

Gender-motivated killings of women on the basis of sexual orientation and gender identity

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Background

On October 12, 2011, the United Nations Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, convened a day-long expert group meeting on gender-motivated killings of women in New York City, USA. The purpose of the meeting was to examine the manifestations, causes and consequences of gender-motivated killings in preparation for a report to the UN Human Rights Council in Geneva in June 2012. ARC International was honoured to participate in this group meeting, make a presentation, and prepare a briefing paper. I represented ARC International at this meeting, and the following paper is intended to provide a somewhat brief and current overview of the global situation of gender-motivated killings of women on the basis of sexual orientation and gender identity. There is also an accompanying 30-minute PowerPoint presentation for which I would welcome further presentation opportunities in other fora, or which can be shared directly by request by contacting: kim@arc-international.net.

Manifestations, causes and consequences

Information on the prevalence and physical manifestations of killings of women based on sexual orientation and gender identity is very difficult to gather. Those of us who work in this field keep bumping up against a circular problem: women often do not report violence, and when women are killed, often these crimes are not reported and/or investigated properly.

These are not trends unique to women killed because of their sexual orientation or gender identity, but the problem is compounded when these factors are at play. For instance, numerous cases have been documented where transgressing the boundaries of gender and/or sexual orientation was cited as bringing “shame” on to families and communities. In the extreme cases of honour killings, discussed later in the paper, this transgression has been used as a justification for the violence.

It is reasonable to assume that when women are killed for these transgressions, families, community members, and other state and non-state actors may try to conceal the person’s identity and/or orientation. Therefore, proper data is often not collected and the statistics are usually not captured in any state or police data as “killings based on sexual orientation or gender identity”.

Much of the data that exists has been gathered by civil society, except in the handful of situations where police forces are trained and committed to documenting hate crimes on this basis. Among civil society, there appears to be some difference between the data collection of killings of lesbian/bisexual women on the one hand,

and of killings of trans women on the other hand, so it is important to delineate the two when discussing the data that is available. The difference is likely due to the following realities that often centre around in/visibility within these populations:

- the concentration of trans women in very public, street-based sex work
- the invisibility of lesbian/bisexual identities, even among trans women (for instance, some trans women identify as lesbian/bisexual but their murders are probably more likely to be recorded as trans hate crimes, particularly if the trans woman is not legally recognized as female)
- in countries where lesbian/bisexual women are simply perceived to be “unmarried women” or “single women”, they have less access to public spaces – so violence that occurs may be less visible
- violence against some lesbians may be on the basis of gender expression as well as sexual orientation
- there is no comprehensive global civil society effort to track and report killings of lesbian/bisexual women
- lesbian/bisexual women may be less likely to report intimate partner violence because of societal stigma and discrimination portraying same-sex relationships to be “dysfunctional”

Some of the comprehensive data on the murder of trans women is gathered by a civil society project called the Trans Murder Monitoring (TMM) project. Started in 2009, it systematically monitors, collects and analyses reports of homicides of trans people worldwide. Updates of the results are published three to four times a year in the form of tables, name lists, and maps on the website of the “Transrespect versus Transphobia Worldwide” project.

The September 2011 update reveals a total of 681 cases of reported killings of trans people from January 1, 2008 to September 25, 2011. The vast majority of these cases involve trans women, and they point to a continuously elevated level of deadly violence against trans people on a global scale.

In the first nine months of 2011, 116 reported murders of trans people have been registered in 23 countries, with the majority in Brazil (29), Mexico (22), Columbia (10), Venezuela (11) and the USA (7), as well as Argentina, Honduras, Guatemala, Philippines, and Turkey (4). Further murders have been reported in Bolivia, Chile, Dominican Republic, Ecuador, El Salvador, India, Indonesia, Malaysia, Pakistan, Panama, Poland, Puerto Rico, and Russia.¹

A global problem with unique regional causes

Violence and killings based on sexual orientation and gender identity are global problems. This is not a Global South issue. Killings have been documented across

¹ TMM. (2011, September 30). All reported murders of trans people since 2008. Retrieved from http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/all-tmm-reports-since-2008.htm.

Europe and the Americas, as well as other regions. However, the manifestations, causes and consequences may be very local, national or regional, and these realities must be taken into consideration when trying to combat the violence. In addition, “patterns” of killings based on sexual orientation must be contextualized within broader “patterns” of violence against women, and while specific solutions must be tailored for different communities, root causes are often linked.

In her research on sexual violence against lesbian women in South Africa, Ines Gontek (2007) proposes the following:

“Although South Africa stands proud with its protection of LGBTQ [lesbian, gay, bisexual, transgender, and queer] rights by constitutional law, heteronormative, patriarchal structures of society and internalised as well as widely institutionalised homophobia (often justified by religion, culture and tradition) contribute significantly to discriminations based on sexual orientation of victims. Hate crimes against lesbian women are conspicuously present in all population groups. Nevertheless, I demonstrate in the thesis that the after effects of the Apartheid system and the related lack of access to essential resources puts black lesbians at a particular risk of hate crimes compared to lesbians in other population groups.” (p. 2)²

Even within one country, the realities of race, class, and geography may put some women at more risk than others and will require unique and specific solutions. This sentiment is further echoed (and put into specific recommendations to the South African government) in a shadow report on Beijing +15 entitled “Criminal Injustice: Violence against Women in South Africa” (2010), which was prepared by four national and regional civil society coalitions.³

In almost all corners of the world, civil society are engaged on these issues and are seeking specific actions to address the problems. In South Africa, these civil society campaigns and actions are highly integrated with general organizing around violence against women in the country. The high rate of lesbian murders in this country sits alongside of statistics that point to some of the highest rates of rapes and sexual assaults in the world. In fact, as a 2011 fact sheet from the World Health Organization (WHO) states, 40% of South African women report that their first sexual experience was forced.⁴

Likely because of a “perception” that South Africa offers a progressive legal

² Gontek, I. (2007). Sexual violence against lesbian women in South Africa. (Master Thesis). University of Cologne, Cologne. Retrieved from <http://ilga.org/ilga/static/images/oldsite/SexualViolenceAgainstLesbian-WomeninSouthAfricabyInesGontek.pdf>.

³ People Opposing Women Abuse (POWA), AIDS Legal Network (ALN), One in Nine Campaign, & Coalition for African Lesbians (CAL). (2010). *Criminal injustice: Violence against women in South Africa* (Shadow report on Beijing + 15). Retrieved from http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/POWA_Others_SouthAfrica48.pdf.

