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Human Rights Advocacy on Gender Issues: Challenges and Opportunities

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Abstract

Recent years have seen notable progress on issues of gender and human rights in standard-setting and to some extent application of those standards through international and domestic legislation and jurisprudence, and in institutional programming and development. Some international and regional human rights bodies now go beyond just including 'women' in a list of 'vulnerable' groups, and have begun to incorporate women's experiences and perspectives into recommendations for structural changes needed to bring about full enjoyment of human rights by women and girls. In addition, recent years have seen the human rights of lesbian, gay, bisexual, transgender, and intersex people being taken up beyond the first human rights bodies that addressed them, and developments have taken place in standard-setting. Despite this progress, many challenges remain. Violence against women continues at a staggering rate. Gender-based discrimination persists in the workplace, housing, education, disaster relief, health care, and countless other areas. Access to justice continues to be hindered by a range of obstacles. Religion, tradition, and culture continue to be used as a shield for violating women's rights. Same-sex conduct is still criminalized in scores of countries, and it carries the death penalty in seven states. The traditional human rights law paradigm, with its focus on the state, may be obsolete in dealing with human rights abuses by such diverse non-state actors as powerful militias and global corporations. This article highlights just a few opportunities and challenges to come for international human rights advocacy on gender issues.

Keywords: equality; gender discrimination; non-state actors; sexual orientation; Yogyakarta principles; women's rights

Recent years have seen notable progress on issues of gender and human rights in standard-setting and to some extent application of those standards through international and domestic legislation and jurisprudence, and in institutional programming and development. Some international and regional human rights bodies now go beyond just including 'women' in a list of 'vulnerable' groups, and have begun to incorporate women's experiences and perspectives into recommendations for structural changes needed to bring about full enjoyment of human rights by women and girls. In addition, recent years have seen the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people being taken up beyond the first human rights bodies that addressed them – the Human Rights Committee, some UN special procedures, and the European human rights system – and developments have taken place in standard-setting. For some years now, human rights non-governmental organizations (NGOs) have themselves been on a

needed learning curve when it comes to gender issues, as NGO members are not immune from the influence of prevailing cultural and social norms.

Despite this progress, many challenges remain. Violence against women continues at breathtaking rates (UN Secretary-General's Campaign, 2008). Domestic violence appears to be on the increase as tensions rise in the global economic crisis. Gender-based discrimination persists in the workplace, and in housing, education, disaster relief, political life, inheritance, health care, access to food, and countless other areas. In 2008, the United Nations Population Fund reported that the number of women dying as a consequence of pregnancy and childbirth is 'essentially unchanged since the 1980s'. (UNFPA, 2008: 4). Access to justice continues to be hindered by a range of obstacles, including restrictions in some countries on freedom of movement, discounting of evidence given by women, and lack of training of police, prosecutors, and judges. Religion, tradition, and culture continue to be used as a shield for violating women's rights, despite strong and persistent statements adopted by states in United Nations' fora that they are not a valid justification for such violations (Farrow, 2005). Same-sex conduct is still criminalized in 77 countries, and it carries the death penalty in seven states.¹ The traditional human rights law paradigm, with its focus on the state, may be obsolete in dealing with human rights abuses by such diverse non-state actors as powerful militias and global corporations. What follow are some thoughts on just a few of the many opportunities and challenges in the coming decade for international human rights advocacy on gender issues.

Advocacy Opportunities and Challenges: the UN Treaty Bodies and Special Procedures

An increased awareness of gender issues is evident in reports of the Special Procedures, human rights treaty bodies, and statements by states in UN fora and in regional human rights bodies. The first step in some of these bodies was simply to add a reference to 'women' in a document, but as Di Otto has pointed out, that 'is not enough to ensure the indivisibility of women's human rights, without also attending to the structural causes of women's marginalization and exclusion'. (Otto, 2002: 2). Similarly, although the UN committed to gender mainstreaming across all its work, true mainstreaming requires 'more than allowing women into international institutions; it must require transforming the structures and assumptions of the international order' (Charlesworth, 2005: 18).

