

Raising our Voices: Opening Global Spaces for Sexual and Gender Minorities

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I. Introduction¹

This chapter will examine how movements of sexual and gender minorities have struggled (and succeeded) in raising their voices and issues within important spaces of global politics and civil society mobilization. Advancing discussions on issues related to sexual rights, and more specifically, sexual orientation and gender identity, has been challenging for these movements and their allies. Organizations have been actively excluded from regional and UN fora, and procedural obstacles have been used to prevent both them and their specific issues from receiving consideration on their merits.

Despite the obstacles, and perhaps because of them, there has been remarkable development of regional and global networks and organizations. They have demanded a voice in global governance at least as far back as the 1975 International Women's Year Conference in Mexico City. In 1978, the only worldwide federation of LGBT (lesbian, gay, bisexual and transgender) groups was founded, and currently, there are many groups of sexual and gender minorities consistently raising their voices in key spaces of global politics. These groups have also worked diligently to build alliances with other human rights organizations to ensure that their issues are mainstreamed throughout a human rights discourse and agenda.

This chapter outlines the participation (and exclusion) of sexual and gender minorities in international and regional processes. These regional and global movements have been at the forefront of documenting human rights abuses and violations, advocating for the development of normative tools, such as the Yogyakarta Principles², and raising their voices in spaces of regional and global governance. This has led to increased visibility and awareness of their issues, and a measurable increase in State support. While many sexual and gender minorities remain vulnerable in their countries, there has been marked improvement on a global scale, and their best practices are useful for other struggles for empowerment in global affairs.

It is important to discuss some of the language used in this chapter. Terminology and identity politics have shaped these movements and strategies, and this needs to be

¹ **Acknowledgments:** Some of the historical information in this paper is compiled from a variety of excellent reports, including Charlotte Bunch & Claudia Hinojosa, "Lesbians Travel the Roads of Feminism Globally" in John D'Emilio, William B. Turner and Urvashi Vaid, eds., *Creating Change: Public Policy, Civil Rights and Sexuality* (New York, 2000); International Gay and Lesbian Human Rights Commission & the Center for Women's Global Leadership, *Written Out: How Sexuality is Used to Attack Women's Organizing* (2005); Prof. Douglas Sanders, *Human Rights and Sexual Orientation in International Law* (2006); Ignacio Saiz, *Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Development and Denial at the UN* (2004) Health and Human Rights, Vol. 7, No. 2, 49.

² In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights, which affirms binding international legal standards with which all States must comply. They can be found in the six official UN languages on the following site: <http://www.yogyakartaprinciples.org/>

acknowledged. At some points, I will use sexual and gender minorities, and at other times I use the terminology lesbian, gay, bisexual and transgendered (LGBT). Not all sexual and gender minorities identify with LGBT terminology, and some organizations are not comfortable with minority language. Therefore, I try to use both in this paper, to address the diversity of perspectives and identities within the movements that I am discussing. In addition, the terminology of sexual rights, and even more specifically, sexual orientation and gender identity (SOGI), is now widely used in rights-based discourse by groups advocating in spaces of global politics.

II. Patterns of Exclusion

This section examines some of the patterns of exclusion for sexual and gender minorities within spaces for global democracy. Some are explicit attempts to silence self-identified advocates and others are more subtle actions, which perpetuate a climate of fear for those who speak out. These actions can be triggered simply when issues of sexual orientation and gender identity arise, even when those who are raising them have not self-identified as part of a particular minority group. Some of the explicit and subtle patterns of exclusion include:

Endorsing violations and silencing the messengers

Disturbingly, it has not been uncommon for States faced with these issues to brazenly assert their right to abuse the human rights of lesbians, gays, bisexuals and transgender people. For example, during the 2nd session of the UN Human Rights Council in September 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that Nigeria retains the death penalty for homosexuality. The International Service for Human Rights summarized the response from Nigeria as follows:

“The Nigerian delegation criticised Mr. Alston for exceeding his mandate by addressing the issue of the continued imposition of the death penalty on lesbians, gays, bisexuals or transgender people (LGBT people), and used the opportunity to comment that death by stoning could be considered “appropriate and fair” in the circumstances.”³

Clearly, in this hostile climate, there would be great fear for personal safety for sexual and gender minorities to speak in their own name, especially if they come from the countries maintaining such penalties. In similar aggressive fashion, the very mandates and skills of UN Special Rapporteurs have been challenged publicly because of their work on issues of sexuality and gender. This has occurred quite recently, despite a UN resolution on sexual orientation and gender identity being adopted by the Human Rights Council in Geneva in 2011.⁴

³ International Service for Human Rights, *Council Monitor*, Human Rights Monitor Series (2006) p.6. Available at: <http://olddoc.ishr.ch/hrm/council/cmreports/sessionoverviews/second/OverviewSecondSession.pdf>

⁴ See <http://arc-international.net/global-advocacy/human-rights-council/hrc17> for an overview of the historic 17th Session of the Human Rights Council including specific links to the resolution on “Human rights, sexual orientation and gender identity”