⁴ WHO. (2011, September). *Violence against women: Intimate partner and sexual violence against women* (Fact sheet N°239). Retrieved from <http://www.who.int/mediacentre/factsheets/fs239/en/>.

framework, lesbian/bisexual women are visible, public and organized. Unfortunately, the exercise of this fundamental right to self-expression and freedom contributes to patterns of their victimization, especially when compared to other countries on the continent.

In other locations, where lesbian/bisexual identities are almost completely invisible, patterns of violence look very different, but may be no less frequent or aggravated. In a 2011 International Gay and Lesbian Human Rights Commission (IGLHRC) and Iranian Queer Organization (IRQO) report to the UN Human Rights Committee, the reality of life for Iranian lesbians is discussed:

“Lesbians are less likely to be subjected to arbitrary arrest than gay men because they are less likely to be able to enjoy the full right of freedom of movement, but it would be wrong to deduce that they are necessarily safer or leading fuller lives. In all of the ways that heterosexual women’s lives are circumscribed, so, too, are lesbians’ lives, only lesbians have the additional, complicating factor of homophobia to contend with. Because of social expectations of women’s traditional roles and the State’s failure to bestow the rights on women that would permit full economic and legal independence, lesbians may be more likely to be dependent on their biological families and may be more likely to be forced to marry a man. The consequence of these circumscriptions means that lesbians are denied basic rights to human dignity and expression.” (p. 4)⁵

This reality of extreme family pressure and lack of independence appears in a number of reports from parts of Asia where women are not seen as equal to their male counterparts. A 2011 report from the Sri Lankan organization Equal Ground states that:

“The Sri Lanka woman is expected to form part of a marriage and become a ‘good wife’ and child-bearer. She is expected to be submissive and more often dependent. She is faced with a high level of pressure from the family and society to be a part of intimate heterosexual relationships and get married.” (p. 5)⁶

Under these conditions, violence looks different from when it occurs in the “public” arena. It may happen in the home or “family” sphere and is less likely to be documented as a “hate-motivated crime”. Sometimes, it is self-inflicted, for example in the case of suicide, which will be addressed later in the paper.

When one examines the interactive map for the Trans Murder Monitoring (TMM) project, it is not hard to notice that in South and Central America, killings of trans

⁵ IGLHRC, & IRQO. (2011). *Human rights violations on the basis of sexual orientation, gender identity, and homosexuality in the Islamic Republic of Iran* (Submission to the 103rd Session of the Human Rights Committee, 17 Oct.- 4 Nov. 2011). Retrieved from <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/1437.html>.

⁶ Equal Ground. (2011). *Struggling against homophobic violence and hate crimes*. Retrieved from http://issuu.com/equalground/docs/homophobic_violence_booklet.

women occur in alarming numbers.⁷ There have also been high levels of violence directed at lesbian and bisexual women in this region, especially those involved as human rights defenders in their communities.

It is also important to point out that the violence against lesbian, bisexual and trans (LBT) women in South and Central America sits alongside statistics regarding some of the highest rates of violent crime rates, generally, in the world. As noted in the 2011 General Assembly Report of the Special Rapporteur on violence against women, its causes and consequences:

“Extreme socio-economic inequalities, a machista culture and high criminality levels are underlying factors that sustain violence against women and discrimination in these societies.” (p. 13)⁸

A 2011 unpublished paper by Scott Long critiques some of the existing State interventions and reviews the social-science literature on “homophobia” with a view to which interventions and actions can be deduced from it, as well as which gaps and limitations can be identified.⁹ It further attempts to determine how this literature can be applied to guide further research and to help dictate interventions in other cultural settings, especially the Global South. Long stresses that in order for states to effectively respond, even in the presence of an urgent and violent situation, they must be able to answer the following questions:

- “what is the discursive content of so-called “homophobic” attitudes?
- what stereotypes or images predominate in them?
- what social or cultural or economic factors help create them?
- what related belief systems lend them support?” (p. 1-2)¹⁰

Honour killings

In 2009, Human Rights Watch (HRW) released a groundbreaking report on violence and hate crime based on sexual orientation and gender in Iraq.¹¹ Despite having “heard” about honour killings against lesbians, they were unable even to locate or interview any women who had experienced intimate or sexual relationships with other women. HRW found that:

⁷ TMM. (2011, September 30). All reported murders of trans people since 2008. Retrieved from http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/all-tmm-reports-since-2008.htm.

⁸ Manjoo, R. (2011). *Report of the Special Rapporteur on violence against women, its causes and consequences to the sixty-sixth session of the UN General Assembly (A/66/215)*. Retrieved from <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx>.

⁹ Long, S. (2011). *Everywhere and nowhere: Relevance and implications of existing social-science literature on “homophobia”* (Unpublished paper). University of Harvard, Cambridge MA.

¹⁰ Ibid.

¹¹ HRW. (2009). *“They want us exterminated”: Murder, torture, sexual orientation and gender in Iraq*. Retrieved from <http://www.hrw.org/reports/2009/08/16/they-want-us-exterminated>.

“As in many other countries, so-called ‘honor crimes’ [...] have a privileged status in Iraqi penal law. Worldwide, such crimes typically take the form of violence against women, including murder, motivated and justified because she has ‘dishonored’ the male members of her family. Standards of ‘honor’ almost always include norms of sexual purity: women who have sex, or are believed to have sex, with men before or outside of marriage violate them. There are other ways, however, in which women can endanger the status and reputation of parents or husbands. Dressing or walking the wrong way can subtly infringe against gendered expectations for how women should behave.” (p. 42)¹²

Despite wide acknowledgement that violence against women is a serious problem in Iraq, HRW asserts that state authorities have ignored it and have doubly neglected how violence targets women for non-heterosexual behaviours. Similarly, in a 2011 report submitted to the Special Rapporteur on the human rights situation in Iran, the impunity of perpetrators of this type of violence is described in the following case study:

“In April 2010, a 24-year-old male-to-female transsexual was murdered by two of her brothers. The offenders argued that they choked their sister to death because of her immoral life style. The defendants’ father forgave his sons; accordingly, the death sentence was commuted. One defendant received eight years in jail with a five-year suspended prison sentence while another received three years in jail with a two-year suspended prison sentence.” (n. p.)¹³

From India, there were media reports from the summer of 2011 about two women who were killed by their relatives in an honor killing in the Ranila village of Haryana, because they were believed to be in a sexual relationship.¹⁴ There were hundreds of bystanders, from the same village as the women, who, despite witnessing the crime, did nothing to interfere. One of the confessed murderers later told the police:

“We have killed them as they were spoiling the image of our family and bringing a bad name to our community. It was necessary to save the honor of our family.” (n. p.)¹⁵

¹² Ibid.