Some developments in the international and regional human rights bodies have now gone further than the 'list' approach. An early example is the General Recommendation on 'Gender-related dimensions of racial discrimination'. Adopted in 2000 by the Committee on the Elimination of Racial Discrimination (CERD), it has advanced understanding of the

1 Iran, Mauritania, Nigeria, Saudi Arabia, Sudan, United Arab Emirates, and Yemen.

intersectionality of race and gender discrimination by explicitly noting that racial discrimination does not always affect women and men equally or in the same way, giving examples of forms of discrimination that may be directed at women because of their sex, pointing out that women may experience consequences that men do not, such as pregnancy from racially motivated rape, and noting that gender bias in the legal system and in private life may hinder access by women to remedies for racial discrimination.

The multiple discrimination women experience is also recognized by the Committee on Economic, Social and Cultural Rights (CESCR) in its general comment on the equal right of men and women to the enjoyment of all economic, social, and cultural rights (General Comment no. 16, 2005). In this general comment, the Committee notes factors that negatively affect the equal right of men and women to the enjoyment of economic, social, and cultural rights, including the right to adequate housing, to adequate food, to education, to the highest attainable standard of health, and to water. The Committee then sets forth a framework for both formal equality and substantive equality, stating that gender-neutral laws ‘can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women’.

Implementation of the Covenant ‘requires addressing gender-based social and cultural prejudices, providing for equality in the allocation of resources, and promoting the sharing of responsibilities in the family, community and public life’. Implementation of the right to the highest attainable standard of health includes ‘addressing the ways in which gender roles affect access to determinants of health, such as water and food; the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health-care workers to deal with women’s health issues’.

Significantly, for those wishing to pursue remedies through state mechanisms or through the new Optional Protocol to the Covenant, described below, the Committee saw fit to state explicitly that the ‘failure to ensure formal and substantive equality in the enjoyment of any of these rights constitutes a violation of that right’, and the ‘failure to adopt, implement and monitor effects of laws, policies and programmes to eliminate de jure and de facto discrimination’ with respect to the rights in the Covenant ‘constitutes a violation of those rights’.

In 2008, CESCR issued a general comment on the right to social security with provisions on both ‘Non-discrimination and equality’ and ‘Gender equality’ (General Comment no. 19, 2008). States are to eliminate factors that prevent women from making equal contributions to social security schemes that link benefits to contributions, or design benefit formulas that take such factors into account in order to avoid gender-based disparities.

States are also to take into account differences in life expectancy of men and women, as they can lead to discrimination in benefits.

In 2006, the Committee addressed an additional aspect of gender discrimination by including ‘sexual orientation’ in the list of prohibited grounds of discrimination in employment in CESCR General Comment no. 18 (2006) on the right to work, in elaborating on the principle that ‘[t]he labour market must be open to everyone under the jurisdiction of States parties’.

Gender-based rights violations are addressed in the Committee against Torture’s recent general comment no. 2 (2008) on the implementation of the Convention against Torture. The comment notes that ‘[b]oth men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles’, and indicates that States Parties should ‘identify these situations and the measures taken to punish and prevent them in their reports’. Rape, domestic violence, female genital mutilation, and trafficking – as well as state responsibility to prevent and protect victims from these and other gender-based violence by non-state actors – are explicitly included in this general comment. In an important recognition of the impact of state inaction on the conduct of non-state actors, the Committee declares that ‘the State’s indifference or inaction’ with respect to these acts ‘provides a form of encouragement and/or de facto permission’ and ‘facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity’.

Human rights advocates can use these general comments to guide their work on legislative and administrative reform and governmental policy-making, in efforts to eliminate gender discrimination and non-equality in intergovernmental organizations, in interactions with governments regarding the content of the obligations they undertook in ratifying the relevant treaty, and in drafting shadow reports to the human rights treaty bodies.

Recent treaty body jurisprudence on gender issues

With the entry into force in December 2000 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women (CEDAW) has delivered its views on several cases. The Committee’s analysis may be used as a guide in evaluating whether a state has exercised due diligence to prevent, investigate, prosecute, and punish violence against women and other human rights abuses. Of the five cases CEDAW has examined on the merits, it found violations in four, three of which involved a failure by the state to provide effective protection against violence against the women concerned (Byrnes and Bath, 2008: 518). The analysis in these cases shows that states will not escape from their responsibility if they have a legal framework in place but do not provide actual protection for women they know are at risk (Ibid., 533).