In June 2012, at the UN Human Rights Council an official intervention was delivered by Egypt during interactive dialogue with the Special Rapporteur on Freedom of Peaceful Assembly and Association. The Egyptian representative noted that:

"Finally, concerning the highly controversial notion of sexual orientation, we can only reiterate that it is not part of the universally recognized human rights. We call on Mr. Kiai not to undermine the credibility and legitimacy of his important work in the eyes of real people who actually need it, especially in regions where such concepts are rejected by both its Christian and Muslim inhabitants like the Middle East."⁵

There are numerous other examples of attacks directed at the Special Procedures, which have questioned their competence to address sexual orientation and gender identity issues within their mandates. If independent UN experts are not even safe from attack for investigating legitimate violations, this creates a climate of fear, not only for sexual and gender minorities, but also for their allies and experts seeking to address their concerns. This toxic atmosphere puts sexual and gender minorities in a challenging position to speak in their own name, request support from high level allies and count on the support of other groups who regularly engage in spaces of global politics.

Divide and Conquer Strategies: “Not in Our Tradition/Culture/Religion”

While it is true that spaces of global politics and civil society mobilization have given strength to sexual rights advocacy, the downside of this is that these same venues and international conferences have been used by other sectors, with opposing interests, to build alliances, even the most unlikely. For example, Christians, Islamic fundamentalists, and traditionalists have formed the most unlikely unions to defend nationalism, religion and traditional values. They see the claim of human rights to universalism, women’s reproductive freedom, and sexual orientation and gender identity as common enemies, they see it as a direct attack on the traditional values, cultures, and religious beliefs‘ of the majority of the people.⁶

While this strategy is not unique to any particular region, the patterns of exclusion are sometimes pervasive, particularly in Africa, and indicate the uphill battle that sexual and gender minorities have faced in African regional structures and within global political spaces. Many reports have suggested that sexuality and gender have become a cultural and religious battleground in Africa, being fought at the national, regional and international level. This is a common thread that emerges in a 2009 Human Rights Watch report.

“Culture – a supposedly monolithic realm of civilizational values – becomes the zone where political rhetoric and religious intolerance combine. Sexual or gender nonconformity is painted as ‘un-African’, its agents symbolically – and actually –

⁵ Egypt’s statement was an official intervention delivered in the Council plenary. Video files can be viewed on the webcast archives at <http://www.unmultimedia.org/tv/webcast/c/regular-sessions.html>.

⁶ Kim Vance, Monica Mbaru and Monica Tabengwa, Human Rights and Traditional Values: exploring the intersections, challenges, and opportunities (2011) Available at: <http://arc-international.net/global-advocacy/humanrightscouncil/ASSSGD-paper.pdf>

expelled from the community.⁷

While there are many examples of this approach from different regions, a couple of examples stand out. A letter circulated by Pakistan on behalf of the Organization of the Islamic Conference in both 2003 and 2004 in response to the Brazilian Resolution⁸ at the UN Commission on Human Rights states that:

“In our perspective sexual orientation is not a human rights issue. Instead it is related to social values and cultural norms. Individual countries need to deal with this issue within the parameters of their own social and legal systems. ... The draft resolution directly contradicts the tenets of Islam and other religions. Its adoption would be considered as a direct insult to the 1.2 billion Muslims around the world.”⁹

And the Holy See, which has observer status at the United Nations, expressed similar views in a letter stating that “a person’s ‘sexual orientation’ is not a source of rights” and expressing the view that while “some documents of the European Union include such an orientation as a cause of discrimination, other legal systems need not follow suit, since such tendencies...are not commonly shared by the societies of the countries with such systems.”¹⁰

More recently, the Human Rights Council Advisory Committee considered a draft report on “traditional values” at its 8th session (February 2012). Amongst other things, the report suggested that “all international human rights agreements ... must be based on, and not contradict, the traditional values of humankind. If this is not the case, they cannot be considered valid”, that the international community should defer to the sovereignty of States, that human rights recognition arises from “responsible behaviour” by the individual, and promoting “the family” as a transmitter of moral values.¹¹

Targeted Exclusion from UN and Regional Mechanisms

Amongst the most striking examples of explicit exclusion have been the attempts to deny organizations addressing human rights violations based on sexual orientation and gender identity the accreditation necessary to participate in UN World Conferences and the work of regional and 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 - even enter the building.

⁷ Scott Long, *Together, Apart : Organizing around Sexual Orientation and Gender Identity Worldwide*. New York, U.S.A.: Human Rights Watch (2009), p.11.

⁸ In April 2003, at the 49th Session of the former Commission on Human Rights, Brazil presented a resolution on sexual orientation. It was deferred until 2004, and ultimately withdrawn. The text can be found at <http://ilga.org/ilga/en/article/406>.

⁹ Letter of Shaukat Umer, Ambassador and Permanent Representative, Permanent Mission of Pakistan, Geneva, February 26, 2004. On file with author.

¹⁰ Note on the Project of Resolution of the United Nations Commission on Human Rights concerning “Sexual orientation and Discrimination”, Permanent Mission of the Holy See to the United Nations Office in Geneva, March 1, 2004. On file with author.