¹³ IRQO. (2011). *Humanity denied: The violations of the rights of lesbian, gay, bisexual and transgender persons in Iran*. Retrieved from <http://www.irqo.org/index.php?lan=en&page=posts&id=187>.

¹⁴ Badash, D. (2011, April 19). Widows bludgeoned to death in honor killing for lesbian relationship. *The New Civil Rights Movement*. Retrieved from <http://thenewcivilrightsmovement.com/widows-bludgeoned-to-death-in-honor-killing-for-lesbian-relationship/news/2011/04/19/18983>.

¹⁵ Ibid.

Aggravated nature of violence

The Canadian researcher Victor Janoff, who examined killings of gay men (mostly) in Canada, uses the term “overkill” to describe the intense violence involved in many of these crimes.¹⁶ “Overkill” means that multiple methods are used in the killing, with much more violence than would be necessary to end a life. While I could not find similar research on such violence against women based on sexual orientation, the recent murders of lesbian women in South Africa demonstrate an aggravated nature of violence consistent with the theory of “overkill”:

“The body of Noxola Nogwaza, a 24 year old lesbian, was found lying in an alley in Kwa-Thema at about 9am on Sunday, April 24 2011. Noxola’s head was completely deformed, her eyes out of the sockets, her brain spilt, teeth scattered all around and face crashed beyond recognition. Witnesses say that an empty beer bottle and a used condom were stuck up her genitals [sic]. Parts of the rest of her body had been stabbed with glass. A large pavement brick that is believed to have been used to crash her head was found by her side.” (n. p.)¹⁷

In 2007, an authoritative report from the Organization for Security and Co-operation in Europe (OSCE) discussed this aggravated nature of violence present in hate crimes in Europe. The report specifically highlighted violence against transgender people, stating that:

“Homophobic hate crimes and incidents often show a high degree of cruelty and brutality. They often involve severe beatings, torture, mutilation, castration, even sexual assault. They are also very likely to result in death. Transgender people seem to be even more vulnerable within this category.”(p. 53-54)¹⁸

As noted in the OSCE report, it is not unusual for killings of lesbian, bisexual and trans women to include some element of sexual violence. This is not just the reality in Europe. A 2009 report by ActionAid on “corrective” rapes in South Africa stated that there had been 31 reports of killings of lesbians committed over the past decade, of which only one had been successfully investigated and prosecuted.¹⁹ Again, there is strong evidence of a problem of impunity for these crimes.

The impact of this type of violence is incredibly damaging in these communities, not just for the families and friends of the murdered women, but also for the human rights defenders that work with these issues on a daily basis, and the LGBT

¹⁶ Janoff, D. (2005). *Pink blood: Homophobic violence in Canada*. Toronto: University of Toronto Press.

¹⁷ Sokari. (2011, April 27). 24 yr old lesbian, Noxola Nogwaza found raped & murdered in Gauteng. Retrieved from <http://www.blacklooks.org/2011/04/24-yr-old-lesbian-noxola-nogwaza-found-raped-murdered-in-gauteng/#more-8126>.

¹⁸ OSCE/ODIHR. (2007). *Hate crimes in the OSCE region: Incidents and responses* (Annual report for 2006). Retrieved from <http://www.osce.org/odihr/26759>.

¹⁹ ActionAid. (2009). *Hate crimes: The rise of ‘corrective’ rape in South Africa*. Retrieved from http://www.actionaid.org.uk/doc_lib/correctiveraperep_final.pdf.

communities as a whole. The loss of life, in and of itself, is not sufficient to the perpetrators of the violence. Some method of “punishment” is exacted on their victims, which sends an intentionally chilling message to the community that these women were being targeted for their sexual orientation and/or gender identity.

Suicide as a form of “killing”

Strong gender divides and intense pressure from within family units to marry, have children, and be subservient to their husbands contribute to a pattern of suicides among lesbian and bisexual women emerging in certain regions, especially within Asia. This pattern was documented in a recent report from Sri Lanka, which highlighted the following case study:

“It is common for lesbian and bisexual women in Sri Lanka to commit suicide associated with their sexuality or harm themselves in other ways. One can take into account the case of 43 year old Arundathi who today still suffers emotionally from her girlfriend committing suicide. The two girls had a 3 year old relationship in school which started at grade 9. When this was made public by others to their superiors and families, Arundathi’s girlfriend could not stand that shame that was brought upon her and committed suicide.” (p. 9)²⁰

As the following case from Iran demonstrates, continued harassment and psychological abuse by state actors can have devastating consequences for trans women, who are routinely harassed by police and other parts of the judicial system, especially if they are involved in sex work. Among sexual minorities, transgender persons are perhaps the most vulnerable when it comes to the violent morality and gender-policing projects of the Iranian government. Sayeh, a male-to-female trans woman in her late twenties, committed suicide in July 2008. Before she killed herself, she told IRQO in an interview:

“I have been arrested three times and have been disrespected in the worst ways possible... When they arrest you, some of them want to do things [sexual] with you... They first try to scare and torture you psychologically by calling you a jerk, a dirty pig, a faggot, a carrier of AIDS and a thousand other things; they try to provoke you to do something so that they can form a complaint against you based on that action. Even when you don’t do anything, they still take you to Mafased [the bureau responsible for dealing with moral corruption]. They keep you there for a while. Then, they send you to court... and the judge decides on your fate... As soon as you are taken to court, every officer prepares himself for making fun of you. When they are dealing with our cases, it is as if all the officers go on a break. They deal with murderers and thieves all day long and when they see an “attractive” case they want to have some fun by belittling us... All these miseries pass, and what stays are the scars that they leave on us. These psychological scars slowly transform us into abnormal humans. I frequently just start

²⁰ Equal Ground. (2011). *Struggling against homophobic violence and hate crimes*. Retrieved from http://issuu.com/equalground/docs/homophobic_violence_booklet.

crying without any reason. I have nightmares and wakeup screaming. I've become very sensitive toward the people around me.” (p. 13)²¹

Even in regions where the gender divides are not so obvious, and harassment by state actors is not a significant factor, suicide still remains a problem for those who are lesbian, bisexual and transgendered, especially youth. This has been linked to bullying in schools, religious intolerance, rejection from the family unit or generalized societal homophobia and transphobia. In 2009, Canada's LGBT advocacy group Egale Canada released the results of the First National Climate Survey on Homophobia and Transphobia in Canadian Schools. It showed alarming levels of victimization, including verbal and physical harassment, and documented high levels of depression among LGBT students when compared to their peers.²²

Violence within the family unit

Across the world, the family unit is identified consistently as a powerful site of violence against lesbian, bisexual and trans women. For this paper, I define “family” broadly to also encompass intimate partner violence. Considering family violence in this context is important because:

“Family based violence also affects lesbian and bisexual women and is a form of violence they can also not report to the state's authorities in order to seek protection or any form of justice. Families thus are able to commit major forms of violence against lesbian and bisexual women...” (p. 10)²³

While doing outreach for this background paper, I received feedback from an employee with the New Zealand Human Rights Commission, who stated that there is anecdotal evidence in New Zealand that trans women are subjected to high levels of domestic violence and/or partnership abuse. A unique experience of violence against trans women is that sometimes the intimate partner will use a provocation defense as an excuse for violence and even for killing (for instance, a “failure to disclose” their gender identity).