In the Human Rights Committee, a law that discriminated against same-sex couples with regard to pension benefits was found to violate Article 26 of the ICCPR as constituting discrimination ‘on the basis of his sex or sexual orientation’ (*Young v. Australia*, 2003). A law that did not permit same-sex marriage, however, was not determined to violate the Covenant (*Joslin v. New Zealand*, 2002). The applicants alleged that a marriage law permitting marriage only between a man and a woman violated several rights including Article 26, prohibition of discrimination, and Article 23, right to marry. The Human Rights Committee remarked that Article 23 ‘is the only substantive provision in the Covenant which defines a right by using the term “men and women”, rather than the phrases used elsewhere in the Covenant – “every human being”, “everyone” and “all persons”’. The Committee went on to declare that the term ‘men and women’ ‘has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from Article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other’.

Optional Protocol to the Covenant on Economic, Social, and Cultural Rights

The newly-adopted Optional Protocol to the Covenant on Economic, Social and Cultural Rights, once it enters into force, has the potential to be a useful tool for advocates. Adopted in December 2008, it provides for individual complaints, interim measures to avoid irreparable harm, and an inquiry procedure. Significantly, communications may be submitted by – or on behalf of – individuals or groups of individuals claiming to be victims of a violation of the economic, social, or cultural rights in the Covenant.

States Parties are to take measures to ensure that anyone who communicates with the Committee under the Protocol is not subjected to any form of intimidation or ill treatment. In what is a first for a human rights treaty, the clause requiring States Parties to disseminate information about the treaty widely requires that they do so ‘in accessible formats for persons with disabilities’.

Once it enters into force, the Optional Protocol can be used to address, in addition to *de jure* discrimination, the cultural and structural obstacles to the achievement of economic, social, and cultural rights. Just one example would be to address the impairment of the right to food experienced by women in some countries. Factors limiting women’s realization of this right include lack of access to resources, lower salaries, gender-biased labour markets, discrimination in laws, limited enjoyment of the right to education, inadequate public health care, and exclusion from decision-making processes (FIAN International).

Human Rights for All

Two recent milestones affirm the basic principle that all human beings are entitled to human rights. One is the development in 2007 of the Yogyakarta

Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles). The other is the Statement on Human Rights, Sexual Orientation and Gender Identity presented in the UN General Assembly in December 2008, marking the first time in history a statement in that body condemned human rights violations that target people because of their sexual orientation or gender identity (UN General Assembly, Annex 2008). Both documents offer opportunities for advocacy with national and local governments, the judiciary, and intergovernmental organizations.

Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity

The Yogyakarta Principles, launched in 2007 at a public event at the UN, were adopted by a group of distinguished experts in international law, including academics, judges, UN special rapporteurs, and NGO representatives. Developed in response to patterns of abuse targeting people because of their actual or perceived sexual orientation or gender identity, the Principles address such serious concerns as extrajudicial executions, torture, and other violence, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, and a range of other rights. Advocates can help disseminate the Principles and urge adoption of the recommendations they contain for the UN agencies, governments, and civil society. The Principles have already been cited by UN agencies and by NGOs in advocacy with governments and in court cases, and governments have been invoking them in UN fora and using them as a guide in policy-making (O’Flaherty and Fisher, 2008: 238–247).

Statement on human rights, sexual orientation and gender identity in the UN General Assembly

On 18 December 2008, just days after the 60th anniversary of the Universal Declaration of Human Rights, a joint Statement on Human Rights, Sexual Orientation and Gender Identity was read in the UN General Assembly. Signed by 66 states,² it is the first statement condemning human rights violations based on sexual orientation and gender identity to be presented in the

2 Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

General Assembly. Delivered by the Ambassador of Argentina, this historic statement was coordinated by states from all regional groups: Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands, and Norway.

The statement condemns killings, torture, arbitrary arrest, and ‘deprivation of economic, social and cultural rights, including the right to health’. The signatories are ‘disturbed that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity’. The statement also calls on states to ‘promote and protect human rights of all persons, regardless of sexual orientation and gender identity’, and to ensure that no criminal penalties are imposed on account of sexual orientation or gender identity. Significantly, although the Holy See said it was against the Statement, a Vatican spokesperson said the Catholic Church opposed considering homosexuality a crime (Catholic News Service, 2008).