¹¹ Copies of the report can be found at <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session8/documentation.htm>

Beginning in 1993, LGBT-identified groups began seeking official consultative status with the United Nations. Official consultative status is granted by the UN Economic and Social Council (ECOSOC), after reviewing recommendations from its subsidiary body – the Committee on Non-Governmental Organizations. In that year, ILGA (the International Gay and Lesbian Association) was the first lesbian and gay rights organization granted ECOSOC status. It was later revoked in 1994, after a campaign by US Conservative Senator Jesse Helms. They were not been successful in gaining that status back until 2011.¹²

The NGO Committee has rejected more than 10 applications by NGOs working on sexual orientation and gender identity issues. In each of 2006, 2007, 2008, 2009 and 2010, the ECOSOC has had to overturn these recommendations in order to uphold the principle of non-discrimination underpinning the UN Charter. While there has been some recent success in this area, which will be discussed later, the NGO Committee has continued to defer or deny applications submitted by NGOs working on issues of sexual orientation and gender identity, including as recently as May 2012.

In 2001, ILGA, was also denied accreditation to the United Nations World Conference against Racism, and in that same year, at the UN General Assembly Special Session on HIV/AIDS, a representative of the International Gay and Lesbian Human Rights Commission (IGLHRC) was initially excluded from participating in an official roundtable discussion on HIV/AIDS and human rights. However, after debate and a vote in the General Assembly, the representative was allowed to take the floor to address government and civil society representatives on topics related to human rights, HIV/AIDS and sexual orientation.¹³

Regional human rights bodies have been important spaces of democracy and politics. Sexual and gender minorities in some regions like Latin America and the Caribbean have been able to organize and participate successfully in these spaces. This will be discussed later as a best practice example. In other regions, however, the exclusion is persistent.

The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial body tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter. The Coalition of African Lesbians (a pan-African lesbian-feminist organization) applied for observer status within the African Commission in 2008, four years after LGBTI rights activists started organizing and advocating for rights within that body. They were denied this status in 2010 on the basis that they “do not promote the rights enshrined under the African Charter”.¹⁴

¹² Article on ILGA's successful campaign to regain ECOSOC accreditation can be found at: <http://ilga.org/ilga/en/article/n5GebHB1PY>

¹³ International Gay and Lesbian Human Rights Commission & the Center for Women's Global Leadership, *Written Out: How Sexuality is Used to Attack Women's Organizing* (2005), note 1, at 111-112

¹⁴ Kim Vance, Monica Mbaru and Monica Tabengwa, *Human Rights and Traditional Values: exploring the intersections, challenges, and opportunities* (2011))

III. Collective Organizing in Global Politics: A brief history

One of the first opportunities for global engagement around issues of sexuality was the 1975 UN Conference in Mexico to mark International Women's Year. This pivotal moment brought together lesbians from the North and South who engaged the feminist movement on issues of sexual orientation, and fostered the development of networks that were to play a key role throughout the International Women's Decade to follow.

Building on the experiences of Mexico City, and the mid-decade World Conference on Women in Copenhagen, the first Latin American and Caribbean Feminist *Encuentros* (Conferences) were held. Following these *Encuentros*, an increasing number of lesbian feminist groups began to organize throughout Latin America. They have continued to demand that lesbian oppression and homophobia be understood as issues for the whole movement and not just questions of a sexual minority.

Around the same time (1978), the European-based International Gay Association (IGA) was founded during the conference of the Campaign for Homosexual Equality in England. One of the aims of the organization was to maximise the effectiveness of gay organisations by coordinating political action on an international level in pursuit of gay rights and in particular to apply concerted political pressure on governments and international institutions.

Between 1980 and 1986, lesbian women increasingly participated in the activities of IGA and in 1986, the organization changed its name to the International Lesbian and Gay Association. (Note: In 2008, in response to its commitment to fight discrimination based on gender identity, the full name of the organization became the "International Lesbian, Gay, Bisexual, Trans and Intersex Association."¹⁵) As in Mexico in 1975, the Nairobi Women's Conference in 1985 provided a forum for the first public discussion of lesbianism in Kenya. Self-identified lesbians from all regions spoke at a press conference and issued a "Third World lesbian statement" that challenged the notion that this was a "white, western" issue.¹⁶

By the time of the UN World Conference on Human Rights in Vienna in 1993, global women's networks and activism had developed into coordinated movements to bring women's and lesbian perspectives into mainstream UN activities. Three non-governmental organisations working on sexual orientation and gender identity issues were accredited to the World Conference, marking the first time that NGOs working on these issues were recognized at a UN event.

All of these developments set the stage for the Fourth World Conference on Women in Beijing in September of 1995 - widely considered a watershed moment in international lesbian visibility. Eleven explicitly lesbian or lesbian and gay organisations were accredited to the Conference. Since Beijing, sexual and gender minorities have engaged

¹⁵ Summarized from "ILGA: 1978 - 2008. A Chronology" available at <http://ilga.org:80/ilga/en/article/mG6UVpR17x>

¹⁶ "UN General Assembly Joint Statement on sexual orientation & gender identity: *Building on the Past, Looking to the Future*" available at <http://www.sxpolitics.org/wp-content/uploads/2009/03/unga-statement-backgrounder.pdf>

regularly in the review processes (+5, +10, and +15) during the Commission on the Status of Women in New York, and hosted caucus meetings, issued statements and hosted parallel events.

