
**SOMEWHERE OVER THE RAINBOW. . .
INTERNATIONAL HUMAN RIGHTS
PROTECTIONS FOR SEXUAL MINORITIES
IN THE NEW MILLENNIUM**

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INTRODUCTION

Sexual relationships represent a fundamental element of individual identity and an intimate aspect of an individual's private life. Although there have always been—and will always be—people who engage in homosexual relationships and activities, being “gay” is a modern political concept that has emerged in response to the deprivation of rights on the basis of sexual orientation.¹ Sexual minorities² have made substantial

¹ CHUCK STEWART, *GAY AND LESBIAN ISSUES 1* (ABC-CLIO, Inc. 2003) (1951). See ERIC HEINZE, *SEXUAL ORIENTATION: A HUMAN RIGHT* 37 (Kluwer Academic Publishers 1995).

² For the purpose of this paper, sexual minority refers to all individuals who have been categorized based on sexual orientation, behavior, or gender identity. I will

progress in obtaining protections of their basic human rights in Australia, parts of Latin America, North America, South Africa and Western Europe,³ but discrimination on the basis of sexual orientation still persists throughout most of the developing world.⁴ Gay, lesbian, bisexual, or transgender (GLBT) relations are criminalized in over eighty-two nations,⁵ and the penalty for being gay often includes public humiliation, hard labor, confinement, torture, harassment, blackmail, spurious trials with no right to appeal or death.⁶ Very few of these laws, however, actually specify the type of conduct that is forbidden, and this lack of specificity allows states greater flexibility in implementing these laws.⁷ Further, many states disproportionately enforce sodomy laws, taking a stronger stance taken against homosexuals.⁸

Less visible forms of discrimination thrive in countries that have passed anti-discrimination legislation on behalf of sexual minorities. Indeed, many governments fail to enforce their anti-discrimination statutes,⁹ leaving GLBT individuals unable to exercise the same rights as their heterosexual counterparts.¹⁰ For instance, in November 2005, Brazil, a country leading the battle for GLBT rights,¹¹ censored the first televised gay kiss.¹² As a result, gay activists protested, including staging a rally advocating for legislation that would allow same-sex marriage.¹³ In February

interchange between the terms sexual minorities, GLBT individuals, and homosexuals. See James Wilets, Comment, *International Human Rights Law and Sexual Orientation*, 18 HASTINGS INT'L & COMP. L. REV. 1, 4 (1994).

³ Joydeep Sengupta, *How the UN Can Advance Gay Rights*, 10 GAY & LESBIAN REV. (Issue 6) 32, Nov. 1, 2003, available at 2003 WLNR 10982863.

⁴ See generally INT'L LESBIAN & GAY ASS'N, LEGAL SURVEY ON THE COUNTRIES IN THE WORLD HAVING LEGAL PROHIBITIONS ON SEXUAL ACTIVITIES BETWEEN CONSENTING ADULTS IN PRIVATE (2005-06), http://www.ilga.org/statehomophobia/LGBcriminalallaws-Daniel_Ottoson.pdf.

⁵ See generally *id.*

⁶ INT'L LESBIAN & GAY ASS'N, *supra* note 4; see also Sengupta, *supra* note 3.

⁷ See generally *id.*; see also Sebastian MacGuire, Comment, *The Human Rights of Sexual Minorities in Africa*, 35 CAL. W. INT'L L.J. 1, 5 (2004).

⁸ See Wilets, *supra* note 2, at 46-47.

⁹ See MacGuire, *supra* note 7, at 32.

¹⁰ See Holning Lau, *Sexual Orientation: Testing the Universality of International Human Rights Law*, 71 U. CHI. L. REV. 1689, 1704 (2004) (discussing explicit limitation of law in some American states). See also James D. Wilets, *The Human Rights of Sexual Minorities: A Comparative and International Law Perspective*, 22 HUM. RTS. 22, 24 (1995).

¹¹ Two Brazilian state constitutions contain protections against discrimination on the basis of sexual orientation. See CONSTITUIÇÃO ESTADO DE MATO GROSSO (1989); see CONSTITUIÇÃO ESTADO DE SERGIPE (1989).

¹² *Brazil Denied First Gay TV Kiss*, BBC NEWS INT'L VERSION, Nov. 6, 2005, <http://news.bbc.co.uk/2/hi/americas/4412240.stm>.

¹³ *Id.*

2005, in South Africa, another nation on the forefront of gay rights,¹⁴ the National Blood Services Organization issued a statement declaring that it would not accept blood donations from openly gay men.¹⁵ Additionally, the majority of states within the United States have not granted gay couples the same marriage, child custody or immigration rights as heterosexual couples.¹⁶

International human rights instruments mandate that human rights standards be applied without discrimination.¹⁷ Nevertheless, none of these documents explicitly outlaws discrimination on the basis of sexual orientation.¹⁸ Sexual minorities continue to fear the overwhelming threats of state-sanctioned persecution, and stronger international protections for gays and lesbians are necessary to achieve even the most fundamental human rights.

This Note examines using international law to promote human rights for sexual minorities. Admittedly, a multitude of rights exist which are critical to the lives and identities of sexual minorities.¹⁹ However, this Note focuses on the fundamental human rights important to sexual minorities in danger of state-sanctioned and extra-judicial persecution. The Note first discusses the history of the international GLBT rights movement and then presents some of the justifications that states have advanced for their persecution of sexual minorities. Second, the Note demonstrates the ways in which a major inter-governmental organization, the United Nations (“U.N.”), can advance human rights for GLBT individuals. Furthermore, the Note specifically examines those major international agreements which provide the greatest hope and protection for sexual minorities in danger of persecution, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and other

¹⁴ S. AFR. CONST. 1996; see CARL STYCHIN, *A NATION BY RIGHTS: NATIONAL CULTURES, SEXUAL IDENTITY POLITICS, AND THE DISCOURSE OF RIGHTS* 76-77 (Temple Univ. Press 1998); see Human Rights Watch, *South Africa: Murder Highlights Violence Against Lesbians*, HUMAN RIGHTS NEWS, Mar. 3, 2006, <http://hrw.org/english/docs/2006/03/02/safric12753.htm>.

¹⁵ MAHLATSE GALLEN, *SA Gays in Blood Flood Protest*, BBC NEWS INT’L VERSION, Jan. 13, 2006, <http://news.bbc.co.uk/2/hi/africa/4610196.stm>.

¹⁶ James Wilets, *Using International Law to Vindicate the Civil Rights of Gays and Lesbians in United States Courts*, 27 COLUM. HUM. RTS. L. REV. 33, 34 (1995); Laurence Helfer, *In Gay Rights, United States Lags Behind Much of the World*, INT’L HERALD TRIBUNE, June 13, 2003 at 8.

¹⁷ Debra DeLaet, *Don’t Ask, Don’t Tell: Where is the Protection Against Sexual Orientation Discrimination in International Human Rights Law?* 7 LAW & SEXUALITY 31, 32 (1997).

¹⁸ *Id.*

¹⁹ See generally International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), arts. 7, 10, 11, 13, U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

Cruel, Inhuman or Degrading Treatment or Punishment. Additionally, the Note explores the role that non-governmental organizations (“NGOs”) have played in advocating for GLBT individuals. Finally, the Note proposes amendments to the language of Brazil’s U.N. resolution on human rights for sexual minorities, taking into account the concerns of the bill’s primary critics, traditionally Islamic and Roman Catholic states.²⁰

HISTORY OF THE INTERNATIONAL GLBT RIGHTS MOVEMENT & HUMAN RIGHTS

The international gay rights movement has been marked by periods of advancement with matched regression. The first documented gay subcultures began to develop as early as the 1700s in London, Paris and Amsterdam,²¹ but it was not until 1869 that a Hungarian doctor, Karoly Maria Benkhert, introduced the term “homosexual” to classify dysfunctional sexual relations.²² Within two years, the word was incorporated into the New Prussian Penal Code, Paragraph 175 (“Paragraph 175”), which outlawed unnatural sexual acts between men, punishing the crime with a mandatory prison sentence of “no less than three years.”²³ In 1897, after a series of medical studies on homosexuality, German doctor Magnus Hirshfeld founded the Scientific Humanitarian Committee to challenge anti-gay discrimination and reform the law.²⁴ Later, in 1919, after mild attempts to spur a gay rights movement, Hirshfeld founded the Institut für Sexualwissenschaft (Institute for Sexual Research) to conduct further sexology studies.²⁵ When Hitler took power in 1933, he banned all gay rights organizations and ordered the demolition of the Institute and public book burnings of the Institute’s library archives,²⁶ and by 1935 the entire reform movement was quashed.²⁷ From 1939 to 1945, the government persecuted 50,000 to 70,000 men it identified as being gay and forced the men to wear pink triangles on their arms during the Nazi takeover of Germany.²⁸ Although the atrocities of WWII²⁹ served as the cat-

²⁰ Jeffrey A. Redding, *Human Rights and Homo-Sexuals: The International Politics of Sexuality, Religion, and Law*, 4 NW. J. INT’L HUM. RTS. 436, 437 (2006).

²¹ KENT GERARD & GERT HEKMA, *MALE HOMOSEXUALITY IN RENAISSANCE AND ENLIGHTENMENT EUROPE* 408 (Harrington Park Press 1989).

²² STEWART, *supra* note 1, at 2.

²³ GÜNTER GRAU, *HIDDEN HOLOCAUST* 65 (Fitzroy Dearborn 1995); *see generally* RICHARD PLANT, *THE PINK TRIANGLE* 206 (Henry Holt & Co. 1986).

²⁴ STEWART, *supra* note 1, at 2.

²⁵ *Id.* at 3.

²⁶ PLANT, *supra* note 23, at 107, 209-11.

²⁷ *See generally* GRAU, *supra* note 23, at 64-84.

²⁸ *Id.* at 264-69; *see also* Lambda GLBT Community Services, *Symbols of the Gay, Lesbian, Bisexual and Transgender Movements*, <http://www.qrd.org/qrd/www/orgs/aproject/symbols.htm> (last visited June 20, 2007); *see also* Andrew Wikholm,

alyst for a general international human rights movement, the gay rights movement failed to share in this momentum.³⁰ In West Germany, gay prisoners from WWII remained enslaved for twenty-four years as the government continued until 1969 to enforce Paragraph 175.³¹

In the United States, the aftermath of World War II stimulated modern gay activism.³² During this period, sociologist Alfred Kinsey published two reports, *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953), which indicated that many Americans exhibited a variety of sexual behaviors, including bisexuality and homosexuality.³³ These studies fueled McCarthyism³⁴ in the 1950s, during which sexual minorities served as scapegoats in anti-communist purges.³⁵ In the 1950s and 1960s, gay rights activists such as the Mat-

Gayhistory.com, *Germany Adopts P.175* (1999), <http://www.gayhistory.com/rev2/factfiles/ff1871.htm> (last visited June 22, 2007).

