more responsive to, and responsible with, one another.

12. People's Union for Civil Liberties-Karnataka (PUCL-K), *Human Rights Violations Against the Transgender Community: A Study of Rohti and Hijara Sex Workers in Bangalore, India* (Bangalore: PUCL-K, 2003).

13. The notion of "intersectionality," a term increasingly used within certain human rights communities, speaks to the intersections of race, class, caste, gender, sexual orientation, age and other identity-related social factors that place people at risk of (or insulate them from) human rights abuses, including those related to health. Some sexual rights analyses use this intersectional approach in looking at how violations are directed at certain groups or subgroups.

13. Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India* (New York: Human Rights Watch, 2002); Human Rights Watch, *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual and Transgender Students in US Schools* (New York: Human Rights Watch, 2001).

14. For a range of reasons, including fear of mistreatment by authorities, reprisals, breaches of confidentiality, and financial dependence on male partners or their families, women often do not report abuses they experience. Documenting women's experience is made harder because of these realities, and human rights reporting often reveals a gender imbalance as a result.

15. Some would argue that different uses of language and terms actually enhance reporting and keep the discipline of sexual rights from becoming too rigid or too legally fixed.