While the World Conferences have served as an invaluable forum for sexual and gender minorities, activists working on these issues have increasingly engaged with other UN human rights mechanisms. A turning point came in 2003 when Brazil introduced a resolution on sexual orientation and human rights at the UN Commission on Human Rights in Geneva. Brazil's initiative served both as a focal point and mobilizing tool for NGOs around the world.

An NGO strategy meeting was held in Brazil in December 2003, attended by a diverse cross-regional group of activists.¹⁷ As a result of that meeting, and similar coordinated organizing efforts, the 2004 session of the Commission saw more than 50 lesbian, gay, bisexual and transgender activists gather in support of the resolution, from all regions of the world. A global listserv (the "SOGI" list) was initiated by a new international organization now based in Canada and Switzerland (ARC International), in response to this global momentum. That listserv now has 600+ subscriber organizations that regularly engage in strategic discussions about advocacy in spaces of regional and global politics.

Movements of gender minorities, which include transgendered persons, have started to mobilize more recently in spaces of global politics. Like lesbian women who have always been part of the women's/feminist movement, trans people have been part of the LGBT movement since its inception, often facing the most severe human rights abuses. However, it has not been until this decade that they have begun to organize more visibly at the regional and international level, and sometimes from their own separate platforms. The first independent trans organization focused on political engagement at the international level, GATE (Global Action for Trans* Equality) was only founded in 2010.

The international trade union movement has also been an important site of global politics and organizing, and some LGBT activists have chosen to focus on the development of strong voices within this movement, and advocated for the labour movement to be a strong ally to the global movements of sexual and gender minorities. Two international trade unions, Public Services International (PSI) and Education International (EI), representing over 50 million workers in 950 trade unions around the world, organized a historic joint LGBT forum in 2004, which generated important recommendations for the ILO, UNESCO, UNAIDS and other groups.¹⁸

Sexual and gender minorities have increasingly sought to organize in important sites of regional politics, as well. A coalition of LGBT organisations, started its work in 2006 around the inclusion of sexual orientation, gender identity and expression in the draft Inter-American Convention against Racism and all Forms of Discrimination and

¹⁷ First International Dialogue on Gender, Sexuality and Human Rights, co-hosted by ARC International, ACPD and ABIA in Rio de Janeiro, 2003. Report can be found at <http://arc-international.net/wp-content/uploads/2011/08/international-dialogue-report-brazil2003.pdf>

¹⁸ Copenhagen Catalogue of Good Practices, p.21

Intolerance. It has since expanded its membership and now works more generally on ensuring the inclusion of these issues at the OAS.¹⁹

Since 2004, sexual and gender minorities in Africa have worked in coalition to engage with the African Commission on Human and Peoples' Rights (ACHPR). Some of their successful strategies for engagement will be discussed in the next section. It is also important to mention the role that HIV/AIDS has had in forging coalitions of sexual and gender minorities. Many groups have used spaces for the discussion of the pandemic to advance rights-based approaches to their work, and have sometimes found the lens of “health” to be a more receptive arena to raise controversial issues of sexuality with States.

IV. Examining Strategies for Recognition, Voice and Influence

As is the case in other global movements, the strategies used by sexual and gender minorities have varied. Some groups have chosen differing, and sometimes conflicting, approaches to seeking freedom, inclusion and equality. Some organizations don't seek inclusion at all. They argue for autonomy and independence from global political institutions. Others view concepts of “equality” as limiting to pursuing broader social justice agendas. These tensions can often emerge along the lines of class, gender, race, regional differences, etc.

In 2009, ILGA published a book entitled “Lesbian Movements: Ruptures and Alliances”.²⁰ The title itself affirms some of the tensions that have been part of these movements over the last 35+ years, but the stories contained within it also highlight the ways in which LGBT persons have worked together, particularly in spaces of global politics. Some of the strategies described below have been used both internally and externally. Lesbians, bisexuals and trans people have sometimes felt (and still feel) at the margins of their own movements and have had to first seek recognition, voice and influence within their own organizations and coalitions.

The emergence of the HIV/AIDS pandemic has also created “interesting” tensions in global movements. I use the term “interesting” because in some ways the pandemic has created unique spaces and opportunities that may not have existed otherwise. However, there is plenty of critical analysis about the impact of HIV/AIDS on the movement and the disparity it has caused around resources and priority of issues.

All of this said, there are probably few other movements that have secured the gains and successes in spaces of global politics, in such a relatively short period of time. In response to this, LGBT groups are beginning to engage in more critical self-reflection.