²⁹ Five million to six million Jews were killed in the Holocaust. The proportion of gay men persecuted is relatively small in comparison to the overall number of people persecuted. Still, it is noteworthy that sexual minorities continued to be victimized despite the development of an overarching international human rights movement. See Jewish Virtual Library, *Estimated Number of Jews Killed in the Final Solution* (2006), <http://www.jewishvirtuallibrary.org/jsource/Holocaust/killedtable.html>.

³⁰ DeLaet, *supra* note 17, at n.6 (citing RICHARD PLANT, *THE PINK TRIANGLE: THE NAZI WAR AGAINST HOMOSEXUALS* (1986)) (noting that the atrocities of World War II did not provide support for inclusion of sexual minorities in human rights movement); see also Sengupta, *supra* note 3.

³¹ PLANT, *supra* note 23, at 13; see also Lambda GLBT Community Services, *supra* note 28.

³² Sharon E. Debbage Alexander, *Romer v. Evans and the Amendment 2 Controversy: The Rhetoric and Reality of Sexual Orientation Discrimination*, 6 TEX. F. ON C.L. & C.R. 261, 268 (2002).

³³ See generally DONALD PORTER GEDDES, *ANALYSIS OF THE KINSEY REPORTS ON SEXUAL BEHAVIOR IN THE HUMAN MALE AND FEMALE* (Mentor Books 1954); see also THE KINSEY INSTITUTE FOR SEX, REPRODUCTION, AND GENDER, INC., *DATA FROM ALFRED KINSEY'S STUDIES* (1996-2006), <http://www.indiana.edu/~kinsey/research/ak-data.html>.

³⁴ A period of United States history, lasting from 1950-1954 named for Sen. Joe McCarthy, a Republican from Wisconsin. During this period, the American government actively accused individuals of being members of the American Communist Party and/or sympathizers of the Party. See generally Jeffrey P. Kelson, *The House Un-American Activities Visit Denver: A Cross Fire of Accusations*, 35 COLO. LAW. 89 (2006).

³⁵ See K.A. Cuordileone, *Politics in an Age of Anxiety: Cold War Political Culture and the Crisis in American Masculinity, 1949-1960*, 87 J. AM. HIST. 515, 520-21 (Sept. 2000); See, e.g., Williams White, *M'Carthy Asserts Budenz Names Red in Acheson Office*, N.Y. TIMES, Apr. 26, 1950 at 1, 3; *More Confusion*, N.Y. TIMES, Apr. 30, 1950 at E1; *Text of Memoranda Issued by McCarthy in Reply to Army Report*, N.Y. TIMES, Mar. 13, 1954, at 6; *Federal Vigilance of Perverts Asked*, N.Y. TIMES, Dec. 16, 1950 at 3; *107 U.S. Aides Ousted on Morals, Security*, N.Y. TIMES, Jul. 3, 1973, at 6.

tachine Society³⁶ and other “East Coast Homophile Organizations”³⁷ mobilized to provide services for GLBT individuals and urged the repeal of discriminatory treatment and legislation.³⁸

In June 1969, a police raid on the Stonewall Inn³⁹ provoked rioting by sexual and other minorities and served as a catalyst for the international gay rights movement.⁴⁰ Prior to 1969 there were few gay rights groups in the U.S., but within three months of the raid over fifty organizations formed, including the international Gay Liberation Front.⁴¹ Indeed, several other groups materialized in the United States and other Western countries.⁴² By 1973, after several years of protest, many gay rights organizations finally triumphed in their challenge to the American Psychiatric Association to remove homosexuality from the list of mental illnesses in the *Diagnostic and Statistical Manual of Mental Disorders*, a categorization that had previously supported the mistreatment of sexual minorities.⁴³

Modern international GLBT activism has focused mainly on the right to equality, the right to privacy and the right to sexual self-determination.⁴⁴ The movement peaked during the 1980s when the European Court on Human Rights held in two monumental cases that the criminalization of private adult sexual conduct violated the European Convention on Human Rights.⁴⁵ In both cases, the European Court balanced the individuals’ rights against the communities’ interest, holding that Irish

³⁶ Robert Trumbull, *Homosexuals Proud of Deviancy*, *Medical Academy Study Finds*, N.Y. TIMES, May 19, 1964 at 1.

³⁷ *Display Ad 80—No Title*, N.Y. TIMES, Aug. 23, 1963 at 26.

³⁸ *Homosexuals Stage Protest at Capital*, N.Y. TIMES, May 30, 1965 at 42; Lacey Fosburgh, *Thousands of Homosexuals Hold a Protest Rally in Central Park*, N.Y. TIMES, Jun. 29, 1970 at 1; see also Murray Schumach, *Morals: On the Third Sex*, N.Y. TIMES, May 7, 1967 at 223.

³⁹ Stonewall Inn was a gay bar in the East Village of New York City. Stonewall Bar and Club, *Welcome to Historic Stonewall*, <http://www.stonewall-place.com/stonewallinn.html> (last visited June 22, 2007).

⁴⁰ Jerry Lisker, *Homo Nest Raided, Queen Bees are Stinging Mad*, N.Y. DAILY NEWS, July 6, 1969 at M1.

⁴¹ See the ‘Gay’ People Demand their Rights, N.Y. TIMES, Jul. 5, 1970 at 100; Steven V. Roberts, *Homosexuals in Revolt*, N.Y. TIMES, Aug. 24, 1970 at 1.

⁴² STEWART, *supra* note 1, at 13.

⁴³ Richard D. Lyons, *Psychiatrists in a Shift, Declare Homosexuality No Mental Illness*, N.Y. TIMES, Dec. 16, 1973 at 24; see also Boyce Rensberger, *Psychiatrists Review Stand on Homosexuality*, N.Y. TIMES, Feb. 9, 1973 at 24; see also *Homosexuals Disrupt Psychiatrists’ Parley*, N.Y. TIMES, May 15, 1970 at 38; see also *The Issue is Subtle, The Debate is Still On*, N.Y. TIMES, Dec. 23, 1973 at 109.

⁴⁴ Kristen Walker, Comment, *Evolving Human Rights Norms Around Sexuality*, 6 ILSA J. INT’L & COMP. L. 343, 351 (2000).

⁴⁵ *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser A.) (1981); *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser A.) (1988), available at <http://www.worldlii.org/eu/cases/ECHR/1988/22.html>; see also Walker, *supra* note 44, at 344.

and British sodomy laws infringed on the most intimate aspect of the plaintiffs' private lives, and, as a result, the laws could not be upheld as "necessary in a democratic society."⁴⁶ Other nations took notice of the decisions and began to rely on them in litigation pertaining to their respective sodomy laws.⁴⁷

The last twenty years have signaled some success in the international gay rights movement. In the early 1990s, the World Health Organization voted to remove homosexuality from the *International Classification of Diseases*.⁴⁸ In 1992, the first openly gay man addressed the U.N.'s Sub-Commission on the Prevention of Discrimination and Protection of Minorities,⁴⁹ requesting recognition of equal rights protections for sexual minorities.⁵⁰ Two years later, in *Toonen v. Australia*, the United Nations Human Rights Committee held that Tasmania's law criminalizing same-sex sexual activity violated international equal protection and privacy norms.⁵¹ In 2003, with the support of twenty-six other states, Brazil introduced a U.N. resolution that would have granted sexual minorities international human rights protections.⁵² Yet, the resolution failed⁵³ after more than a year of amendments to the document's language and great

⁴⁶ See, e.g., Norris, 142 Eur. Ct. H.R. (ser A.).

⁴⁷ B. v. France, 40 Eur. Ct. H.R. (ser A.) (1992); Dudgeon, 45 Eur. Ct. H.R. (ser A); Lawrence v. Texas, 539 U.S. 558, 573 (2003) (Kennedy, J., majority) (rejecting the Court's reasoning in *Bowers v. Hardick* as inconsistent with European Court on Human Rights decision in *Dudgeon v. United Kingdom*).

⁴⁸ See Richard Isay, *Let Civility Reign in Homosexuality Debate; Removing the Stigma*, N.Y. TIMES, Sept. 2, 1992 at A18.

⁴⁹ In 1999, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities was renamed the Sub-Commission on the Promotion and Protection of Human Rights. Office of the U.N. High Comm'r for Human Rights, *Sub-Commission on the Promotion and Protection of Human Rights*, (Aug. 7-25, 2006) available at <http://www.ohchr.org/english/bodies/subcom/>.

⁵⁰ Canadian Professor Douglas Sanders issued a statement on the human rights of gay and lesbian people to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its 44th Annual Session on August 6, 1992 in Geneva, Switzerland. See Douglas Sanders, Int'l Gay & Lesbian Ass'n, *First Gay Speaks at United Nations*, ILGA FILES, June 8, 1992, http://www.ilga.org/news_results.asp?LanguageID=1&FileID=405&ZoneID=7&FileCategory=1 (last visited Apr. 7, 2006).

⁵¹ *Toonen v. Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Opinion (Apr. 4, 1994), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d22a00bcd1320c9c80256724005e60d5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d22a00bcd1320c9c80256724005e60d5?Opendocument).

⁵² Int'l Gay & Lesbian Human Rights Comm'n, *Resolution on Sexual Orientation and Human Rights*, http://www.iglhrc.org/files/iglhrc/program_docs/actionkitfinal%5B1%5D.doc.pdf (last visited Mar. 3, 2006).

⁵³ Within the last decade, however, the Vatican has aligned with Islamic groups to prevent the discussion of GLBT issues at international human rights and women's rights conferences. See Sengupta, *supra* note 3, at 32.

resistance by other nations.⁵⁴ In 2006, the United States aligned itself with Iran, Sudan, China and Cuba to block consultative status⁵⁵ for gay and lesbian non-governmental organizations in the United Nations.⁵⁶ Thus, sexual minorities have made some—albeit limited—progress in obtaining recognition of their human rights on an international front. As evidenced by the current condition of state-sanctioned persecution against sexual minorities, discrimination will continue until international bodies take a stronger position in exposing fundamental human rights violations and guaranteeing such rights to all individuals, regardless of sexual orientation.

STATE-SANCTIONED AND EXTRA-JUDICIAL PERSECUTION OF SEXUAL MINORITIES

In order to effectively combat discrimination against sexual minorities, the legal justifications offered by various states to support their anti-gay stance must be understood. Generally, many current laws criminalizing same-sex relations relate directly to their enacting country's history. For example, during Stalin's era, the former Soviet Republic passed laws prohibiting sodomy in order to raise the declining birth rate in the face of World War II.⁵⁷ In January 2004, Uzbekistan employed these very laws to imprison and subject a gay rights activist to extreme abuse, including the threat of rape with a bottle.⁵⁸

Similarly, all Asian nations that were former British colonies have had sodomy laws that can be traced to colonization.⁵⁹ India, Maldives, Burma

⁵⁴ Int'l Gay & Lesbian Human Rights Comm'n, *supra* note 52.