An alternative statement in the General Assembly was organized by the Organization of the Islamic Conference and signed by 57 states, which affirmed the ‘principles of non-discrimination and equality’ but claimed that universal human rights do not include ‘the attempt to focus on the rights of certain persons’ (IGLHRC, 19 December 2008). In a sad display of ignorance, it claimed that the statement could lead to ‘the social normalization, and possibly the legitimisation, of many deplorable acts including pedophilia’ (International Service for Human Rights 2008: 8–9).

In the same session, the General Assembly adopted a resolution condemning extrajudicial executions, which called on states to investigate promptly and thoroughly ‘all killings committed for any discriminatory reason, including sexual orientation’ (General Assembly, 18 December 2008). A proposal by Uganda to delete the reference to sexual orientation was rejected in the General Assembly by 78–60.

Organization of American States

Earlier in 2008, on the occasion of the 60th anniversary of its Charter, the 34-member Organization of American States (OAS) approved by consensus a declaration on ‘Human Rights, Sexual Orientation, and Gender Identity’ affirming that human rights protections extend to sexual orientation and gender identity. Joining in the consensus were those states in the Caribbean that still criminalize sexual conduct between people of the same sex.

Refugee Status Relating to Gender, Sexual Orientation, or Gender Identity

Opportunities to establish refugee status for those fleeing persecution on the basis of their sexual orientation or gender identity may be supported by a valuable new resource issued by the UN High Commissioner for Refugees (UNHCR) in November 2008: an 18-page Guidance Note on Claims for Refugee Status Under the 1951 Convention Relating to Sexual Orientation

and Gender Identity. The document quotes the Yogyakarta Principles multiple times in providing guidance on how sexual orientation or gender identity can be the basis of a well-founded fear of persecution. This guidance is a welcome addition to the materials on gender issues available to asylum applicants. These include the UNHCR's detailed, step-by-step training modules developed in 2005 on 'Ensuring Gender Sensitivity in Refugee Status Determination', which include case studies on domestic violence and on sexual orientation.

Gender and HIV/AIDS

Much has been written on the gender-related aspects of HIV/AIDS. Just two issues of recent focus are the under-representation of women in medical trials, and the trend to criminalize HIV transmission and exposure.

The Global Coalition on Women and AIDS launched by UNAIDS in 2004 has pointed out that women and girls, who constitute half of those with HIV/AIDS, are often underrepresented in biomedical HIV trials, particularly those assessing new treatment drugs or strategies. 'Women are considered "difficult" to study and enrol in trials given the complexities of their biology and their lives' (UNAIDS, July 2008). In addition, because biological differences between men and women can influence drug metabolism, research data should be disaggregated and reported by sex. The *Women and HIV Trials* initiative begun in 2007 by a coalition of organizations has begun to address the challenge of under-representation and recommend protocols to increase the inclusion of women in these trials (UNAIDS, 11 December 2008).

The trend towards criminalizing HIV transmission and exposure has prompted concern that laws criminalizing exposure and transmission compound women's risk to violence. The Women Won't Wait campaign has stated that '[w]omen's ability to safely disclose their status and adhere to treatment is already severely limited by the threat of violence from their intimate partners and/or families'. The threat of prosecution will exacerbate this situation. In addition, because women are often the first to learn of their HIV/AIDS status due to prenatal or postnatal care, they are likely to be disproportionately targeted for prosecution (Women Won't Wait, 2008). The trend towards criminalization may affect gay men by serving as a vehicle to prosecute them even in states that do not criminalize same-sex sexual relations per se.