In 2010, ARC International conducted an international dialogue and action research project (“Rising Through the Challenge”) on best practices for advancing human rights

¹⁹ <http://www.iglhr.org/cgi-bin/iowa/article/takeaction/resourcecenter/1144.html>

²⁰ Book can be downloaded from the ILGA website: http://ilga.org:80/ilga/static/uploads/files/2009/10/22/22130838_5630150.pdf

related to sexual orientation and gender identity.²¹ The following are just some examples of strategies identified in the collected research.

Visibility

This idea of “visibility” as a strategy may not be unique to this movement. However, it does look different for LGBT movements, when compared to other global movements. Because of global patterns of heteronormativity, coupled with climates of fear and intolerance, some sexual and gender minorities are often rendered invisible. This has been a double-edged sword, allowing for access to spaces that might be limited for other, more identifiable, groups. But at the same time, this reality forces a painful process of needing to constantly assert their own identity lest they remain invisible, or worse, presumed to be something they are not.

While most groups seeking UN ECOSOC accreditation, for instance, are truly interested in engaging in UN processes, there is a parallel strategy for LGBT organisations of increasingly visibility within these spaces. It has been very important to ensure that States can no longer assert that there are no LGBT people in their countries or regions, or that this concept only refers to those who are white and Western.

Perhaps the strongest response to arguments that sexual orientation and gender identity are Western constructs comes from those directly affected, who are increasingly speaking out in countries around the world to claim - or reclaim - respect for their human rights and their rightful place within diverse cultural traditions. In preparation for the 2004 Commission on Human Rights, NGOs from all regions participated in development of a briefing kit²², which affirmed:

“Our sexual orientation is as much a part of our identity as our race, our faith, or our gender. As the Vienna Declaration and Programme of Action recognises, human rights are indivisible and interrelated, and it is meaningless to accord human rights protection to one part of our identity, such as our race, sex or religion, but to deny it to another part of our identity, such as our sexual orientation or gender identity. ...It is inherently divisive, isolating and inaccurate to position the issue as that of one culture —versus another, since this overlooks the reality that lesbians, gays, bisexuals and transgender people come from all walks of life, from all faiths, all countries, all cultures and all religions.”

During debate on the Brazilian resolution at the UN, lesbian, gay, bisexual and transgender Muslim groups²³ responded directly to the assertions of the Organization of the Islamic Conference, saying:

“Muslims hold a diverse range of religious and political beliefs and our cultural heritage,

²¹ Full report of the Dialogue can be found at: <http://arc-international.net/wp-content/uploads/2011/08/international-dialogue-report-argentina2010.pdf>

²² Brazilian Resolution on Human Rights and Sexual Orientation: Government Briefing Kit, compiled by ARC International, on behalf of a Steering Committee representing NGOs from all UN regions (March 2004).

²³ Al-Fatiha UK, Salaam, Salaam Halifax, Al-Fatiha Toronto Foundation (April 24, 2003).

racial background, gender, age and yes sexual orientation, often determine our ideology as human beings and as believers in our faith of Islam. Homosexuality in the Muslim World/Ummah is a reality today that too many people ignore or deny. ...We fail to understand how opposing the basic human rights of a marginalized community and granting them human dignity will counter your larger objectives of promoting a fair and accurate vision of Islam, a religion whose core values are peace and justice.”

At UN bodies such as the Commission on Human Rights and subsequently the Human Rights Council, sexual and gender minorities from around the globe have addressed Member States in speeches, parallel events and direct advocacy. As such visibility continues to grow, it will become increasingly difficult to dismiss the claims of these advocates as uniquely Western concerns. And it's clear that it's having an impact.

The comments of UN Secretary General, Ban Ki-Moon speaking at a UN panel on December 10, 2010, illustrate this point:

“Yesterday evening, I spoke to a Human Rights Day event at the Ford Foundation. It was called ‘Speak Up’ a conversation with human rights defenders. One of my fellow speakers was a young activist from Uganda. Frank Mugisha has been working with a variety of civil society groups to stop legislation that institutionalizes discrimination against gay and lesbian people. With extraordinary eloquence, he appealed to us, the United Nations, for help. He asked us to rally support for the decriminalization of homosexuality everywhere in the world. And that is what we will do. We have been called upon, and we will answer.”²⁴

Building Alliances with Other Social Movements

In the ARC International research, this was a key area of commonality among the groups submitting case studies. It was consistently noted throughout the narratives and discussions, that success is highly correlated with establishing strategic alliances and overcoming isolation of movements. For groups with very little economic or political power, alliances are extremely important. It was also clear that forming alliances has to be holistic in approach, recognizing the common elements that may oppress a number of people, such as restrictions on sexual and reproductive rights or laws on prostitution and trafficking.