⁵⁵ Consultative status is the only official means by which non-governmental organizations (NGOs) can influence and participate in discussions among member states at the United Nations. Although approximately 3,000 organizations have consultative status, only two groups are GLBT rights organizations, the Coalition of Activist Lesbians and International Wages Due Lesbians. See NGOs IN CONSULTATIVE STATUS WITH ESOSO (2005), available at http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf.

⁵⁶ Warren Hoge, *Rights Groups Fault U.S. Vote in U.N. on Gays*, N.Y. TIMES, Jan. 27, 2006, at A6; see also Human Rights Watch, *United Nations: U.S. Aligned with Iran in Anti-Gay Vote*, HUMAN RIGHTS NEWS, Jan. 25, 2006, <http://www.hrw.org/english/docs/2006/01/25/iran12535.htm>.

⁵⁷ Michael Spector, *Gay Russians Are Free Now But Stay in a Fearful Closet*, N.Y. TIMES, July 8, 1995, at 1; see also GLBTQ: An Encyclopedia of Gay, Lesbian, Bisexual, Transgender, Queer Culture, Russia, *Stalinism a "Great Retreat" from Bolshevism?* <http://www.glbtc.com/social-sciences/russia,6.html> (last visited Apr. 8, 2006).

⁵⁸ *Uzbekistan: Release Imprisoned Rights Defender: Soviet-Era Sodomy Law Used to Retaliate Against Dissenter*, HUMAN RIGHTS NEWS (Jan. 14, 2004), available at <http://hrw.org/english/docs/2004/01/14/uzbeki6927.htm>.

⁵⁹ China, Mongolia, Japan, Korea and Thailand have never had sodomy laws. Vietnam, Cambodia, Laos, Indonesia, East Timor, Macao and the Philippines were

and Nepal still have prohibitions on sodomy reminiscent of British colonization which continue to endanger GLBT individuals and activists.⁶⁰ In August 2005, Human Rights Watch accused the Nepalese police of mistreating thirty-nine members of the Blue Diamond Society, an organization that campaigns for gay rights under these laws.⁶¹ Again, in January 2006, police in India detained men from two HIV/AIDS outreach organizations, the Naz Foundation International and Bharosa Trust, for forty-seven days in atrocious conditions.⁶² Although the police arrested the activists consistent with India's sodomy laws, India released the men after pressure from international human rights groups.⁶³

Many Caribbean and African nations' legal frameworks also bear traces of colonization and European-imposed sodomy laws that are used to justify mistreatment against GLBT individuals.⁶⁴ In November 2005, Cameroonian officials forced gay men to undergo physical forensic exams to prove that they had engaged in homosexual conduct.⁶⁵ In Zimbabwe, government officials recently outlawed a radio talk show which was aimed at promoting gay rights and educating the public that "homosexuality is not a white man's disease."⁶⁶ Jamaican laws punish sodomy with a sentence of up to ten years in jail, and the police are often violent against

colonized by European powers. However, because French colonized these countries, they do not have anti-homosexual laws. Hong Kong, which was colonized by the British, had a sodomy law which was repealed in 1991. Yax 350, *The Map's Tale*, http://www.yawningbread.org/arch_2004/yax-350.htm (last visited Apr. 13, 2007).

⁶⁰ Unnatural Offenses Act, No. 45 of 1870, INDIA PEN. CODE (1860); Penal Code of 1960 (Maldives); Penal Code, Act 45/1860, Volume VIII, § 37 (Myan.); Muluki Ain Revised Edition 1963, ch. 16, part 4 (Nepal).

⁶¹ *Human Rights Watch Nepal Gay Plea*, BBC NEWS INT'L VERSION, Aug. 12, 2004, http://news.bbc.co.uk/2/hi/south_asia/3557794.stm; Human Rights Watch, *Nepal: 'Sexual Cleansing' Drive Continues*, HUMAN RIGHTS NEWS, Mar. 16, 2006, <http://hrw.org/english/docs/2006/03/17/nepal13020.htm>.

⁶² Human Rights Watch, *India: Repeal Colonial Sodomy-Law: Entrapment, Arrests Harms AIDS Prevention Workers*, HUMAN RIGHTS NEWS (Jan. 11, 2006), available at <http://hrw.org/english/docs/2006/01/11/india12398.htm>.

⁶³ *Id.*

⁶⁴ See MacGuire, *supra* note 7, at 3-4; see Willets, *supra* note 2, at 66. Katherine Williams, *Gay Sex Prosecuted Worldwide*, THE ADVOCATE (Dec. 13, 2000), available at <http://www.planetout.com/pno/news/article.html?2000/12/13/3>.

⁶⁵ Cameroon was colonized by the British and the French. U.S. Department of State, Background Note: Cameroon, <http://www.state.gov/r/pa/ei/bgn/26431.htm> (last visited Apr. 13, 2007). Human Rights Watch, *Letter to the Minister of Justice of Cameroon*, HUMAN RIGHTS NEWS (Nov. 30, 2005), available at <http://hrw.org/english/docs/2006/01/03/camero12355.htm>.

⁶⁶ *Gays Have it Tough in Africa- Zim Activist*, INDEPENDENT ONLINE SOUTH AFRICA, July 7, 2006, http://www.iol.co.za/index.php?set_id=1&click_id=84&art_id=QW1152269460949B254.

openly gay men.⁶⁷ Lloyd Ellis, the Chair of Jamaica's Public Complaints Authority, has excused the police attacks on sexual minorities, maintaining that if the police have abused GLBT individuals, they have done so as citizens and out of necessity.⁶⁸ Clearly, sodomy laws have been—and continue to be—used to further discrimination against sexual minorities.

As secularization of religious societies continues to expand, various states' moral objections to sexual minorities receive increasing criticism on a global scale.⁶⁹ Fundamentally, the 1994 U.N. decision in *Toonen v. Australia* bars arguments for the criminalization of homosexuality on the basis of morality.⁷⁰ Still, because many international law instruments do not confer rights in absolute terms, many states claim that the terms of international agreements which would protect sexual minorities are inapplicable.⁷¹ As such, the de-criminalization of homosexuality has yet to trickle down to the rest of the developing world.

Other states have claimed to criminalize homosexuality as a way of controlling the spread of HIV/AIDS.⁷² In 2004, while recognizing the interference with the right to privacy and family life, India rejected a reform of its sodomy law out of a concern for public health.⁷³ In 2002, a Human Rights Watch issued a report on India's colonial anti-sodomy laws as an obstacle to the NGO's AIDS prevention efforts.⁷⁴ In the Caribbean, sexual minorities have been afraid to request treatment for HIV/AIDS because there are laws criminalizing same-sex conduct.⁷⁵ The Jamaican parliament has considered reforming the nation's sodomy laws, which human rights organizations see as contributing to a rising AIDS rate.⁷⁶ The United Nations Human Rights Committee, however, has proposed that there is no link between the criminalization of such activity

⁶⁷ *The Americas: AIDS in Jamaica: The Fear that Spreads Death*, THE ECONOMIST, Nov. 27, 2004, at 66.

⁶⁸ *Id.*

⁶⁹ Robert Ermanski, Comment, *A Right to Privacy for Gay People Under Human Rights Law*, 15 B.C. INT'L & COMP. L. REV. 141, 160 n.175 (1992).

⁷⁰ *Toonen*, *supra* note 51 ¶¶8.5-8.6.

⁷¹ See generally Professor Douglas Sanders, *Human Rights and Sexual Orientation in the Developing World*, ILGA FILES, July 7, 2005, http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&ZoneID=7&FileID=577.

⁷² See Wilets, *supra* note 16, at 38.

⁷³ Ben Townley, *India Rejects Challenge to Anti-gay Law*, QUEER LESBIAN GAY NEWS (Sept. 4, 2004), available at <http://www.gay.com/news/article.html?2004/09/07/3>.

⁷⁴ Human Rights Watch, *India: Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, HUMAN RIGHTS NEWS (July, 2002), available at <http://www.hrw.org/reports/2002/india2/india0602.pdf>.

⁷⁵ U.N. Official: *Caribbean Official Must Relax Anti-Gay Laws*, THE ADVOCATE (Dec. 2001), available at <http://www.sodomylaws.org/world/wonews015.htm>.

⁷⁶ Zadie Neufville, *Rights-Jamaica: Gov't May Repeal Anti-Gay Laws*, INTER-PRESS SERVICE AGENCY NEWS (Aug. 5, 2006), available at <http://www.ipsnews.net/news.asp?idnews=29793>.

and the spread of HIV.⁷⁷ Rather, the Committee found that the marginalization of GLBT individuals seriously undermines public health initiatives because GLBT individuals are afraid to seek treatment.⁷⁸

Another growing international trend demonstrates that sexuality serves as a scapegoat for other contested issues and government frustration regarding Western influence.⁷⁹ For instance, Zimbabwe's President, Robert Mugabe, has publicly chastised homosexuals for the nation's damaged economy and political anarchy.⁸⁰ In Egypt, homosexuals are accused of foreign espionage which has resulted in a number of arrests.⁸¹ In June 2000, at a U.N. General Assembly meeting, a delegate from Pakistan expressed outrage that representatives from Western nations were supporting the inclusion of sexual orientation in anti-discrimination provisions.⁸² Even China, which is not a developing nation, depicts homosexuality as a malignant symbol of Western influence.⁸³

The majority of states that persecute GLBT individuals violate international agreements that offer human rights protections for all individuals.⁸⁴ GLBT individuals have much to contribute to educational, social, professional and cultural aspects of their societies.⁸⁵ State governments must realize that in addition to violating human rights standards, the refusal to recognize sexual identity stifles the overall progress of their nations by silencing a segment of the population. Activists must use international agreements to advance claims for basic human rights protections so that sexual minorities may ultimately enjoy other rights and privileges with

⁷⁷ Wilets, *supra* note 16, at 38-39.

⁷⁸ *See id.*

⁷⁹ Scott Long, *Egypt Human Casualties of the Culture Wars*, GAY & LES. REV. Vol. 11, Issue 3 (2004).

⁸⁰ *See id.*; see also MacGuire, *supra* note 7, at 3-4; Cris Chinaka, *Mugabe Takes Another Shot at West—and Gays*, ZWNEWS.COM, <http://www.zwnews.com/issuefull.cfm?ArticleID=13888> (last visited June 22, 2007); *Iden Wetherell, Gay Bashing in Zimbabwe: I-Mugabe's Unholy War*; Southern African Report Vol. 11 No. 4 (July 1996) at 11, available at <http://www.africafiles.org/article.asp?ID=3877>; AMNESTY INTL. PUBLICATIONS, ANNUAL REPORT 2000: ZIMBABWE, at <http://web.amnesty.org/report2000/countries/019419745438547f802568f200552987?OpenDocument>.

⁸¹ Long, *supra* note 79.