Gender and Disabilities

As noted in the Convention on the Rights of Persons with Disabilities, which entered into force in March 2008, women and girls with disabilities are subject to multiple discrimination, and are often at greater risk – both within and outside the home – of violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation (Preamble and Article 6). The move away from welfare, charity, and other approaches to the

rights-based model of this treaty presents opportunities for advocates. The Convention contains a reporting mechanism, and an individual complaint mechanism exists under an Optional Protocol that also entered into force in March 2008. These mechanisms could be used, for example, to raise awareness of and develop responses to the fact that many maternal health facilities around the world lack staff with knowledge of providing care to pregnant women with disabilities (ECOSOC, Commission on Social Development, 2007: para. 4). Additional potential areas of focus could be the measures in Article 16 to protect freedom from exploitation, violence and abuse, and the call in Article 28(b) to ‘ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes’. Of related use is the 2007 Economic and Social Council (ECOSOC) resolution on ‘Mainstreaming disability in the development agenda’, which could be used to push for mainstreaming gender-related aspects of disability in development programs.

Women as Key to Peacemaking and Peacebuilding

When the UN Security Council adopted by consensus Resolution 1325 (2000) calling for the increased representation of women in conflict resolution and peacemaking processes, and incorporation of a gender perspective in peacekeeping operations and in negotiation and implementation of peace agreements, women took action. The resolution became an advocacy tool, and women on every continent used it to push to be present at peace negotiations and in post-conflict reconstruction planning and implementation (WILPF: Resolution 1325 in Action).

Security Council Resolution 1820 (2008) elaborates on parts of resolution 1325 and addresses sexual violence in conflict and post-conflict zones. A challenge is to ensure that states and the UN do not treat efforts to implement Resolution 1820 as a reason to ignore Resolution 1325. If one is attempting to bring about a peaceful and just resolution of the situation in Afghanistan, for example, one must not meet only with warlords; one should meet with women as well, and not write them out of the consultation and decision-making process.

New Information and Communication Technologies

New information and communication technologies present both challenges and opportunities in addressing gender issues in human rights. New forms and manifestations of violence against women have emerged through such technologies as the internet, webcams, and mobile phone technology. This violence includes cyberstalking, online verbal abuse of women, and email harassment. New technologies are also being used by traffickers and by others who sexually exploit women and girls. Challenges for addressing these problems include the question of which state has jurisdiction over an

internet crime; the tension between government surveillance and investigation techniques and the privacy rights that may be infringed by these techniques; and the need for education of both law enforcement and internet users about these crimes and how to protect against them.

At the same time, new information and communication technologies offer opportunities in virtually every area of human rights. These include helping to disseminate information about human rights and on how to make use of the various human rights mechanisms; fostering education of women, including through distance learning for rural women; helping healthcare systems in low-income communities to provide needed information and even diagnoses; expanding the potential reach of hotlines and helplines for women; and aiding in the rapid spread of information about rights violations, to name just a few.

The gender digital divide in access to these new technologies, however, remains a continuing challenge. A panel on ‘Why the purse feels empty: Financing for women’s equitable access to information and communication technologies’ during the 2008 session of the UN Commission on the Status of Women presented perspectives on this issue from donor, development, and civil society groups.

Gender and Climate Change

Climate change threatens a wide range of rights, including the right to food, to adequate housing and water, and even the right to life. A United Nations Children’s Fund (UNICEF) advisor has pointed out that ‘[w]omen and children are disproportionately affected by climate change-related impacts’, which are ‘a reflection of social inequalities and a failure to implement basic rights of peoples’ (OHCHR, December 2008). In addition, because women are ‘the principle care-givers and domestic natural resource managers’, they are at particular risk ‘because of their direct reliance on the ecosystem for much of their productive and household activities’ (OHCHR, 22 October 2008).

Educating for Human Rights

A key challenge is the need for education of governmental officials, inter-governmental organizations’ staff, journalists, and civil society, including human rights NGOs, about issues relating to women’s human rights and to sexual orientation and gender identity. Education of educators is also critically important in order to protect the right to education. In its intervention at the United Nations Educational, Scientific and Cultural Organization (UNESCO) International Conference on Education in November 2008, the Global Alliance for Lesbian, Gay, Bisexual and Transgender Education (GALE) highlighted the need for collaboration between ministries of education and LGBTI civil society. Addressing the situation of students ‘who are not able to conform to expected male or female gender roles’, GALE drew attention to the bullying and ridicule these students often experience, which

frequently remains unchallenged by school staff. GALE estimates about six million students a year drop out worldwide as a result of this bullying.