This was also confirmed in the Human Rights Watch Report, which stated that “(I)ntegration with other human rights struggles needs to be the first priority in approaching sexual rights. We need stronger political alliances, and conceptual frameworks in which the commonalities between issues can become clear”.²⁵

One of the strategies for building these alliances is engaging international civil society spaces. A number of these spaces have opened up around major UN conferences, as has

²⁴ The full text of Ban Ki-Moon's speech can be found at: <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/459-2.pdf>

²⁵ Scott Long, *Together, Apart : Organizing around Sexual Orientation and Gender Identity Worldwide*. New York, U.S.A.: Human Rights Watch (2009), p.2.

been articulated in the previous section. Other spaces, such as the World Social Forum (WSF) have also been important. The WSF is a space for multiple voices, for dialogue and mutual understanding, and for diversity and plurality. This can, and has been, an important space for building alliances, and organizing within the LGBT communities. Thanks to the committed activism of their creators and coordinators, spaces for sexual and gender minorities have been important and principle features of each chapter of the World Social Forum. This has been true from Porto Alegre to Belem do Para and from Mumbai to Nairobi.²⁶

Another good example of regional movement alliance building comes from the African Commission, which not only represents a space for regional governance on human rights, it is also preceded by an NGO Forum where civil society leaders in the area of human rights network, dialogue, and strategize. Given the challenge that sexual and gender minority groups have faced in Africa, even within like-minded civil society movements, this has been an important space for these groups to participate and work.

As a result of these advocacy efforts, participants at the NGO Forum of the 46th Ordinary Session of the Africa Commission in November, 2009, adopted and disseminated a comprehensive three-page resolution²⁷. It called on the Commission to, as a starting point, acknowledge and condemn human rights violations and discrimination based on sexual orientation and gender identity and protect human rights defenders who are operating for the protection of LGBTI human rights. It also asked them to mandate a Special Committee to investigate, document and report on these violations in order to develop appropriate responses and interventions and create a mechanism to address human rights violations based on sexual orientation and gender identity; ensure that states put in place mechanisms for access to HIV prevention treatment and care services for everyone.

The resolution went even further and suggested that: African states repeal laws which criminalise non-heteronormative sexualities and gender identities, and amend other laws that are implemented with the purpose of persecuting individuals and communities based on their sexual orientation and gender identity; end impunity for acts of violation and abuse, whether committed by state or non-state actors; and protect the right of all people to freedom of association and assembly, freedom of expression, and freedom to participate in civil society and key decision- making organs of government.

And, while the decision to reject CAL's observer status at the African Commission was extremely disappointing, in a positive demonstration from civil society allies, who have not always been willing to tackle issues of sexual orientation and gender identity, no less than 18 organisations who have observer status at the African Commission used the recent public session to remind the Commission that the protection and promotion of human and peoples' rights was their twin mandate and that their obligation was simply to

²⁶ This World Social Forum synopsis was gathered from a report produced by staff at IGLHRC and can be found at: <http://iglhrc.wordpress.com/2011/02/08/a-march-without-rainbow-flags>

²⁷ The full text of the Resolution can be found at the following website http://ypinaction.org/files/01/55/Thematic_Resolution_African_Commission_2009.pdf

protect and promote rights.²⁸

Documenting Human Rights Violations

It took some time for LGBT groups to engage in the routine process of documentation and reporting, and there are still challenges, but those that have contributed are responsible for a growing body of evidence on human rights violations. UN Special Procedures are regularly documenting human rights violations based on sexual orientation and gender identity, and States are informed of the extent of such violations.

A review of Special Procedures' reports indicates that reporting has increased from two Special Procedures addressing these issues in 1998, to five in 2002, to more than a dozen in 2006. At the 20th session of the Human Rights Council in June/July 2012, a number of Special Procedures address human rights violations based on sexual orientation or gender identity in their reports. In particular:

- The Special Rapporteur on violence against women focuses her report on gender related killings of women, including a full section on killings as a result of sexual orientation and gender identity;
- The Special Rapporteur on contemporary forms of racism, focuses on human rights challenges posed by extremist political parties, movements and groups. He highlights violations including “the death of a young gay man of 24 years old, following a brutal attack by individuals linked to a neo-Nazi group, who beat him unconscious and cut swastikas on his chest and arms with a broken bottle”.
- The Special Rapporteur on freedom of peaceful assembly and association has highlighted groups at risk, including “victims of discrimination because of their sexual orientation and gender identity”.
- The Working Group on the issue of discrimination against women in law and in practice note in its conceptual framework the importance of an intersectional approach, to address the needs of women who face multiple forms of discrimination because of grounds including sexual orientation or gender identity.

Another area within the UN human rights system that has been a hugely successful tool for LGBT organizations is the new **Universal Periodic Review (UPR)**, which allows scrutiny of the human rights records of all UN States. The first round of UPR reviews concluded in October 2011, with significant engagement between civil society and States on issues of sexual orientation and gender identity. It's clear that groups at the national level have embraced this new tool as a way to bring forward documentation of violations occurring within their countries.

Virtual and Responsive Coalitions

²⁸ From an opinion piece entitled “The day the African Commission disavowed humanity”, found at <http://www.pambazuka.org/en/category/features/68947/print>

Global networks and coalitions of sexual and gender minorities have used technology to organize in very unique and responsive ways. Some groups can only find safety in the virtual world, and rely heavily on access to the internet as their link to international, regional, national and even local communities of sexual and gender minorities, especially in places where it is not safe to have an ongoing physical and visible presence. An example of how this virtual international network can mobilize quickly was demonstrated recently around a UN resolution on killings.