⁸² Professor Douglas Sanders, *Human Rights and Sexual Orientation in International Law*, Int'l GAY & LESBIAN ASS'N FILES: U.N. COMM'N ON HUMAN RIGHTS (Nov. 5, 2005), available at http://ilga.org/news_results.asp?LanguageID=1&FileCategoryID=44&FileID=577&ZoneID=7.

⁸³ Mageswary Ramakrishnan, *Homosexuality is a Crime Worst Than Murder*, TIMEASIA (Sept. 26, 2000), available at <http://cgi.cnn.com/ASIANOW/time/features/interviews/2000/09/26/int.malay.gay2.html>.

⁸⁴ *See* DEPT. OF PUBLIC INFORMATION UNITED NATIONS, BASIC FACTS ABOUT THE UNITED NATIONS 3 (United Nations Publication 1992; see, e.g., INT'L LESBIAN & GAY ASS'N, *supra* note 4).

⁸⁵ PSYCHOLOGICAL PERSPECTIVES ON LESBIAN, GAY, AND BISEXUAL EXPERIENCES 736 (Linda D. Carnals & Douglas Kimmels eds. 2003).

respect to employment, marriage, housing, and education to name a few.⁸⁶

THE UNITED NATIONS

The U.N. has served as a principal organ of international human rights protections since the end of World War II.⁸⁷ Currently, 191 member states from various parts of the world comprise the organization.⁸⁸ Drafted in San Francisco on June 6, 1945, the United Nations Charter (“U.N. Charter” or “Charter”) creates a set of legal obligations for members and grants the U.N. the authority to create a body of aspirational principles in international human rights law.⁸⁹ Among the named ideals are international cooperation in diplomatic relations between nations, the promotion of social development, respect for justice and international law, the suppression of war, and guarantees of fundamental human rights.⁹⁰ Since member states have agreed to the terms set forth in the U.N. Charter, the U.N. can enforce authority over nations that fail to comply with the U.N. directives as set forth in the organization’s documents and instruments.⁹¹

The Charter repeatedly and explicitly mandates that member states grant fundamental human rights and equality to all individuals.⁹² For instance, the Preamble to the Charter states that one of the goals of the United Nations is to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women. . . .”⁹³ The Preamble also states that the U.N. will establish “conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”⁹⁴ Further, Article 1 of the Charter provides that one of the goals of the U.N. is to “promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁹⁵ Similarly, with respect to international economic and social development, Article 55 of the Charter states that the U.N. shall “promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or

⁸⁶ See generally International Covenant on Economic, Social and Cultural Rights, *supra* note 19.

⁸⁷ See DEPT. OF PUBLIC INFORMATION UNITED NATIONS, *supra* note 84.

⁸⁸ United Nations, List of Member States, available at <http://www.un.org/OverView/unmember.html> (last visited Mar. 4, 2006).

⁸⁹ See U.N. Charter art. 2, para. 4.

⁹⁰ *Id.*; see also DEPT. OF PUBLIC INFORMATION UNITED NATIONS, *supra* note 84.

⁹¹ See U.N. Charter arts. 5, 6.

⁹² U.N. Charter pmb. l.

⁹³ *Id.*

⁹⁴ See *id.*

⁹⁵ U.N. Charter art. 1, para. 3.

religion.”⁹⁶ All member states agree to support the U.N. when the organization takes action under the principles set forth in the Charter,⁹⁷ and member states also agree to take joint and separate action towards the goals set forth in Article 55.⁹⁸

As such, by including language that outlaws gender discrimination, the U.N. Charter establishes the U.N. as an international organization that is capable of providing human rights protections for sexual minorities.⁹⁹ When sexual minorities are marginalized because they fail to comply with traditional gender identity roles and expression, this disparate treatment constitutes a form of gender discrimination.¹⁰⁰ Since the Charter repeatedly and explicitly states that individuals should not be discriminated against on the basis of gender, the U.N. must recognize sexual minorities in its protections.¹⁰¹ Although this interpretation may be broader than the traditional understandings of gender discrimination, the U.N. has already expanded other terms, including “family,” to encompass the different cultural, social, and psychological structures that have evolved since various agreements were first enacted.¹⁰²

Within the past twelve years, the U.N. has demonstrated efforts to recognize sexual minorities under the term “sex.”¹⁰³ In *Toonen*, the U.N. Human Rights Committee explicitly stated that the term “sex” includes sexual orientation.¹⁰⁴ The Committee, however, has not taken action

⁹⁶ *Id.* art. 55.

⁹⁷ *Id.*

⁹⁸ *See id.* art. 56.

⁹⁹ U.N. Charter art. 55.

¹⁰⁰ *See* Press Release, The Queer Youth Alliance, U.N. Resolution on Sexual Orientation (May 23, 2004), available at <http://www.queeryouth.org.uk/phpnews/news.php?action=fullnews&id=33>.

¹⁰¹ *See* Maria Sophia Aguirre & Ann Wolgram, *United Nations Policy and the Family: Redefining Ties that Bind a Study of History, Forces and Trends*, 16 *BYU J. PUB. L.* 113, 128-129 (2002).

¹⁰² International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, *Finale Program of Action Agreed to in Cairo*, ¶ 5.1, U.N. Doc. A/CONF.171/13 (Oct. 18, 1994), available at <http://www.iisd.ca/Cairo/program/p05001.html>; *see generally* Fourth World Conference on Women, Beijing, P.R.C., Sept. 4-15, 1995, *Report of the Fourth World Conference on Women*, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995), available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a—20.en>; *see also* Aguirre & Wolgram, *supra* note 101.

¹⁰³ *See generally* STEWART, *supra* note 1; *see also* U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee: Poland*, ¶ 23, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999), available at <http://www.unhchr.ch/tbs/doc.nsf/0/a61db0e519524575802567c200595e9c?Opendocument>. *see also* U.N. Econ. & Soc. Council [ECOSOC], Working Group on Arbitrary Detention, *Civil and Political Rights, Including Torture and Detention*, ¶ 27, U.N. Doc. E/CN.4/2003/8/Add.1 (Jan. 24, 2003).

¹⁰⁴ *Toonen*, *supra* note 51; Sanders, *supra* note 71.

against states that fail to comply with their directives.¹⁰⁵ Since member states have already pledged to support U.N. action in upholding Charter ideals,¹⁰⁶ the U.N. should take a stronger position to include anti-discrimination measures on the basis of gender. With stronger enforcement, member states would not have as much room to interpret agreements to allow persecution of GLBT individuals. Additionally, member states would be required to take action against those states that committed such violations.¹⁰⁷

Clearly, sexual minorities would gain greater protection if the U.N. amended the Charter to include language that explicitly protects sexual minorities.¹⁰⁸ However, in April 2005, the membership tabled Brazil's proposed resolution, "Human Rights and Sexual Orientation,"¹⁰⁹ which would have elevated anti-discrimination measures on behalf of sexual minorities to international human rights status.¹¹⁰ Speaking on behalf of thirty-two countries, a representative from New Zealand stated that the United Nations was not ready to address the issue of sexual orientation.¹¹¹ Sexual minorities will have to rely on language already contained in the Charter and other U.N. instruments to protect their fundamental human rights.¹¹² Advocates of human rights for sexual minorities must continue to revamp the U.N. resolution, addressing various member states' concerns to ensure that systematic persecution against sexual minorities is challenged on the international level. Otherwise, as evi-

¹⁰⁵ ECOSOC, *supra* note 103.

¹⁰⁶ See U.N. Charter art. 2, para. 4.

¹⁰⁷ See U.N. Charter art. 25.

¹⁰⁸ In order to amend the Charter, the General Assembly of the U.N. must pass the resolution by two-thirds vote, which must include the five permanent members to the Security Council, the United States, France, China, the United Kingdom and the Russian Federation. Gopal Policy Forum, *United Nations: Status of Alternative Revenue Raising Proposals*, <http://www.globalpolicy.org/finance/alternat/us.htm> (last visited Apr. 14, 2007).

¹⁰⁹ ECOSOC, Comm'n on Human Rights, *Human Rights and Sexual Orientation*, U.N. Doc. E/CN.4/2003/L.92 (Apr. 17, 2003); see also South Asians Take Gay Struggle to the UN, *infra* note 112; Gay Rights Go Global, *infra* note 112.

¹¹⁰ See Int'l Lesbian & Gay Ass'n, *Permanent Mission of Brazil to the United Nations: Brazil Postpones Debate over Resolution on Sexual Orientation*, ILGA FILES (Mar. 29, 2004), available at http://www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=44&FileID=263&ZoneID=5.

¹¹¹ Press Release, Amnesty International, U.N. Commission on Human Rights: Overview of Developments at the 61st Session (Apr. 22, 2005), available at <http://news.amnesty.org/index/ENGIOR410462005>.

¹¹² See *South Asians Take Gay Struggle to the UN*, <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=X-157-18545>; *Gay Rights Go Global*, WORLDNETDAILY, Feb. 5, 2004, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=36938 (last visited June 22, 2007).

denced by current practice, without global exposure and scrutiny, such atrocities will continue to occur, especially in the developing world.

THE UNITED NATIONS INTERNATIONAL BILL OF RIGHTS

In 1946, the United Nations created the Commission on Human Rights to promote human rights according to Article 68 of the U.N. Charter.¹¹³ As a result, the Commission drafted the International Bill of Human Rights,¹¹⁴ which includes the Universal Declaration of Human Rights (“Declaration”),¹¹⁵ the International Covenant on Economic, Social and Cultural Rights (“ICESC”),¹¹⁶ the International Covenant on Civil and Political Rights (“ICCPR” or “Covenant”),¹¹⁷ and two Optional Protocols to the ICCPR which allow individuals to bring complaints to the U.N. Human Rights Committee.¹¹⁸ The Declaration sets forth the guiding principles of international law while ICESC and ICCPR delineate various rights and their respective limitations.¹¹⁹ The International Bill of Rights is composed of several documents and was drafted as a way to further U.N. goals through social and economic measures.¹²⁰

¹¹³ The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions. Office of the High Comm’r of Human Rights, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, <http://www.unhchr.ch/html/menu6/2/fs2.htm> (last visited Mar. 1, 2007).

¹¹⁴ *Id.*

¹¹⁵ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), *available at* <http://www.unhchr.ch/udhr/lang/eng.pdf>.

¹¹⁶ *See generally* International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

¹¹⁷ International Covenant on Civil and Political Rights arts. 6, 9.1, G.A. Res. 2200A (XXI), at 21, U.N. GAOR Supp. (No. 16), U.N. Doc A/6316 (Dec. 16, 1966), *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹¹⁸ Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966), Res. 2200A (XXI), U.N. GAOR Supp. (No. 16), U.N. Doc A/6316 (Dec. 16, 1966); Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, GA Res. 44/128, annex, 44 UN GAOR Supp. No. 49 at 207, UN Doc. A/44/49 (1989).

¹¹⁹ *See* Original Protocol, *supra* note 118; Second Optional Protocol, *supra* note 118.