In cases of trans murders in the United States, for example, this “trans panic” defense had lead to charges being reduced from murder to involuntary manslaughter. Such verdicts send the powerful message to trans women that simply by existing as a transgender person, they are engaged in a process of “deception” with potential intimate partners that could lead to their death. To add insult to

²¹ IRQO. (2011). *Humanity denied: The violations of the rights of lesbian, gay, bisexual and transgender persons in Iran*. Retrieved from <http://www.irqo.org/index.php?lan=en&page=posts&id=187>.

²² Egale Canada Human Rights Trust. (2009). *Youth speak up about homophobia and transphobia: The first national climate survey on homophobia in Canadian schools. Phase One Report*. Retrieved from http://egale.ca/extra/CG_Taylor_Climate_Survey_Phase_One_Report.pdf.

²³ Equal Ground. (2011). *Struggling against homophobic violence and hate crimes*. Retrieved from http://issuu.com/equalground/docs/homophobic_violence_booklet.

injury, the justice system may ultimately hold them partially responsible for that crime. In 2009, in the murder of Angie Zapata in the United States, discussed later in this paper, the murderer first “discovered” the victim’s gender identity by sexually assaulting her and then used that discovery as the justification for killing her.

It is also important to highlight the specific vulnerability of trans women trying to escape from domestic violence, if safe houses and women’s refuges are not trans-inclusive. This is also a challenge for lesbian and bisexual women experiencing domestic violence within same-sex relationships. Often, service providers are not equipped to handle this type of intimate partner violence, where the perpetrators are not men.

Stigma and discrimination compound the problems of collecting data on this type of intimate partner violence, even in countries with good data gathering on domestic violence. Telling the “community-at-large” about battering in a same-sex relationship can reinforce the myth that same-sex relationships are somehow dysfunctional. This can cause the victim to feel even more isolated and unsupported.

In 2010, the Anti-Domestic Violence Network of the China Law Society published a report on domestic violence against lesbian and bisexual women in China:

“There is no national law against domestic violence in Mainland China. Although some serious cases have been reported by public media, the society in general has not paid enough attention. Anti-Domestic Violence Network of China Law Society has been trying to push for the domestic violence legislation since 2005, and some local protection ordinances have been enacted in recent years. Due to huge social pressure and lack of family support, lesbian and bisexual women are more vulnerable to domestic violence.” (n. p.)²⁴

International, regional and State responses

The work of the United Nations

Special Rapporteurs, OHCHR, and Secretary-General

It cannot be emphasized enough how important it has been to have the Special Rapporteur on violence against women, its causes and consequences documenting and highlighting violence against women based on their sexual orientation and gender identity within the UN system. Radhika Coomaraswamy’s (1997) report was the first to open the door to looking at women’s sexuality being regulated by state and non-state actors.²⁵ While the report did not mention lesbians or trans women

²⁴ Anti-Domestic Violence Network of the China Law Society (2010). *Domestic violence against lesbian and bisexual women in China: Report abstract*. Retrieved from <http://ilga.org/ilga/en/article/mhMcLP4196>.

²⁵ Coomaraswamy, R. (1997). *Report of the Special Rapporteur on violence against women*,

specifically, it did highlight family and community violence, including killings, and spoke of the risks facing women who live their lives outside of heterosexuality.

Mandate holders Yakin Erturk and Rashida Manjoo, the former and current Special Rapporteurs, have continued to bring attention to these violations in their reports, and met with groups in various countries to hear their stories and experiences. In addition, the Special Rapporteur on extrajudicial, summary or arbitrary executions has increasingly drawn attention to killings of women based on their gender identity, although the reports remain somewhat weak regarding the documentation of killings of lesbian and bisexual women. Again, this is likely a result of the underreporting and invisibility of these crimes.

The Office of the UN High Commissioner for Human Rights has played a key role in advocating equality and nondiscrimination on the basis of sexual orientation and gender identity. For example, the current High Commissioner, Navi Pillay, spoke at a Human Rights Council side event in September 2010 on ending violence and criminal sanctions based on sexual orientation and gender identity. She highlighted that:

“It’s also an issue that knows no boundaries. In spite of very significant progress made in a number of States, there is still no region in the world today where people who are gay, lesbian, bisexual, transgender or intersex (LGBTI) can live entirely free from discrimination or from the threat of harassment and physical attack.” (n. p.)²⁶

In addition, there are multiple references to sexual orientation and gender identity in the High Commissioner’s Strategic Management Plan (SMP) 2010-2011, indicating a strong commitment from her office and sending a clear message to the OHCHR field offices, which have been critical points of contact for civil society working directly on these issues in their home countries.²⁷ Over 98 NGOs from around the world hailed this inclusion in the SMP and gave a statement to the 13th session of the Human Rights Council explaining the importance of such a step.²⁸

The 2006 Secretary-General’s Study on Violence against Women was also extremely important in documenting violations based on sexual orientation and gender identity. Section 5 in the report, entitled “Violence against women and multiple discrimination”, includes a number of references to sexual orientation and gender

its causes and consequences (Commission on Human Rights, fifty-third session, E/CN.4/1997/47).

Retrieved from <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx>.

²⁶ Pillay, N. (2010, September 17). Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights (Side event on ending violence and criminal sanctions based on sexual orientation and gender identity). Retrieved from <http://www.arc-international.net/global-advocacy/hchr/hc-presentation-september2010.htm>.

²⁷ OHCHR (2009). *High Commissioner’s strategic management plan*. Retrieved from <http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>.

²⁸ ILGA et al. (2010, March 4). Joint statement (UN Human Rights Council, 13th session, Item 2: Interactive dialogue with High Commissioner). Retrieved from <http://www.arc-international.net/global-advocacy/hchr/ngo-joint-statement-hc-march2010.htm>.

identity including:

“147. Forms and manifestations of violence against women are shaped by social and cultural norms as well as the dynamics of each social, economic and political system. Factors such as women’s race, ethnicity, caste, class, migrant or refugee status, age, religion, sexual orientation, marital status, disability or HIV status will influence what forms of violence they suffer and how they experience it.”