In November 2010, the Third Committee of the United Nations General Assembly voted 79-70 to remove a reference to sexual orientation from a resolution on extrajudicial, summary or arbitrary executions. For the past 10 years, the resolution had included sexual orientation in the list of discriminatory grounds on which killings are often based. At the time, it was the only UN resolution to contain language on sexual orientation.

Sexual and gender minorities around the globe were shocked and angered by this reversal, but it seemed impossible to change the situation in the short-term. On December 10th, the U.S. Ambassador to the UN announced at a World Human Rights Day panel, that they were going to fight to reintroduce this wording when the resolution came before the General Assembly in less than two weeks. This announcement led to 11 days of arguably the most successful civil society engagement in the history of global LGBT advocacy, sparked by an e-mail alert issued on the SOGI list, and forwarded to electronic lists around the world.

On December 21st, 2010, the UN General Assembly voted 93-55 to reintroduce the sexual orientation language into the EJE resolution, marking a gain of 23 States in favour. Two African countries, South Africa and Rwanda, completely reversed their earlier positions in the final voting. LGBT activists and their allies, particularly in South Africa, acted quickly to ignite a coalition of support. An open protest letter to President Zuma and Minister Nkoane-Mashabane was published in the Mail and Guardian on International Human Rights Day (10 December 2010) and signed by the Most Reverend, Dr. Thabo Makgoba Archbishop of the Anglican Church of Southern Africa and Archbishop Emeritus Desmond Tutu. It was republished on 17 December 2010 with hundreds of individual and organisational signatures.²⁹

This is just one example of how responsive and creative these coalitions have become over time, but there are many more examples from all regions of the world.

Contributing to the Development of Human Rights Norms

In 2006, the former High Commissioner for Human Rights, Louise Arbour, had expressed concern about the inconsistency of approach in law and practice with regard to sexual orientation and gender identity. In an address to a lesbian, gay, bisexual and transgender conference in Montreal, she suggested that although the principles of universality and non-discrimination apply to the grounds of sexual orientation and

²⁹ See full protest letter and signatories at <http://writingrights.org/2010/12/17/50-organisations-and-47-individuals-emergency-call-president-zuma-reverse-vote-on-lgbti-people-at-the-un-on-2021-december-2010/>

gender identity, there is a need for a more comprehensive articulation of these rights in international law, “(i)t is precisely in this meeting between the normative work of States and the interpretive functions of international expert bodies that a common ground can begin to emerge”.³⁰

Furthermore, commentators have suggested that international practice could also benefit from the application of more consistent terminology to address issues of sexual orientation and gender identity. While some Special Procedures, treaty bodies and States have preferred speaking of “sexual orientation” or “gender identity”, others speak of “lesbians”, “gays”, “transgender” or “transsexual” people, and still others speak of “sexual preference” or use the language of “sexual minorities”. In addition, issues of gender identity have been little understood, with some mechanisms and States referencing transsexuality as a “sexual orientation”, and others frankly acknowledging that they do not understand the term at all.

It is in this context of such diverse approaches, inconsistency, gaps and opportunities that the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (the Yogyakarta Principles) were conceived. The proposal to develop the Yogyakarta Principles originated, in 2005, with a coalition of mainstream human rights and LGBT-specific NGOs that was subsequently facilitated by the International Service for Human Rights and the International Commission of Jurists.

Twenty-nine experts were invited to undertake the drafting of the Principles. They came from 25 countries representative of all geographic regions. They included one former UN High Commissioner for Human Rights (Mary Robinson, also a former head of state), 13 current or former UN human rights special mechanism office holders or treaty body members, two serving judges of domestic courts and a number of academics and LGBT activists.

Launched in 2007, the Principles are a coherent and comprehensive identification of the obligation of States to respect, protect and fulfill the human rights of all persons regardless of their sexual orientation or gender identity. Since their launch the Principles have attracted considerable attention on the part of States, United Nations actors and civil society. They have played a significant role within advocacy efforts and, whether directly or otherwise, in normative and jurisprudential development³⁸.

In late 2010, activists in regions around the world celebrated the release of a new tool for LGBTI advocacy: *the Activist's Guide to the Yogyakarta Principles*³¹. The Activist's Guide - is a toolkit, which provides an introduction to the Yogyakarta Principles, exploring how they can enhance the work of activists in advancing rights for LGBTI people around the globe. It presents several creative examples of ways in which LGBTI activists have already used the Yogyakarta Principles to make significant gains, and suggests strategies for further engagement with the Principles.