¹²⁰ *See* U.N. Charter art. 2, para. 4.

THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1948, the United Nations General Assembly adopted The Universal Declaration of Human Rights,¹²¹ which asserts that all human beings are “entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status* (emphasis added).”¹²² The Universal Declaration also provides unequivocal equal protection for all individuals with regards to all rights included in the Declaration.¹²³ The Universal Declaration of Human Rights, however, is merely a resolution; it is not binding as treaty law on U.N. member states.¹²⁴ Nonetheless, the Universal Declaration may be binding as customary international law¹²⁵ because its principles have been accepted into practice by various organizations, courts and countries.¹²⁶

The Universal Declaration of Human Rights enunciates several civil, political, social, cultural and economic rights that are fundamental to all individuals. These rights include the right to life, liberty and security of the person; the right to equal protection and non-discrimination; the right to a fair trial; the right against arbitrary interference with privacy; freedom of movement; the right to family; the right to property; freedom of religion, freedom of assembly; the right to choose employment; the right to an adequate standard of living, medical care and education; and the right to participate in the cultural life of the community.¹²⁷ The Universal Declaration also protects those human rights that have proved particularly essential to sexual minorities in danger of persecution, including protections against slavery, torture, detention and other cruel, inhumane, or degrading treatment, since these are the most extreme forms of state-sanctioned discrimination.¹²⁸

¹²¹ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, 72 U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), available at <http://www.unhchr.ch/udhr/lang/eng.pdf>.

¹²² *Id.* art 2.

¹²³ *Id.* art. 7.

¹²⁴ Office of the High Comm’r of Human Rights, Universal Declaration of Human Rights, <http://www.unhchr.ch/udhr/miscinfo/carta.htm> (last visited Mar. 11, 2007).

¹²⁵ Customary international law refers to legal norms that have been developed by states through practice over time. Legal obligations may arise where states have not rejected conduct. Customary international law is distinguished from treaty law, which is based on explicit agreements to assume obligations. As such, customary international law is regarded as secondary to treaty law. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102 (1987).

¹²⁶ DeLaet, *supra* note 17, at 36; see Wilets, *supra* note 2, at 11.

¹²⁷ Universal Declaration of Human Rights, *supra* note 121, arts. 3, 7, 10, 12, 13, 16, 17, 18, 20, 23, 25, 26, 27; see also DeLaet, *supra* note 17, at 36; see generally Wilets, *supra* note 2.

¹²⁸ See Wilets, *supra* note 2, at 11.

Given that the Universal Declaration of Human Rights explicitly provides protection to individuals of “other status,” the document already affords some degree of protections to sexual minorities.¹²⁹ Almost every clause begins with the word “everyone,” conferring positive rights on all human beings.¹³⁰ This interpretation finds support in past U.N. conferences, where the term “other status” has been deliberately included to provide anti-discrimination measures for sexual minorities.¹³¹ For instance, in 1996, in creating a Global Plan of Action with respect to housing, the U.N. incorporated the term “other status” to ensure that sexual minorities would have equal access to shelter and basic services.¹³² A year later, at a Special Session on HIV/AIDS, Muslim nations compromised after extensive debate with Western nations regarding the inclusion of gay men, by including the language, “those at risk [of the disease] due to sexual practice” in AIDS prevention efforts.¹³³ Adopted in 2001, a Special Rapporteur on Extra-judicial, Summary, or Arbitrary Executions continues to be the only resolution adopted by the U.N. Human Rights Commission with an explicit reference to sexual orientation.¹³⁴

Despite the Declaration’s general non-discrimination position, Article 29 does contain language that states might use to circumvent the application of various freedoms to sexual minorities.¹³⁵ The Declaration states that individuals will be guaranteed protection provided they meet “the just requirements of morality, public order and the general welfare in a democratic society.”¹³⁶ Since many states persecute GLBT individuals on moral grounds, these states can reference this language to prevent international intervention on behalf of sexual minorities.¹³⁷ Further, general state practice and the *travaux préparatoires*¹³⁸ with respect to certain

¹²⁹ Universal Declaration of Human Rights, *supra* note 121, art. 2.

¹³⁰ See Universal Declaration of Human Rights, *supra* note 121.

¹³¹ See United Nations Conference on Human Settlements: Habitat II Summit, Istanbul, Turkey, June 3-14, 1996, *The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action*, ¶¶ 27, 40(j), 61(a), U.N. Doc A/S-25/3.

¹³² *Id.* ¶61a.

¹³³ Sanders, *supra* note 71.

¹³⁴ *Id.* The Special Rapporteur on Extra-Judicial, Summary, or Arbitrary Executions contains language which prohibits the death penalty on the basis of sexual orientation. See 22 U.N. Doc. E/CN.4/1999/39, available at http://www.extrajudicial.executions.org/reports/E_CN_4_1999_39.pdf.

¹³⁵ See Universal Declaration of Human Rights, *supra* note 121, art. 29.

¹³⁶ *Id.* art. 29.2.

¹³⁷ *Id.*

¹³⁸ *Travaux préparatoires* refers to drafting papers of international treaties. BLACK’S LAW DICTIONARY 1538 (8th ed. 2004).

rights indicate that the states' original intention was that certain rights be limited to heterosexuals.¹³⁹

Advocates for GLBT rights, however, can refute discrimination based on moral grounds in light of Article 29 of the Declaration and the *Toonen* decision. For instance, Article 30 of the Declaration states that no provision of the Declaration will be interpreted by any state or person to deprive an individual of any of the rights set forth included in the Declaration.¹⁴⁰ Therefore, states cannot exploit Article 29 to deprive sexual minorities of basic human rights guaranteed by the Declaration. While some critics may scrutinize whether certain rights are "fundamental human rights," offending states that are member states to the United Nations have already conceded that the aforementioned rights should receive protection by becoming parties to terms of the U.N. agreements and international treaties.

THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant for Civil and Political Rights, entered into force in 1976, creates a binding legal obligation to observe the treaty provisions on all states that have ratified the treaty.¹⁴¹ The ICCPR includes most of the civil and political rights contained in the Declaration. The Covenant established a Human Rights Committee ("Committee") which considers reports submitted by state parties on the ways to implement the Covenant's provisions.¹⁴² The Committee may also receive communications from other states when a party is not fulfilling its obligations under the Covenant.¹⁴³

The ICCPR serves as the most effective instrument for GLBT activists in the struggle for human rights. The ICCPR explicitly guarantees the right to "life,"¹⁴⁴ and "liberty and security of the person"¹⁴⁵ as enunciated

¹³⁹ See Human Rights Comm., Communication No. 902/1999: New Zealand, ¶3.3, U.N. Doc CCPR/C/75/D/902/1999 (Jul. 30, 2002), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e44ccf85efc1669ac1256c37002b96c9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e44ccf85efc1669ac1256c37002b96c9?Opendocument).

¹⁴⁰ Universal Declaration of Human Rights, *supra* note 121, art. 30.

¹⁴¹ University of Minnesota Human Rights Library, <http://www1.umn.edu/humanarts/instree/b3ccpr.htm> (last visited Mar. 11, 2007). 152 states have ratified the treaty. See OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL HUMAN RIGHTS TREATIES (June 9, 2004), <http://www.unhchr.ch/pdf/report.pdf>; Christopher Harland, *The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey Through UN Human Rights Committee Documents*, 22 HUM. RTS. QTR.188 (2000).

¹⁴² See Harland, *supra* note 141.

¹⁴³ *Id.*

¹⁴⁴ International Covenant on Civil and Political Rights art. 6.1, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (No. 16), U.N. Doc A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

in the Universal Declaration of Human Rights by stating that no person “shall be subjected to arbitrary arrest or detention”¹⁴⁶ or “deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹⁴⁷ The ICCPR also states that an individual shall be allowed the right to trial before a court if she is deprived of liberty and shall be treated with dignity while in prison.¹⁴⁸ Additionally, an individual who has been the victim of unlawful arrest or detention has an enforceable right to compensation.¹⁴⁹

States that execute sexual minorities or condone violence by other parties against sexual minorities deny these individuals the most basic right to life in violation of the ICCPR and the Universal Declaration.¹⁵⁰ For instance, Sudan, which is subject to the ICCPR and the Universal Declaration, has a provision in its penal code that mandates the death penalty for those engaging in same-sex sodomy.¹⁵¹ Similarly, Yemen’s penal code allows for judicial interpretation of the law to include the death penalty as a punishment for homosexuality.¹⁵² Other states also disproportionately enforce sodomy laws with a stronger stance taken against homosexuals.¹⁵³

The ICCPR’s framework provides proponents of gay rights a legal basis in which to advance their arguments. Still, the effectiveness of this scheme has not been maximized; although 85 nations¹⁵⁴ criminalize same-sex relations, the Committee has only issued recommendations to improve state practices to the United States, the United Kingdom, Colombia, Sudan, Cypress, Zimbabwe, Ecuador, Austria, Chile, Lesotho, Poland, Romania, Hong Kong, Trinidad and Tobago, El Salvador, Sweden, Egypt, Argentina, and the Philippines under the ICCPR.¹⁵⁵ The Committee’s recommendations tend to be relatively general in nature. The proposed reforms have ranged from educational campaigns to the repeal of discriminatory legislation.¹⁵⁶ In the case of Sudan, the Committee stated that because homosexuality was not a crime worthy of the death penalty, Sudan’s penal code was incompatible with the Covenant’s

¹⁴⁵ *Id.* art. 9.1.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* art. 9.4.

¹⁴⁹ *Id.* art. 9.5.

¹⁵⁰ *See, e.g.,* INT’L LESBIAN & GAY ASS’N, *supra* note 4.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *See* Willets, *supra* note 2, at 46-47.

¹⁵⁴ *See generally* INT’L LESBIAN & GAY ASS’N, *supra* note 4.

¹⁵⁵ The United Nations Human Rights Treaties, Equality and Discrimination: Sexual Orientation Concluding Observations, http://www.bayefsky.com/themes/equality_sexual_concluding-observations.php (last visited Oct. 13, 2006).