“151. Women may encounter violence based on social prejudices against them because of their sexual orientation. Forms of violence against lesbian women because of their sexual orientation include non-partner sexual violence, sexual enslavement, forced marriage and murder...” (p. 46)²⁹

The current UN Secretary-General has been arguably more vocal on violations based on sexual orientation and gender identity than any of his predecessors. In January 2011, a special sitting of the UN Human Rights Council was convened to hear remarks by UN Secretary-General Ban Ki-moon. In a strong statement, the Secretary-General called for an end to human rights violations based on sexual orientation and gender identity:

“We must reject persecution of people because of their sexual orientation or gender identity ... who may be arrested, detained or executed for being lesbian, gay, bisexual or transgender. They may not have popular or political support, but they deserve our support in safeguarding their fundamental human rights. I understand that sexual orientation and gender identity raise sensitive cultural issues. But cultural practice cannot justify any violation of human rights. Women's treatment as second-class citizens has been justified, at times, as a “cultural practice.” So has institutional racism and other forms of inhuman punishment. But that is merely an excuse. When our fellow humans are persecuted because of their sexual orientation or gender identity, we must speak out.” (n. p.)³⁰

CEDAW

In the last few years, CEDAW has shifted from failing to address sexual rights issues, to peppering their analyses with references to sexual orientation, and, increasingly, gender identity as well. CEDAW's most recent report to the General Assembly is a summary of the last few CEDAW sessions. It contains three paragraphs that are of particular interest, the first being intersectionality:

“Intersectionality is a basic concept for understanding the scope of the general

²⁹ Report of the Secretary-General (2006). *In-depth study on all forms of violence against women* (General Assembly, sixty-first session, A/61/122/Add.1). Retrieved from <http://doc.un.org/TMP/7234328.38916779.html>.

³⁰ Ban, K. M. (2011, January 25). The Secretary-General: Remarks to the Human Rights Council (Human Rights Council, Geneva). Retrieved from <http://www.arc-international.net/global-advocacy/generalassembly/un-sg-statement-to-hrc-on-sogi-issues-.htm>.

obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.” (p. 112)³¹

Regarding the obligation of States parties to provide legal protection and to abolish or amend discriminatory laws and regulations as part of their policy on eliminating discrimination against women, the report further states that:

“States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Certain groups of women, including women deprived of their liberty, refugees, asylum seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.” (p. 115)³²

In terms of older women and discrimination, specific areas of concern were noted including:

“The discrimination that older women experience is often multidimensional, with age-based discrimination compounding other forms of discrimination based on sex, gender, ethnic origin, disability, level of poverty, sexual orientation and gender identity, migrant status, marital and family status, and literacy, among other grounds.” (p. 121)³³

The General Assembly and Human Rights Council

From 2005 to 2010, there was only one UN resolution, namely the resolution on extrajudicial, summary or arbitrary executions, that referenced sexual orientation, and there was no resolution referencing gender identity. In a surprising move, the Third Committee of the UN took a vote of 79-70 to remove this reference on November 17, 2010.³⁴ Thankfully, NGOs reacted immediately, highlighting previous references from within the UN system:

This decision flew in the face of the overwhelming evidence that people are routinely killed around the world because of their actual or perceived sexual orientation and rendered these killings invisible or unimportant. The Special

³¹ CEDAW. (2011). *Report of the Committee on the Elimination of Discrimination against Women* (General Assembly, forty-sixth, forty-seventh, and forty-eight session, Supplement No. 38, A/66/38). Retrieved from http://www.un.org/ga/search/view_doc.asp?symbol=A/66/38.

³² Ibid.

³³ Ibid.

³⁴ ARC International, & IGLHRC. (2010, November 17). Governments remove sexual orientation from UN resolution condemning extrajudicial, summary or arbitrary executions. Retrieved from <http://www.arc-international.net/press-releases/eje-vote-nov-2010.htm>.

Rapporteur on extrajudicial, summary or arbitrary executions had previously highlighted documented cases of extrajudicial killings on the grounds of sexual orientation, including: individuals facing the death penalty for consensual same-sex conduct; individuals tortured to death by State actors because of their actual or perceived sexual orientation; paramilitary groups killing individuals because of their actual or perceived sexual orientation as part of “social cleansing” campaigns; individuals murdered by police officers with impunity because of their actual or perceived sexual orientation; and States failing to investigate hate crimes and killings of persons because of their actual or perceived sexual orientation.

The massive diplomatic and civil society effort that ensued resulted in a vote of 93-55 to reintroduce the reference on December 21, 2010. Despite pressure from civil society, State sponsors decided *not* to add a reference to gender identity in the new text. The effect of the initial decision to strip the reference sent a chilling message to sexual minorities that solid gains can be lost with political maneuvering at the UN level, with no consultation with civil society and contrary to the evidence provided by UN experts. The missed opportunity to include gender identity, despite the strong evidence, reminded the LGBT community that there is still much work to do at the UN level.

Just six months later, in June 2011, a groundbreaking resolution on human rights violations based on sexual orientation and gender identity was presented at the Human Rights Council by South Africa, along with Brazil and 39 additional co-sponsors from all regions of the world.³⁵ It was passed with a vote of 23 in favour, 19 against, and 3 abstentions.

The resolution is the first UN resolution ever to bring specific focus to human rights violations based on sexual orientation and gender identity and followed a joint statement on these issues delivered at the previous March session of the council. The resolution affirms the universality of human rights and notes concern about acts of violence and discrimination based on sexual orientation and gender identity. It also requests the High Commissioner for Human Rights to prepare a study on violence and discrimination on the basis of sexual orientation and gender identity (which is being prepared at this moment of writing this paper) and calls for a panel discussion to be held at the Human Rights Council to discuss the findings of the study in a constructive and transparent manner, as well as to consider an appropriate follow-up.

Earlier in that 17th session of the Human Rights Council, the UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, had reported to the Council that:

³⁵ Human Rights Council. (2011). *Resolution on human rights, sexual orientation and gender identity* (Human Rights Council, 17th session, 15 June 2011, A/HRC/RES/17/19). Retrieved from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19.

“... [C]ontributory factors for risk of violence include individual aspects of women’s bodily attributes such as race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation.” (p. 8)³⁶

The report also detailed a number of violations committed against lesbian, bisexual and trans women, including cases of rape, attacks and murders. It was therefore regrettable that a reference to “women who face sexuality-related violence” was removed from the final version of the resolution focused on the elimination of violence against women during the same session. Clearly, there is still reluctance of States to integrate these issues across the spectrum of UN resolutions, again, despite evidence from UN experts.