Education can also help reduce the incidence of violence against women. Education is one aim of the Global Symposium on Engaging Men and Boys in Gender Equality, scheduled to take place in Brazil in spring 2009. Goals include reducing violence against women by challenging rigid gender norms, and building the capacity of NGOs committed to working with men and boys in promoting gender equality (Symposium on Engaging Men and Boys in Gender Equality).

Restrictions on NGO Registration and Activities

In many countries, NGOs may operate only with government approval of registration. Denial of registration and revocation of registration are a continuing challenge faced by human rights groups, a challenge all the more difficult for those wishing to organize on issues of sexual orientation and gender identity. Even in some states where homosexuality is not a criminal offence, meetings and demonstrations are still banned. In a 2007 report, the International Gay and Lesbian Human Rights Commission details rallies and marches that were prohibited or stopped and requests for demonstration permits that were denied. In Russia, for example, the police arrested over 20 LGBT activists at Moscow's City Hall when they attempted to deliver a complaint there, and the police stood aside as skinheads and others violently attacked the group. The mayor of Moldova's capital, Chisinau, flouted a ruling by the state's Supreme Court when, for the third year in a row, he denied an LGBT group's request to hold a march, even after the Court ruled that the denial violated the state's constitution and the European Convention on Human Rights. Impunity for violence directed at LGBTI marches is also a problem. In Bolivia, for example, when several people in an LGBT march were injured by a Molotov cocktail, the district prosecutor and other officials failed to investigate the incident (IGLHRC, 30 October 2007: 5).

There were some victories, however. In November 2008, the Supreme Court of Turkey overturned a lower court's decision to dissolve the Turkish NGO Lambda Istanbul. The Istanbul Governor's Office decided their name and constitution were against the law, morality, and Turkish family values. When the Supreme Court overturned the lower court's order to disband, Lambda Istanbul announced: 'As people who face violence, who get expelled from our jobs, who are excluded and isolated, who are denied their legal rights, our voices will now multiply; and as the LGBTTT (lesbian, gay, bisexual, transvestite, transsexual) movement we will be louder when we shout out our right to equality'. A similar challenge to NGO registration was overcome in November 2006, when the Supreme Court of Argentina ruled that registration must be granted to a transvestite and transsexual group, overturning a lower court decision that the group's goals were 'against the common good' (IGLHRC, 30 October 2007: 6).

Impunity of UN and Other Intergovernmental Operations

A distinct challenge arises from within the very structures that are supposed to protect rights. In its 2007 conference report ‘High-level Conference on Eliminating Sexual Exploitation and Abuse by UN and NGO Personnel’, the UN Department of Peacekeeping Operations (DPKO) stated that the ‘Secretary-General’s message of “zero tolerance” has still not gotten through to all stakeholders’. Reasons cited were that ‘[i]t is often difficult to report allegations of this type of abuse (for communities, victims and staff members), and all too frequently these reports do not trigger appropriate responses’ (DPKO, 2007: 4).

Several attempts to apply the European Convention on Human Rights to alleged human rights abuses by multinational operations have also failed. These decisions have implications for any gender-based claims that might be brought against the personnel of states parties taking part in these operations. In *Behrami v. France* and *Saramati v. France*, the European Court of Human Rights determined it lacked competence to review acts in Kosovo of the respondent States’ military personnel participating in UNMIK and KFOR that were carried out under the authority of UN Security Council resolutions. The Court was aware that UNMIK had introduced the European Convention on Human Rights into Kosovo law and expressly stated that the military and the civilian presence would be bound by its standards. But in a controversial decision, the Court concluded that because the actions were carried out under the authority of UN Security Council resolutions, they were attributable to the UN and not to the states in question.

Citing *Behrami*, the Court soon dismissed two other cases alleging violations by States Parties’ personnel in KFOR (*Gajic v. Germany*, *Kasumaj v. Greece*). Shortly thereafter, the UK House of Lords cited *Behrami* in dismissing an appeal brought by a British national held by British forces in detention facilities in Iraq without charge or trial since October 2004 (*Al-Jedda*). Though these decisions did not involve claims of gender-based rights violations, they close off an avenue for establishing accountability for such violations, until the judges are persuaded of a flaw in their reasoning.