¹⁵⁶ *See id.*

prohibitions on cruel and unjust punishment.¹⁵⁷ The Committee recommended that Sudan provide information on the number of death penalty sentences, the reasons for the executions, and the manner in which the executions were carried out.¹⁵⁸ Sudan failed to respond to the Committee's recommendations. Still, the Committee did not specify any action that it would take if Sudan failed to comply.¹⁵⁹ Activists and member states have also not challenged the Committee to take action. In the case of Trinidad and Tobago, the nation's government responded to the Committee's recommendation regarding its sodomy laws by declaring that since the Covenant does not explicitly outlaw discrimination on the basis of sexual orientation, the state would continue to adopt a more conservative approach and would not repeal laws criminalizing homosexuality.¹⁶⁰ In fact, Sweden appears to be the only state that has implemented the Committee's suggestion of a media or educational campaign to combat discrimination against sexual minorities.¹⁶¹

The Committee's goal is to encourage public debate with respect to its recommendations.¹⁶² It seeks to determine whether reforms of law or practice are necessary in light of the state parties' interpretations of the treaty provisions.¹⁶³ States have an advantage in submitting their own responses to the Committee's recommendations because it is an opportunity to expound upon their interpretations of the law. In 2001, the Committee decided that since states have been chronically late with the submission of their reports, the Committee would issue provisional reports to replace the state reports.¹⁶⁴ If a state is repeatedly unrespon-

¹⁵⁷ U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee*, ¶ 8, U.N. Doc. CCPR/C/79/Add. 85/1997 (Nov. 19, 1997), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bc310a747155dff88025655300537fae?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc310a747155dff88025655300537fae?Opendocument).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ U.N. Human Rights Comm., *Comments by the Government of Trinidad and Tobago on the Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, ¶ 34, U.N. Doc. CCPR/CO/70/TTO/Add.1/2001 (Jan. 15, 2001), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6526d484e7da46a4c1256a15004c191a?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6526d484e7da46a4c1256a15004c191a?Opendocument).

¹⁶¹ Sweden implemented a media campaign to combat various forms of discrimination, including discrimination on the basis of sexual orientation. U.N. Human Rights Comm., *Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee*, ¶ 18-21, U.N. Doc. CCPR/CO/74/SWE/Add.1/2003 (May 26, 2003).

¹⁶² See U.N. CIVIL AND POLITICAL RIGHTS COMMITTEE, HUMAN RIGHTS FACT SHEET NO. 15 REV.1, 17 (2006).

¹⁶³ *Id.* at 10.

¹⁶⁴ *Id.* at 14.

sive, the Committee then records the matter and presents it at the next General Assembly.¹⁶⁵

However, in order to compel state action, the Committee must take a more aggressive stance in interpreting the Covenant's provisions to include sexual minorities. By formally prohibiting and denouncing discrimination against sexual minorities, expanded international human rights laws will obligate signatory states to pass legislation to protect sexual minorities' rights to life and liberty. States would not have as much latitude to arbitrarily enforce laws that target GLBT individuals.¹⁶⁶ Further, GLBT individuals would have greater means of redress against offending governments or extra-judicial operations.

The U.N. does not have the power to take action against states that fail to comply with the Committee's recommendations unless those states threaten international peace and security.¹⁶⁷ However, once a state is reported to the General Assembly for its non-compliance with the Committee's recommendations, the U.N. should serve as a forum to expose discrimination against sexual minorities. The U.N. should compel other international or regional bodies like the International Labour Organization, the World Health Organization, or the European Convention that have the power to impose sanctions against offending nations.

In 2000, the U.N. established the Working Group on Sanctions to develop recommendations for implementing more effective sanctions.¹⁶⁸ Possible sanctions on offending states include diplomatic, economic or trade sanctions, travel bans, or limits on financial assistance.¹⁶⁹ Admittedly, some harm exists in imposing sanctions on developing nations whose economies are already suffering. Refined sanctions, however, can be implemented so that the specific groups or people persecuting GLBT individuals are targeted. Two examples include freezing the financial assets of political leaders or organizations who target sexual minorities and imposing visa restrictions on these leaders so that they cannot travel.¹⁷⁰ States concerned with the discriminatory treatment of GLBT individuals must also be more diligent in taking action and reporting the

¹⁶⁵ *Id.*

¹⁶⁶ See DeLaet, *supra* note 17, at 32.

¹⁶⁷ See U.N. Charter arts. 41, 42.

¹⁶⁸ United Nations Security Council, Note by the President of the Security Council, ¶ 3, U.N. Doc. S/2000/319/ (Apr. 17, 2000), available at <http://www.casi.org.uk/info/undocs/n0039502.pdf>.

¹⁶⁹ The U.N. has imposed sanctions on sixteen states. See Office of the Spokesman for the Secretary General, Use of Sanctions Under Chapter VII of the United Nations Charter (Jan. 2006), available at <http://www.un.org/News/ocssg/sanction.htm>.

¹⁷⁰ U.N. Security Council Sanctions Comm., Security Council Sanction Committee: An Overview, <http://www.un.org/Docs/sc/committees/INTRO.htm> (last visited Apr. 8, 2006).

violations of other states.¹⁷¹ Further, NGOs can encourage and support sexual minorities who are able to bring complaints against their nations under the Optional Protocol to the ICCPR.¹⁷² Only through international pressure will offending states reform their laws and behavior.

In Article 17, the ICCPR expands on the right to privacy first mentioned in the Declaration, protecting the personal decisions of individuals to express their sexuality.¹⁷³ Unlike the Declaration, however, the ICCPR does not recognize states' rights to limit their observations of the agreement for moral reasons.¹⁷⁴ Thus, persecuted individuals can use the ICCPR for greater protection and redress than the Declaration; laws prohibiting the right to engage in private sexual conduct between consenting individuals violate the ICCPR because offending states cannot make the argument that they are upholding morality, public order and the general welfare of their societies.¹⁷⁵

The Committee has been more aggressive than in the past in issuing recommendations with respect to violations of the right to privacy, making recommendations of ways to improve to at least 26 states.¹⁷⁶ However, the majority of the states have not responded to the Committee recommendations. A critical shortcoming of the Committee is that it suggests state action but does not specify the kind of action or sanction uncooperative states should face. As a result, states take limited, ineffective action to appease the Committee or do not respond altogether. Again, the Committee must expose states who fail to respond to their recommendations and encourage other nations, international and regional bodies, to impose sanctions against violating states.

Sexual minorities would also benefit from the stronger enforcement of Article 26 of the ICCPR, which guarantees the right to equal protection of the laws specified by the ICCPR.¹⁷⁷ Stronger observation of Article 26

¹⁷¹ See Security Council, Informal Working Group on General Issues Related to Sanctions, <http://www.un.org/Docs/sc/committees/sanctions/index.html> (last visited Apr. 8, 2006).

¹⁷² See Center for Economic and Social Rights: Social Justice Through Human Rights, Optional Protocol to the International Covenant on Economic, Social & Cultural Rights, <http://cesr.org/optionalprotocol?PHPSESSID=91...a78f9969da61bd9> (last visited Mar. 11, 2007).

¹⁷³ International Covenant on Civil and Political Rights art. 17, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (No. 17), U.N. Doc A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹⁷⁴ Robert Ermanski, Comment, *A Right to Privacy for Gay People Under Human Rights Law*, 15 B.C. INT'L & COMP. L. REV. 141, 163-64 (1992).

¹⁷⁵ *Id.* at 161; see also DeLaet, *supra* note 17, at 38.

¹⁷⁶ U.N. Human Rights Comm., *Egypt*, ¶ 77(19), ICCPR, A/58/40 vol. I (2002) 31, available at http://www.bayefsky.com/themes/privacy_concluding-observations.pdf; see U.N. Human Rights Comm., *Portugal*, ¶¶ 83(15), 83(18) ICCPR, A/58/40 vol. I (2003) 56, available at http://www.bayefsky.com/themes/privacy_concluding_part2.pdf.

¹⁷⁷ U.N. Human Rights Comm., *supra* note 157, at ¶17.

would provide support for other aspects of the law, which suggest that the state should play a greater role in the protection of sexual minorities.¹⁷⁸ Member states also fail to adhere to the equal protection provision of Article 26 if they selectively recognize some rights but not others, such as the right to engage in same-sex relations, while refusing the right to marriage and family.¹⁷⁹ States must take greater measures to observe the equal protection clause, especially since equal protection serves as the basis for other basic rights.

Thus, while the Covenant sets forth many protections for sexual minorities, there are several deficiencies in the scheme that foster inconsistencies in the reform of state laws. A critical failure of the Covenant is that it merely requests that signatory states take steps toward a goal, but it does not mandate appropriate activity.¹⁸⁰ The U.N. serves as staunch advocate for fundamental human rights for all individuals, so it must assert itself in compelling greater state action on behalf of sexual minorities. The U.N. can take a stronger position through issuing more detailed recommendations, educating and exposing the injustices in nations that support or allow the persecution of sexual minorities, and compelling other member states to take action. Although the U.N. does not have the authority to enforce sanctions, the organization can apply political pressures and recommend that other international and regional bodies impose sanctions on offending nations. Offending states will be more likely to change their behavior once they know that other governments' perceptions of their egregious behavior may affect their relations in the global arena.

UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN, DEGRADING TREATMENT
OR PUNISHMENT

The United Nations created the Convention Against Torture which established the U.N. Committee Against Torture.¹⁸¹ The Convention defines torture¹⁸² and is intended to expand the Universal Declaration

¹⁷⁸ DeLaet, *supra* note 17, at 40.

¹⁷⁹ International Covenant on Civil and Political Rights art. 26, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (No. 17), U.N. Doc A/6316 (Dec. 16, 1966), *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹⁸⁰ *See id.*

¹⁸¹ Office of the High Comm'r for Human Rights, *Committee Against Torture*, <http://www.unhchr.ch/html/menu2/6/cat/index.html> (last visited Mar. 12, 2007).

¹⁸² "[T]he term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, where such pain or suffering is inflicted by or at the

and ICCPR's ban on cruel and unjust punishment.¹⁸³ Since customary international law prohibits torture, the legal obligations of the Convention Against Torture are binding even on those states that have not ratified the agreement.¹⁸⁴ The U.N.'s protections against torture are not limited to state actors.¹⁸⁵ Rather, under the Convention Against Torture, the U.N. can also pursue individuals and government who commit torture even if member states do not protect sexual minorities or investigate the crime.¹⁸⁶

The U.N. requires that states make torture illegal, punish those who commit torture, or extradite suspects to face trial before another competent court.¹⁸⁷ In 2001, the Special Rapporteur on Torture called for reports from states specifically regarding ill-treatment of sexual minorities at the hands of state officials.¹⁸⁸ The Special Rapporteur generally visits states after receiving letters or complaints of torture to investigate prisons, detention centers and places where suspects are questioned.¹⁸⁹ The Special Rapporteur also investigates whether victims of torture have free access to the authorities, NGOs, private individuals and the media.¹⁹⁰ The Special Rapporteur then submits an annual report on its activities to the General Assembly and member states.

The Special Rapporteur reported that “. . . sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations.”¹⁹¹ The Special Rapporteur stated that discrimination on the basis of sexual ori-

instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Office of the High Comm’r of Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1 (Dec. 10, 1984), *available at* <http://www.un.org/documents/ga/res/39/a39r046.htm> [hereinafter Convention Against Torture].

¹⁸³ *Id.*

¹⁸⁴ Vienna Colucci, *Torture and the Law*, Amnesty Int’l (Nov. 2001), *available at* http://www.amnestyusa.org/Reports_Statements_and_Issue_Briefs/Torture_and_the_Law/page.do?id=1107981&n1=3&n2=38&n3=1052.