³⁰ Presentation of Ms Louise Arbour to the International Conference on Lesbian, Gay, Bisexual, and Transgender Rights, Montreal, July 2006, available at: <http://www.unhchr.ch/huricane/hurricane.nsf/view01/B91AE52651D33F0DC12571BE002F172?opendocument>

³¹ The Activist's Guide is available on the following site: www.ypinaction.org

V. The Circumstances for Success and/or Struggle

In terms of circumstances that block strategies for success, it cannot be underemphasized that at least seven countries maintain the death penalty for consensual same-sex practices³² and more than 80 countries still maintain laws that make same-sex consensual relations between adults a criminal offence. In other countries, laws against “public scandals”, “immorality” or “indecent behaviour” are used to penalise people for looking, dressing or behaving differently from enforced social norms.³³ Even where criminal sanctions against homosexuality or “immorality” are not actively enforced, such laws can be used to arbitrarily harass or detain persons of diverse sexual orientations and gender identities, to impede the activities of safer sex advocates or counsellors, or as a pretext for discrimination in employment or accommodation.³⁴

However, the development of norms, such as the Yogyakarta Principles listed in the previous section, create opportunities for sexual and gender minorities to achieve success in the face of these circumstances. As an example, in India, Voices against 377 and the Naz Foundation, used the Yogyakarta Principles to support a successful challenge to s. 377 of the *Indian Penal Code* – a relic of the colonial era used to harass and criminalise members of the LGBTI communities. In addition, Transgender Network Netherlands are using the Yogyakarta Principles to get a fundamental flaw in gender recognition legislation corrected - the requirement of sterilisation in order to legally change one's gender.

Some of the alliance building strategies noted in the earlier section have paved the way for sexual and gender minorities to combat exclusion. Not having UN ECOSOC status, for instance, does not prevent groups from engaging in UN bodies. Many ECOSOC-accredited allied groups working on issues of sexual and reproductive rights, women's rights, HIV/AIDS, and general human rights, have been extremely helpful in accrediting representatives from LGBT organizations to attend meetings and assisting with sponsorship of workshops and parallel events.

In addition, it's no coincidence that the LGBT groups that have experienced recent success in the area of UN accreditation, have been groups with strong ties to their national governments. For example, the first group from the Global South to gain UN ECOSOC accreditation (2009) was ABGLT (Associação Brasileira de Gays, Lésbicas e Transgêneros) the Brazilian Federation of LGBT Groups. Brazil has demonstrated clear

³² Those states are Iran, Mauritania, Saudi Arabia, Sudan, United Arab Emirates, Yemen and Nigeria (the death penalty applies in 12 Northern provinces). See Ottoson, ‘State-Sponsored Homophobia. A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults’, International Lesbian and Gay Association (ILGA), April 2007; and International Lesbian and Gay Association, ‘World Day against Death Penalty: 7 Countries Still Put People to Death for Same-Sex Acts’, Press Release, 10 October 2007.

³³ See, for example, Human Rights Watch, ‘Kuwait: Repressive Dress-Code Law Encourages Police Abuse. Arrests Target Transgender People’, Press Release, 17 January 2008, available at: <http://hrw.org/english/docs/2008/01/17/kuwait17800.htm>

³⁴ Voices against 377, ‘Rights for All: Ending Discrimination against Queer Desire under Section 377’, 2004, available at: http://files.creaworld.org/files/Voices_Report_English.pdf [last accessed 15 February 2008].

leadership on LGBT issues with UN fora, and has a strong programme at the national level called “Brasil without Homophobia”.

Some of the successful strategies noted earlier, have not been easy to achieve and some contexts still make it difficult to engage in spaces of global politics. Earlier, I discussed how the World Social Forum (WSF) has been an important space for alliance building. However, each WSF event bears the imprint of the host country. In the very recent case case of Dakar (2011) there was an absence of visibility for LGBT people. During preparations for the registration of workshops and events, African LGBT colleagues advised their allies to keep a low profile. Any public demonstration would seriously compromise the security of the local LGBT community.³⁵

VI. Conclusion

Although many obstacles remain, the last three decades have seen an enormous increase in the visibility and influence of sexual and gender minorities within spaces of global politics. Enhanced reflection and analysis about best practice and successful engagement is emerging from all corners of these movements. Many of the “lessons learned” from the struggle of sexual and gender minorities can be summarized as follows:

- Never underestimate the reality that human rights are routinely negotiated in spaces of global politics for broader interests, such as trade, conflict, aid, etc. It is very important to understand and gauge the impact of these geopolitical realities.
- Small minority groups with limited access to resources rely on the alliances that they are able to secure with broader social movements. The rights that you are seeking have more credibility if you also support the claims of other groups seeking to be included and influential.
- Movements are rarely homogeneous, and global movements, even less so. It is important to understand the needs and definitions of success in national and regional contexts. Priorities and processes for working will be different, but all are valuable to the overall struggle for inclusion and influence.
- Engaging in spaces of global politics requires significant capacity and leadership enhancement within civil society organizations.
- Certain opposition can only be effectively addressed from within. For instance, progressive religious voices are often best positioned to address faith-based opposition.
- Communities need to be engaged, empowered and nurtured.
- Document, document, document!!!
- Step away from constantly operating in response mode and take the time to develop a strategic agenda.
- It is important to translate knowledge and success into practical tools that can assist other groups or individuals.
- Make time for reflection, evaluation, and analysis.

³⁵ Summarized from an article on IGLHRC’s web site: <http://iglhrc.wordpress.com/2011/02/08/a-march-without-rainbow-flags/>

- Find creative ways to ensure your voice is heard in spaces of global politics, even when some are attempting to actively exclude you...there is always a way!