ECOSOC

One of the barriers for addressing killings based on sexual orientation and gender identity at the UN level are the attempts to deny organizations addressing these human rights violations the accreditation necessary to participate in UN World Conferences and the work of UN human rights bodies. Such accreditation usually governs whether a group can access meetings, book rooms for parallel events, submit written statements, make oral statements and even enter the building.

Beginning in 1993, LGBT-identified groups began seeking official consultative status with the United Nations. In that year, the International Gay and Lesbian Association (ILGA) was the first lesbian and gay rights organization granted ECOSOC status. However, their status was revoked just a year later, after a campaign by US Conservative Senator Jesse Helms, and they were only successful in regaining their status in 2011, despite numerous previous attempts to have it reinstated.^{37, 38}

In 2006, the NGO Committee of ECOSOC rejected the applications of four NGOs working on sexual orientation and gender identity issues. No reasons were provided for denying consultative status, other than the fact that their work falls into the fields of sexual orientation and gender identity. Iran and Sudan expressed doubts about whether these organizations could contribute to the work of ECOSOC. The Holy See suggested that the NGOs were seeking “special rights”, not equal rights. The NGO Committee has since continued to defer or deny applications submitted by NGOs working on the issues of sexual orientation and gender identity.

³⁶ Manjoo, R. (2011). *Report of the Special Rapporteur on violence against women, its causes and consequences* (Human Rights Council, 17th session, A/HRC/17/26). Retrieved from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf>.

³⁷ ILGA. (2010). *A short overview of ILGA involvement in ECOSOC*. Retrieved from <http://ilga.org/ilga/static/uploads/files/2010/12/17/A%20short%20overview%20of%20ILGA%20involvement%20in%20ECOSOC.doc>.

³⁸ Miller, S. (2011, July 28). Healing old wounds: Gay rights group is readmitted to the United Nations. Retrieved from <http://www.humanrightsfirst.org/2011/07/28/healing-old-wounds-gay-rights-group-is-readmitted-to-the-united-nations/>.

That said, some LGBT groups have experienced recent success in the area of UN accreditation. For example, the first group from the Global South to gain ECOSOC accreditation was the Associação Brasileira de Gays, Lésbicas e Transgêneros (ABGLT), the Brazilian Federation of LGBT Groups, in 2009. The Dutch LGBT organization COC Netherlands was the first group whose application received a recommendation from the NGO Committee before it came before ECOSOC. And in 2010 and 2011, ECOSOC approved the accreditation of two major international LGBT groups, IGLHRC and ILGA.

It is no coincidence that most of these groups have strong ties to supportive national governments. Brazil has demonstrated clear leadership on LGBT issues within UN fora. COC has a long-standing relationship with their national government, and the Dutch government was willing to exert heavy diplomatic influence within the ECOSOC to secure COC's accreditation. The US government also exerted heavy influence in support of the application of IGLHRC.³⁹ It is unfortunate that groups require this kind of diplomatic effort when ECOSOC should be reviewing their applications on the basis of their merits.

Regional Mechanisms

While an exhaustive overview of regional work on this topic, especially in the European system, was not possible within the scope of this paper, it is important to highlight some recent developments within regional human rights mechanisms.

Over the past three years, the Organization of American States (OAS) has adopted, by consensus, several resolutions condemning violence and discrimination on the basis of sexual orientation and gender identity and may consider the creation of a Special Rapporteur on LGBT-related violations.⁴⁰ In accordance with these resolutions, the IACHR (the body of the OAS responsible for the promotion and protection of human rights in the Inter-American system) facilitated a thematic hearing in 2010 with representatives of the LGBT communities in the English-speaking Caribbean.

The Commissioners acknowledged the seriousness of this issue and pledged their full support to LGBT individuals and organizations that are working on these issues in the Anglophone Caribbean. The Commissioners also urged affected individuals and organizations to continue to involve them and inform them about the status of LGBT human rights in accordance with the OAS resolution, as well as to utilize all the tools and mechanisms available through the Inter-American human rights system in their efforts. At the conclusion of the 140th period on November 5, the Commission affirmed its commitment to intensify its efforts to defend the rights of

³⁹ Rice, S. E. (2010, June 30). Statement by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, on lesbian, gay, bisexual, and transgender (LGBT) Pride month. Retrieved from <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/iglhrcthenews/1156.html>.

⁴⁰ IGLRHC. (2010, June 6). Activists address LGBTTTTI issues at OAS in Lima, Peru. Retrieved from <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1144.html>.

LGBT persons and prepare a hemispheric report on this issue.⁴¹

Unfortunately, the developments are less positive within the African Union, which, during the 15th Assembly held in Kampala in July 2010, reaffirmed its commitment “to the universal values and principles of Rule of Law, Democracy and Human Rights” (p. 12), while simultaneously negating that very same principle by reaching the following decision based on a resolution submitted by Egypt: ⁴²

*“...importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues; ... **strongly rejects** any attempt to undermine the international human rights system by **seeking to impose concepts or notions pertaining to social matters, including private individual conduct**, that fall outside the internationally agreed human rights legal framework...” (p. 12)⁴³ [emphasis added]*

Suspiciously, this decision of the AU Assembly came soon after the 47th session of the African Commission, which had deferred their decision on an application for observer status from the Coalition of African Lesbians (CAL). CAL had applied for this status in 2008, and exactly four years after LGBTI rights activists and groups started organizing and advocating for rights at the Commission, it was denied at the 48th Ordinary Session in 2010. Many of the concerns raised were related to the family and African values, arguing, for example, that same-sex sexual conduct is in contradiction to what inspired the African Charter. In further response as to why the CAL application was rejected, the Commission said that “CAL objectives do not promote the rights enshrined under the African Charter” (p. 12).⁴⁴

Regarding transgender women, the Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg, published the ‘Gender Identity and Human Rights’ Issue Paper in July 2009.⁴⁵ This paper has been hailed as a significant step forward in articulating the human rights and equality that national governments should provide to trans people, including twelve recommendations that all 47 Council of Europe Member States are urged to implement at their national levels. In the introduction, Hammarberg states:

“The human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group

⁴¹ IGLHRC. (2010, November 9). Inter-American Commission on Human Rights heightens commitment to LGBT rights at hearing on punitive measures and discrimination. Retrieved from <http://www.iglhrc.org/cgi-bin/low/article/takeaction/resourcecenter/1250.html>.