¹⁸⁵ *See* Convention Against Torture, *supra* note 183, art. 1.

¹⁸⁶ *Id.* art. 13; Justice for Torture Victims, No Impunity for Torturers, Amnesty Int’l. (Nov. 19, 2001) *available at* <http://web.amnesty.org/library/index/engACT400222001>.

¹⁸⁷ *See* Convention Against Torture, *supra* note 183, arts. 2, 8.

¹⁸⁸ U.N High Comm’r for Human Rights, Call for Submissions, at 19-20, G/SO 214 (53-13) jnb (May 31, 2001).

¹⁸⁹ *See* Office of the United Nations High Comm’r for Human Rights, Fact Sheet No.7/Rev.1, Complaints Procedure, *available at* <http://www.ohchr.org/english/about/publications/docs/fs7.htm>.

¹⁹⁰ *Id.*

¹⁹¹ Human Rights Watch, *Sexual Orientation and Gender Identity: Briefing to the 60th Session of the U.N. Commission on Human Rights*, HUMAN RIGHTS NEWS (Jan. 2004), *available at* <http://hrw.org/english/docs/2004/02/02/global7249.htm>.

entation often contributes to the dehumanization of the victim, which is often a necessary condition for torture.¹⁹² Several nations, including Jamaica, the Bahamas and Malaysia fail to investigate or prosecute individuals and organizations that engage in systematic violence against sexual minorities.¹⁹³ More recently, Egyptian and Iranian officials have identified gay men through the Internet and subjected them to torture.¹⁹⁴ As a result of the government's harassment of sexual minorities, the Torture Convention issued several recommendations to Egypt, including regular inspections of prisons by a neutral body, the abolishment of incommunicado detention and open access to NGOs.¹⁹⁵ The Convention has also made recommendations to Brazil with respect to its maltreatment of sexual minorities in prisons.¹⁹⁶ Although these nations have responded positively to the Committee's recommendations, systematic persecution of GLBT individuals continues which illustrates that the U.N. must take stronger, more consistent action with respect to torture.

The Convention mandates that states provide training to law enforcement authorities on torture prevention.¹⁹⁷ The Convention also mandates that states investigate allegations when its officials have committed torture.¹⁹⁸ The Convention also provides that statements obtained under torture cannot be used against suspects at trial.¹⁹⁹ In many developing nations, the police participate in the persecution of sexual minorities.²⁰⁰ In 2004, Human Rights Watch exposed torture of sexual minorities in

¹⁹² *Id.*

¹⁹³ See Amnesty Int'l, Crimes of Hate, Conspiracy of Silence, Torture, and Ill-Treatment Based on Sexual Identity (2001), available at http://www.ai-lgbt.org/ai-report_torture.htm#carib.

¹⁹⁴ Amnesty Int'l USA, LGBT Human Rights: A Chat with Former Amnesty International Prisoner of Conscience Wissam Tawfiq Abyad (Sept. 26, 2006), available at <http://www.amnestyusa.org/askamnesty/live/display.php?topic=42> [hereinafter Interview with Wissam Tawfiq Abyad]; Doug Ireland, *Iran's Anti-Gay Pogrom: American Gay Rights Groups are Ignoring Systematic Persecution in the Islamic Republic*, IN THESE TIMES (Jan. 4, 2005) available at <http://www.inthesetimes.com/site/main/article/2458>; GME: GayMiddleEast.com, Torture in Iran, July 9, 2005, <http://www.gaymiddleeast.com/news/article72.html>.

¹⁹⁵ U.N. High Comm'r for Human Rights, Conclusions and Recommendations of the Committee Against Torture: Egypt, ¶ 6, U.N. Doc. CAT/C/CR/29/4 (Dec. 23, 2002).

¹⁹⁶ Int'l Service for Human Rights, Committee Against Torture 26th Sess. (Geneva, Apr. 30 - May 18, 2001), available at http://www.ishr.ch/hrm/tmb/treaty/cat/reports/CAT_26.htm#_ftnref6.

¹⁹⁷ Convention Against Torture, *supra* note 183, art. 10.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* art. 15.

²⁰⁰ Human Rights Watch, World Report 2001, HUMAN RIGHTS NEWS, <http://www.hrw.org/wr2k1/special/gay.html>; Human Rights Watch, World Report 2002, HUMAN RIGHTS NEWS, <http://www.hrw.org/wr2k2/lgbt.html>.

Uganda by government officials.²⁰¹ In 2005, police in Saudi Arabia detained and flogged 100 men for dancing and “behaving like women.”²⁰² The U.N. Committee on Torture and the U.N. Working Group on Arbitrary Detention recently condemned Egypt’s gender-neutral “debauchery” law²⁰³ as constituting discrimination on the basis of sexual orientation.²⁰⁴ The U.N. Working Group has held that when states detain individuals on the basis of sexual orientation without a law that criminalizes same sex-relations, the states are violating sexual minorities’ fundamental human rights.²⁰⁵

The U.N. also prohibits states from returning an individual to a nation where she will be tortured.²⁰⁶ Further, the Convention provides that states must evaluate the human rights record of the native country and allow victims refugee status if there is reason to suspect that the individual will be tortured.²⁰⁷ As such, stronger recognition of international human rights for sexual minorities would assist torture victims in receiving asylum in other nations under the Convention.

Many nations strive to mitigate the effect of torture on sexual minorities. Canada, Kingdom of the Netherlands and the United Kingdom already provide asylum to sexual minorities who have been torture victims.²⁰⁸ Moreover, in October 2003, the Australian High Court recognized that refugee status should be granted to individuals persecuted on the basis of sexual orientation.²⁰⁹ The United States grants sexual minorities asylum but is also one of the largest financial supporters of the Egyptian military, an organization that systematically persecutes sexual minorities.²¹⁰ While the Convention on Torture is important to ensuring

²⁰¹ *Torture ‘Widespread’ In Uganda*, BBC NEWS INTERNATIONAL VERSION, Oct. 19, 2004, <http://news.bbc.co.uk/2/hi/africa/3756354.stm>.

²⁰² Human Rights Watch, *Saudi Arabia: Men ‘Behaving Like Women’ Face Flogging*, HUMAN RIGHTS NEWS (Apr. 7, 2005), available at <http://hrw.org/english/docs/2005/04/07/saudia10434.htm>.

²⁰³ Article 9(c), Egyptian Law 10 of 1961 on the Combat of Prostitution.

²⁰⁴ Sanders, *supra* note 71.

²⁰⁵ *Id.*

²⁰⁶ Convention Against Torture, *supra* note 183, art. 3.

²⁰⁷ *Id.*

²⁰⁸ GAY IRANIAN ASYLUM SEEKERS IN THE NETHERLANDS MAY BE DEPORTED, THE ADVOCATE (Mar. 9, 2006), available at http://www.advocate.com/news_detail_ektid27553.asp; James D. Wilets, *Conceptualizing Private Violence Against Sexual Minorities As Gendered Violence: An International And Comparative Perspective*, 60 ALB. L. REV. 989, 1010 (1997); UK LESBIAN & GAY IMMIGRATION GROUP, [HTTP://WWW.UKLGIG.ORG.UK/ASYLUM.HTM](http://www.uklgig.org.uk/ASYLUM.HTM) (LAST VISITED APR. 1, 2007).

²⁰⁹ *Australia Grants Gay Asylum Claim*, BBC NEWS INT’L VERSION (Dec. 9, 2003), available at <http://news.bbc.co.uk/2/hi/asia-pacific/3302649.stm>.

²¹⁰ See Anup Shah, Sustainable Development, The US and Foreign Aid Assistance, <http://www.globalissues.org/TradeRelated/Debt/USAid.asp> (last updated Oct. 7, 2006); Amnesty Int’l, LGBT Human Rights: A Chat with Former Amnesty

that victims receive immediate support, it is also critical that host nations pressure offending states to improve their human rights records with respect to sexual orientation. Host states should impose sanctions on offending states to compel reform by withholding financial assistance.²¹¹ Then, asylum claims would not only serve as a short-term solution, but would also serve as another avenue for achieving long-term change.

NON-GOVERNMENTAL ORGANIZATIONS

Mainstream NGOs, such as Amnesty International and Human Rights Watch, are increasingly active in launching campaigns to combat discrimination.²¹² In 1991, Amnesty International became the first mainstream human rights organization to include sexual minorities in its definition of political prisoners.²¹³ There are currently human rights campaigns on behalf of sexual minorities in Cameroon, Nicaragua, Nigeria, Nepal, the Netherlands, Peru, South Africa, Russia, Guatemala, Zimbabwe, and India.²¹⁴ The majority of these campaigns are focused on exposing official homophobia, releasing political prisoners, decriminalizing sodomy laws and urging other states and organizations to take action against discriminatory legislation.²¹⁵ These human right campaigns, which are designed to prompt state action to protect sexual minorities, expose torture by making the international community aware of the atrocities in various parts of the world.²¹⁶ The most promising aspect of the NGO movement is that generally several organizations coalesce to support GLBT human rights protections in each campaign. For instance, in recent action taken on behalf of sexual minorities in Nigeria, Human Rights Watch joined with organizations in the United States, Nigeria, Cameroon, the United Kingdom, the Congo, Switzerland, and South Africa.²¹⁷

International Prisoner of Conscience Wissam Tawfiq Abyad <http://www.amnestyusa.org/askamnesty/live/display.php?topic=42>; IGLHRC Action Alert, Egypt: Witch Hunt Underway: Dozens of Men Arrested, Held Incommunicado (May 2001).

²¹¹ See *supra* notes 168, 170-72.

²¹² Human Rights Watch, *Lesbian, Gay, Bisexual, and Transgender Rights*, HUMAN RIGHTS NEWS, http://hrw.org/doc/?t=lgbt&document_limit=40,20 (last visited Aug. 10, 2006); Amnesty, Int'l, *OUTfront! Lesbian, Gay, Bisexual and Transgender Human Rights*, http://www.amnestyusa.org/Our_Issues/LGBT_Human_Rights/page.do?id=1011002&n1=3&n2=36 (last visited Aug. 10, 2006).

²¹³ Walker, *supra* note 44, at 346.

²¹⁴ Human Rights Watch, *supra* note 213.

²¹⁵ *Id.*

²¹⁶ NGO Joint Statement to the UNHCR, NGO Joint Statement on Sexual Orientation, Gender Identity and Human Rights, <http://www.pfc.org.uk/node/1433>. Human Rights Council, 3rd Sess., Dec. 1, 2006.