Non-State Actors and the Human Rights Law Paradigm

To address gender-based rights violations, one must address conduct not only by states but also by non-state actors. Karima Bennouna has described the neglected gender dimensions of terrorism and the insufficient response of the human rights community to terrorism (Bennouna, 2008). UN Special Rapporteur on torture Manfred Nowak has remarked that ‘[d]e facto regimes and armed groups continue to commit acts amounting to torture, causing untold suffering’, but that ‘this practice has received comparatively little attention if contrasted to torture committed by state agents’ (Nowak, 2006: 3). One reason is that some human rights advocates have resisted

applying the human rights paradigm to non-state actor conduct. So invested are some in a state-centric model of human rights despite the terrible toll that terrorist acts have taken on women that they have ignored many appeals by women's rights groups, who have now simply written them off.

As for addressing human rights abuses by corporations, some of the UN treaty bodies have not only done so, but also have used the term 'violation' to describe what has taken place. Over a decade ago, for example, the Committee on Economic, Social and Cultural Rights stated in its review of the Russian Federation report in 1997 that it was 'alarmed' at reports 'that the economic rights of indigenous peoples are violated with impunity by oil and gas companies which sign agreements under circumstances which are clearly illegal' (para. 14). This statement was made, of course, in the context of the responsibility of the State Party to take adequate steps to protect these peoples from such exploitation, but it did signal the relevance of human rights treaties to addressing conduct by corporations.

The extent to which corporations can be held accountable under international law, however, is an ongoing area of contestation. So is the question of responding to terrorism as a human rights violation (Bennoune, 2008: 40–47). But if human rights are rights that we all hold by virtue of being human, then human rights law can and should provide protection against violations of those rights – not just by the state, but by any other powerholder. The *means* for establishing accountability may vary based on the status of the perpetrator as state or non-state actor, because there is not total overlap in the arenas in which these actors play, but that just requires adjusting the means to the actor; it should not mean jettisoning the very notion of holding perpetrators responsible.

Some Final Thoughts

Ignacio Saiz wrote in 2004 about the need to counter cultural justifications for human rights violations, to confront shortcomings in the legal interpretation of rights relating to sexual orientation and to lift the particular barriers facing those who defend these rights (Saiz, 2004: 50). These concerns continue, but as noted above, progress has been made in each of these areas.

Regarding cultural claims, the United Nations Population Fund has pointed out the erroneous assumption 'that every member of a culture thinks the same way'. Cultural change is driven in part by 'multiple expressions of internal resistance, out of which transitions emerge. The movement towards gender equality is a good example of this process at work' (UNFPA, 2008: 1).

As for methods for achieving rights protection and accountability for violations, the human rights movement has been adopting new approaches such as indicators, benchmarks, impact assessments and budgetary analysis. But as the UN Special Rapporteur on the right to health noted in his statement to the Human Rights Council in March 2007, if we are to progress further,

‘established human rights nongovernmental organisations [should] work on serious health and human rights issues, such as maternal mortality, just as vigorously as they campaign on disappearances, torture and prisoners of conscience’.

Such organizations have now begun to undertake reporting and campaigning on health and human rights issues. A recent example is the shadow report on maternal mortality in Nicaragua that Amnesty International submitted to the Committee on Economic, Social and Cultural Rights in 2008. The report examines maternal mortality and morbidity in Nicaragua in the context of the total ban on therapeutic abortion and the criminalization of abortion in 2006, and the obligation under Article 12 of the Covenant on Economic, Social and Cultural Rights to recognize ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. However, while Human Rights Watch issued a report in 2008 on ‘Peru: At-risk women denied legal abortions’ that documented the difficulties women face in getting access to abortion needed to save the life of the woman or avoid serious health risks, this serious challenge to women’s life and health is mentioned nowhere in Amnesty International’s 2007 report ‘Peru: Denial of the right to maternal and child health’. In light of the fact cited near the beginning of this article that maternal mortality has remained virtually unchanged since 1980s, NGOs that undertake campaigning on this problem must meet the challenges head-on and address all its race, class, and gender dimensions in order to maximize the opportunities for change that their involvement can create.

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