⁴² Mbaru, M., Tabengwa, M., Vance, K. (2011). *Human rights and traditional values: Exploring the intersections, challenges, and opportunities*. Retrieved from: <http://www.arc-international.net/global-advocacy/humanrightscouncil/ASSSGD-paper.pdf>.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Commissioner for Human Rights. (2009). *Human rights and gender identity* (Issue paper). Retrieved from <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstraneImage=1824655&SecMode=1&DocId=1433126&Usage=2>.

alone. Transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity and the right to health.” (p. 5)⁴⁶

In a positive step from Asia, in 2009, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR). The concept of sexual orientation and gender identity as a human right issue, however, is not popular. For instance, not one country in this regional grouping voted in favor of the re-inclusion of sexual orientation in the previously mentioned UN resolution on extrajudicial, summary or arbitrary executions in 2010. The Philippines, Singapore, Thailand, Cambodia, Laos, and Vietnam abstained; Indonesia, Malaysia, and Brunei were against; and Burma/Myanmar did not vote.

This situation is particularly disappointing as the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity originated in the ASEAN region. Inspired to engage with this body and to create change, civil society in the region has taken bold steps. In May 2011, activists from eight Southeast Asian countries participated in an ASEAN People’s Forum assembly to challenge governments on the status quo and to demand the “recognition, promotion, and protection of LGBTIQ [lesbian, gay bisexual, transgender, intersex and queer] rights” (n. p.).⁴⁷ Among other things, the groundbreaking documentary *Courage Unfolds* was screened in front of the international audience attending the Forum in Jakarta.

More recently, in September 2011, there were more developments in the region with national human rights institutions (NHRIs), which act as “bridge” between the international human rights system and the domestic legal system. Specifically, the Asia Pacific Forum of National Human Rights Institutions (APF) organized a meeting in Bangkok where Professor Vitit Muntarbhorn, a former UN Special Rapporteur, presented a report on issues of sexual orientation and gender identity.⁴⁸ The audience included NHRIs established by the governments of Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Qatar, South Korea, Thailand and Timor Leste.

Specifically, Muntarbhorn presented the conclusions of a report by the Advisory Council of Jurists, a body composed of academics and judges, which arose as an outcome from a workshop held in Java in 2009 regarding the Yogyakarta Principles. Other positive outcomes included projects in five member countries being funded,

⁴⁶ Ibid.

⁴⁷ IGLHRC. (2011, May 6). Statement of the first ASEAN lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people’s caucus. Retrieved from <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1381.html>.

⁴⁸ Sanders, D. (2011, October 10). Asian experts endorse sexual orientation, gender identity rights. Retrieved from <http://www.fridae.asia/newsfeatures/2011/10/10/11255.asian-experts-endorse-sexual-orientation-gender-identity-rights>.

which involved consultations with LGBT organizations and groups, and the commissioning of a background study on the issues in member countries.⁴⁹

So far, the NHRIs in Thailand, Korea, and the Philippines have taken leadership with regard to these issues. Hopefully, some of the other 15 regional NHRIs will follow suit in the near future.⁵⁰ While the NHRIs are not States, per se, their responses have been valuable in moving State positions and responses forward on these types of violations, especially the more extreme violations, such as killings.

States' responses

One of the core elements required to have due diligence is the need for accurate data collection. At the moment, this is not happening in any kind of consistent way in most parts of the world. In some States, we are seeing the development of hate crimes units within police departments, but for the most part, the data that has been made available thus far is being collected by civil society organizations.

There is some hope, however. Recently, a number of States have instituted training programmes for law-enforcement officials, with a view to sensitizing them to bias-motivated violence against LGBT persons and recognizing, registering and responding to reports of such crimes. In some countries – Spain and Honduras, for example – special prosecutors have been appointed to investigate and bring cases of homophobic and transphobic violence to trial.

The 2007 report of the Expert Group Meeting on Indicators to Measure Violence against Women, organized by the United Nations Division for the Advancement of Women, the United Nations Economic Commission for Europe and the United Nations Statistical Division, mapped out important indicators that remain underutilized by States in measuring violence against women, in general, and specifically based on sexual orientation and gender identity.⁵¹ The report's call for disaggregated data and further expansion of the indicators is extremely important, but it must be widened further to also include hate- and bias-motivated killings of lesbian, bisexual and transgender women.

⁴⁹ For more information see: ACJ. (2010). *ACJ report: Human rights, sexual orientation and gender identity*. Retrieved from http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Human_Rights_Sexual_Orientation_and_Gender_Identity_Final_Report.doc.pdf. See also: ACJ. (2010). *ACJ reference: Human rights, sexual orientation and gender identity* (Background paper). Retrieved from http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Human_Rights_Sexual_Orientation_and_Gender_Identity_Background_Paper.pdf.

⁵⁰ Sanders, D. (2011, October 10). Asian experts endorse sexual orientation, gender identity rights. Retrieved from <http://www.fridae.asia/newsfeatures/2011/10/10/11255.asian-experts-endorse-sexual-orientation-gender-identity-rights>.

⁵¹ Expert Group Meeting on Indicators to Measure Violence against Women. (2007). *Indicators to measure violence against women* (Report of the Expert Group Meeting, 8-10 Oct. 2007). Retrieved from http://www.un.org/womenwatch/daw/egm/IndicatorsVAW/IndicatorsVAW_EGM_report.pdf.

Hate crimes and related legislation

While many human rights defenders have embraced hate crime legislation as a positive step forward, many have also voiced the critique that contributing to harsher sentencing and a “law and order agenda” has done nothing to protect LBT women from hate crime and offered little support to their families and loved ones after violence occurs. A critique of efforts to enact hate crimes legislation in the United States has been published by the website www.blackandpink.org, which claims to have compiled documentation from various US organizations, such as the Sylvia Rivera Law Project, the Audre Lorde Project, FIERCE, Queers for Economic Justice, the Peter Cicchino Youth Project, the Denver Chapter of INCITE! Women of Color Against Violence, and Denver on Fire.

However, many civil society organizations argue that hate crimes sentencing sends a powerful message from the state that targeting people on the basis of their sexual orientation and/or gender identity (among other things) is not acceptable. The case of Angie Zapata, mentioned earlier in the paper, was one of the first trials in the US in which hate crimes legislation was used to prosecute the murderer of a transgender person. This, and the fact that the killing was extraordinarily brutal, created a lot of media coverage.⁵²

As Zapata’s killer received a first-degree murder conviction, i.e. a life-sentence without parole, the added hate crimes punishment, which is up to three years in Colorado, did not, in fact, increase the sentence. Even so, Zapata’s family stressed the importance of the hate crimes law having been applied.⁵³ At a press conference, her brother Gonzalo said:

“Only a monster can look at a beautiful 18-year-old and beat her to death. The message was sent loud and clear that crimes targeting L.G.B.T. people will not be tolerated in Colorado.” (p. A20)⁵⁴

In New Zealand, the Sentencing Act 2002 sets out the principles that are to guide sentencing decisions and the factors that the Court must take into account when sentencing or otherwise dealing with an offender. Section 9(1) of the Act directs that the Court must take into account a number of aggravating factors, where applicable. These include:

“(h) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and-

⁵² Frosch, D. (2009, April 22). Murder and hate verdict in transgender case. *The New York Times*, p. A20. Retrieved from <http://www.nytimes.com/2009/04/23/us/23transgend.html>.

⁵³ Ibid.

⁵⁴ Ibid.

- (i) the hostility is because of the common characteristic; and
(ii) the offender believed that the victim has that characteristic.” (p. 26)⁵⁵

While a positive step forward, since the Act came into force, it has become clear that in order for this legislation to be effective, significant improvements are required in police data collection practices and systems. Invariably, there is insufficient information on the original charge sheet filled out by police for the court to consider these aggravating factors when sentencing. This shows clearly that legislation alone is not enough to have meaningful impact.

However, since the 1990s, there have been huge improvements in trans communities’ relationship with police in New Zealand. Trans people are regularly involved in training programmes for Police Diversity Liaison officers who link with LGBTI communities, and police have led the way in improvements to search and detention policies for trans people.

In May 2011, the South African government announced it was establishing a task team to tackle the escalating incidents of homophobic attacks in the country, highlighted by the brutal murder of a young lesbian in Johannesburg the month prior. The national task team will be charged with developing a legislative intervention plan, a public awareness strategy, and LGBTI-sensitive shelters and was due to start work this past July. However, informal reports from civil society in South Africa indicate that the work has been delayed by six months.

While South Africa has a constitution preventing discrimination on the basis of sexual orientation, and has recently led on the aforementioned UN resolution on addressing violations based on sexual orientation and gender identity at the Human Rights Council, it does not have hate crimes legislation that includes a reference to these grounds.

Some States, including Chile, Canada, Czech Republic, Finland and Panama have agreed to use the Yogyakarta Principles to guide policy development around violence and discrimination, while others, including Brazil, Ecuador, Germany, the Netherlands and Uruguay, have applied the Principles in developing government programs and policies. These Principles on the application of international human rights law in relation to sexual orientation and gender identity, while not legally binding, provide guidance to States on related human rights issues and legal standards. In the UPR process, several governments have also committed to using the Principles in future policy development.

Tackling the climate that condones and perpetuates violence against LBT women

⁵⁵ New Zealand Ministry of Justice and Department of Corrections (2002). *Sentencing Act 2002*. Retrieved from <http://www.legislation.govt.nz/act/public/2002/0009/latest/096be8ed80714aca.pdf>.

Between 2002 and 2005, media campaigns to combat homophobia and to promote tolerance were initiated by the governments of Argentina, Brazil, Colombia, and Mexico in response to the prevalence of violence against LGBT people in general, and especially transgender persons. These campaigns used different means to get their message across, including billboards, print and broadcast advertisements, leaflets and postcards. It is clear that these campaigns constituted crucial progress both nationally and regionally.⁵⁶

However, as Scott Long (2011) notes in his paper mentioned above:

“... [I]n only one of the four countries, Mexico, was the campaign preceded by any research to determine a baseline level of homophobic attitudes, either in the general public or in specific populations. In none of the cases was follow-up research undertaken to evaluate the campaign’s success in changing attitudes. (p. 1)⁵⁷

The importance of this population-based surveying to gather both baseline data and follow-up data cannot be understated. The report of the Expert Group Meeting on Indicators to Measure Violence against Women recommended that:

“Member States should collect data to support these indicators through dedicated population-based surveys. Population-based surveys should have an adequate sample size in order to provide representative data on all the proposed disaggregations of the indicators listed above.... Member States should enhance national statistical and research capacity for collection of data through both specialized surveys and routine data collection.” (p. 31)⁵⁸

Closing Thoughts

While some of the trends and patterns regarding killings based on sexual orientation and gender identity evolve and change over time, often the solutions remain the same and have been articulated consistently by civil society, which works directly with these realities. Often, these solutions are intricately linked to broader solutions to combat violence against women, but specificity in data collection and the consideration of national, regional, traditional and religious contexts of violence are important.

The following are key recommendations made by the International Gay and Lesbian Human Rights Commission (IGLHRC) in their input memo to the UN Secretary-

⁵⁶ Long, S. (2011). Everywhere and nowhere: Relevance and implications of existing social-science literature on “homophobia” (Unpublished paper). University of Harvard, Cambridge MA.

⁵⁷ Ibid.

⁵⁸ Expert Group Meeting on Indicators to Measure Violence against Women. (2007). *Indicators to measure violence against women* (Report of the Expert Group Meeting, 8-10 Oct. 2007). Retrieved from http://www.un.org/womenwatch/daw/egm/IndicatorsVAW/IndicatorsVAW_EGM_report.pdf.

General's Study on Violence against Women in 2006.⁵⁹ Despite it being five years later, they are worth repeating, as many remain forgotten or willfully neglected by state and non-state actors:

- “1. Violence perpetrated and/or condoned by the state on the basis of sexual conduct and/or gender expression meets the standard deserving attention, recognition and response by the international community.
2. Data on violence against women should be disaggregated with respect to sexual orientation and gender identity wherever possible.
3. Researchers and program staff addressing violence against women should be particularly attentive to assumptions they bring to the exploration of violence against women who transgress social or cultural boundaries. They, for instance, should not assume that the survivors or victims are heterosexual.
4. Researchers and program staff need to make and maintain contacts with local civil society groups that represent or have access to lesbian, bisexual and transgender communities of women, and work in consultation with these groups to design and implement the most effective strategies. Where possible, researchers and program staff should utilize reporting tools already developed by NGO advocates.
5. Researchers and program staff need to develop or improve their capacity to be sensitive to where and how to gather information on violence against sexually non-conforming women in order to develop more accurate measures about the extent and location of violence against women. In particular, those working directly with survivors must be adequately trained in seeking information related to violence and sexual/gender identity, and in ensuring the safety, security and confidentiality of those reporting. They should also be sensitive to the ways in which violence against sexual minorities is often hidden within the context of families and communities who hide the existence and/or nature of the violence, or whose primary concern is protecting their family's honor rather than protecting women members of the family or seeking justice for those who have been victims of violence.” (p. 3)⁶⁰

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⁵⁹IGLHRC. (2006). *International Gay and Lesbian Human Rights Commission input memo to the UN Secretary-General's study on violence against women*. Retrieved from <http://www.un.org/womenwatch/daw/vaw/ngocontribute/International%20Gay%20and%20Lesbian%20Human%20Rights%20Commission.pdf>.

⁶⁰ Ibid.