²¹⁷ Africa Action (United States), African Human Rights Organization (Cameroon), Alliance Rights (Nigeria), Amnesty International, International Secretariat (United Kingdom), Center for Democracy and Development (Nigeria),

NGOs have been successful in exposing state-sanctioned and extra-judicial persecution of individuals in many nations. Recently, Amnesty International advocated for the release of an HIV/AIDS activist in China who was detained for speaking against the state's treatment of people with HIV/AIDS.²¹⁸ In July 2005, a gay activist in South Korea was released after his refusal to join the nation's military because of its discriminatory policy against GLBT individuals.²¹⁹ In September 2004, the former Deputy Prime Minister of Malaysia was released after allegations that he had engaged in sodomy.²²⁰ A gay political prisoner was recently released in Egypt after police arrested him for crimes related to prostitution, lechery and debauchery.²²¹ In February 2006, the Pride Shelter Trust, the first crisis center for GLBT individuals was erected in Cape Town, South Africa.²²²

Despite the aforementioned successes of NGOs, however, they must continue to play a larger role in exposing state-sanctioned and extra-judicial persecution against sexual minorities. Major NGOs must join with other more local organizations that have more access to those sexual minorities in immediate danger of persecution in the developing world. Gaining a forum to investigate and air complaints has proven especially difficult because only two GLBT rights NGOs have consultative status in

Centre d'Etudes et de Recherche en Droits de l'Homme Démocratie et Justice Transitionnelle (Democratic Republic of Congo), Civil Liberties Organization (Nigeria), Global Rights (United States), Human Rights Watch (United States), International Gay and Lesbian Human Rights Commission (United States), International Commission of Jurists (Switzerland), International Service for Human Rights (Switzerland), Legal Defense and Assistance Project (Nigeria), National Black Justice Coalition (United States), Support Project in Nigeria (Nigeria), University of Pretoria - Centre for Human Rights (South Africa). See Human Rights Watch, *Letter to President Obasanjo Regarding Bill to Criminalize Gay Rights*, HUMAN RIGHTS NEWS, Mar. 26, 2006, <http://hrw.org/english/docs/2006/03/23/nigeri13064.htm>.

²¹⁸ Amnesty Int'l, Media Briefing: China (March 7, 2006), available at <http://www.amnestyusa.org/countries/china/document.do?id=ENGASA170172006>.

²¹⁹ Amnesty Int'l, Outfront! Lesbian, Gay, Bisexual and Transgender Rights, Success Stories!, <http://www.amnestyusa.org/outfront/success.do> (last visited Apr. 10, 2006); U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: REPUBLIC OF KOREA (Feb. 25, 2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41647.htm>.

²²⁰ Press Release, Amnesty Int'l, Malaysia: Anwar Ibrahim's Release Renews Confidence In Judicial Independence (March 7, 2006), available at <http://www.amnestyusa.org/countries/malaysia/document.do?id=80256DD400782B8480256F030053DA0D>.

²²¹ Interview with Wissam Tawfiq Abyad, *supra* note 197.

²²² Int'l Lesbian & Gay Ass'n, *Launch of Pride Shelter Trust: Africa's First Formal Shelter Providing Short-Term Accommodation to Sexual Minority Groups During Crisis Periods*, ILGA FILES (Nov. 2, 2006), available at http://www.ilga.org/news_results.asp?FileCategory=1&ZoneID=2&FileID=756.

the U.N.²²³ Two other NGOs, the International Gay and Lesbian Human Rights Commission (“IGLHRC”) and the International Lesbian and Gay Association (“ILGA”),²²⁴ had consultative status but the United Nations revoked the associations’ consultative status after the associations included another organization which condoned pedophilia.²²⁵ These organizations attempted to regain consultative status in January 2006.²²⁶ However, United Nations member states recently aligned to continue preventing these NGOs from obtaining consultative status.²²⁷ Several NGOs are still campaigning for the U.N. to reinstate the ILGA’s consultative status.²²⁸

OPPOSITION TO THE U.N. RESOLUTION ON SEXUAL ORIENTATION

When the United Nations first organized, sexual orientation had not emerged as a major focus of study in the world. In fact, Brazil’s 2003 resolution, *Human Rights and Sexual Orientation*, represented the first time that a sweeping resolution specifically addressing sexual orientation had been proposed in the U.N.²²⁹ U.N. member states polarized, with Canada and European nations supporting the bill²³⁰, and the Organization of the Islamic Conference and Vatican states uniting to oppose the bill.²³¹ In particular, among the resolution’s greatest critics were Pakistan, Saudi Arabia, Egypt, Libya and Malaysia, who urged the removal of the words “sexual orientation” from the resolution.²³² After intense

²²³ NGOs IN CONSULTATIVE STATUS WITH ESOSO, *supra* note 55.

²²⁴ The International Lesbian and Gay Association is comprised of over 400 other organizations. Liz Highleyman, G-Max- Queer History, *What is the History of the IGLA?*, <http://www.gmax.co.za/think/history/2006/060816-igla.html>.

²²⁵ Laurence R. Helfer & Alice M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 HARV. HUM. RTS. J. 61, 99 (1996).

²²⁶ Human Rights Watch, *supra* note 56.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See Human Rights and Sexual Orientation, U.N. Doc E/CN.4/2003/L.92 (Apr. 17, 2003); *Gay Rights Discussion Postponed as Session Ends*, U.N. WIRE, Apr. 28, 2003, http://www.unwire.org/unwire/20030428/33413_story.asp.

²³⁰ Austria, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland supported the draft resolution. U.N. WIRE, *supra* note 230.

²³¹ Juan Pérez Cabral, *Vatican, Muslim States Slam Queer Human Rights: Arm-twisting, procedural shenanigans at UN in Geneva*, THE GULLY (Apr. 25, 2003), available at http://www.thegully.com/essays/gaymundo/030425_UN_vatican_muslims.html.

²³² U.N. WIRE, *supra* note 230; see also Pinar Ilkcaracan, *Sexuality as a Contested Domain in Muslim Societies*, SEXUALITY IN AFRICA MAGAZINE (2005), available at <http://www.arsrc.org/resources/publications/sia/aug05/feature.htm>.

debate, twenty-four member states voted to postpone the vote until the following year.²³³ By 2004, after member states repeatedly tabled the resolution, Brazil withdrew its efforts.²³⁴

Islamic critics voiced opposition to the resolution, maintaining that homosexuality is inconsistent with Islamic religious tenets.²³⁵ This interpretation of Islam, however, does not represent all Islamic beliefs. Rather, historical analyses indicate that there is great variance in the interpretation of Islamic religious principles with respect to homosexuality.²³⁶ First, homosexuality is not explicitly referenced in the Q'uran.²³⁷ The belief that the Q'uran outlaws homosexuality originates from interpretations of the story of Lot who God saved because he condemned other men that engaged in same-sex practices.²³⁸ Generally, Muslims believe there is a divine order in nature that mandates that humans use their God-given features to fulfill a purpose on earth.²³⁹ Homosexual relationships run contrary to the rule of nature because in these relationships human beings use their bodies for a purpose that God did not intend.²⁴⁰ Some orthodox Muslims also believe that the Hadith, a collection of sayings attributed to Mohammad, denounces same-sex relationships.²⁴¹ Another school of thought, the Hanbalite, which continues to dominate Saudi Arabia and Syria, codified the punishments for sexual minorities: stoning by execution.²⁴²

On the other hand, the Hanafites consider individual reasoning and local circumstances in practice, teaching that homosexuality is wrong but

²³³ Commission on Human Rights Adopts Resolution on Situation in Iraq; Concludes Substantive Work, U.N. Doc. HR/CN/1047 (Apr. 25, 2003), *available at* <http://www.un.org/News/Press/docs/2003/hrcn1047.doc.htm>.

²³⁴ Ben Townley, *Brazil Retreats on U.N. Gay Rights Plan*, GAY.COM, Mar. 29, 2004, <http://www.gay.com/news/article.html?2004/03/29/2>.

²³⁵ WORLDNETDAILY, *supra* note 112.

²³⁶ Safra Project, *Sexuality, Gender and Islam, The Qu'ran and Homosexuality* (2006), *available at* <http://www.safraproject.org/sgi-progressiveislam.htm>.

²³⁷ The Qu'ran and Homosexuality, <http://www.fordham.edu/halsall/pwh/quran-homo.html>; PM Transcript, *Nigerian Faces Death by Stoning for Gay Sex* (July 14, 2005), *available at* <http://www.abc.net.au/pm/content/2005/s1414598.htm>.

²³⁸ According to some interpretations of the Qur'an, God saved Lot and his family and killed the other inhabitants of Sodom, presumably for their homosexual activities. Islam and Homosexuality, *Homosexuality in the Qur'an and Hadith, Differences Between the Qur'an and Bible; Penalties for Homosexual Activity*, http://www.religious-tolerance.org/hom_isla1.htm (last visited June 22, 2007).

²³⁹ Helen M. Alvaré, *The Moral Reasoning of Family Law: The Case of Same Sex Marriage*, 38 LOY. U. CHI. L. J. 349, 358 (2007).

²⁴⁰ *Id.* at 358-59.

²⁴¹ Paul Varnell, *Punishing Gays Under Islam*, INDEPENDENT GAY FORUM, Mar. 31, 2007, <http://www.indegayforum.org/news/show/27132.html> (last visited June 22, 2007).

²⁴² *Id.*

does not warrant physical punishment.²⁴³ Further, progressive Muslims now challenge the Shari'ah as solely an interpretation of the Q'uran which developed over time, incorporating local customs and practice into the law.²⁴⁴ Reformists believe that they will succeed once the Shari'ah laws are placed in their historical context.²⁴⁵ Increasingly, more nongovernmental organizations allow gay Muslims to explore their sexual identities.²⁴⁶ Advocates build upon the arguments of reformist Muslims by arguing that the omission of an explicit reference to homosexuality in the Q'uran undermines any argument for a general Islamic ban on homosexuality.²⁴⁷ Greater recognition of the variance of religious beliefs, as well as the progress of the gender rights movement in Islamic nations would provide advocates with a basis upon which to promote acceptance of a U.N. resolution.²⁴⁸

The Vatican aligned with the Organization of Islamic states to contest the passage of the U.N. resolution.²⁴⁹ Unlike the Q'uran, the Bible specifically prohibits homosexuality.²⁵⁰ As such, the Catholic Church views homosexuality as contrary to its religious principals.²⁵¹ Within Catholicism, however, there is still a wide array of beliefs regarding homosexuality. Under the religion, human beings are equipped with intellect, reason, and free will.²⁵² "Natural law" entails humans using reasoning to do what is good in concrete situations.²⁵³ The basic goods of life include the sexual unions of males and females according to physical nature, procrea-

²⁴³ *Id.* The Hanafites believe that physical punishment is reserved for other acts such as murder. *Id.*

²⁴⁴ The Safra Project, *supra* note 237.

²⁴⁵ *Id.*

²⁴⁶ See Jeffrey A. Redding, *Human Rights and Homo-Sexuals: The International Politics of Sexuality, Religion, and Law*, 3 Nw. J. INT'L HUM. RTS. 436, 32-33 (2006); Al Fatiha, Welcome (Mar. 31, 2007), <http://www.al-fatiha.org/>; Imaan, Welcome to Imaan UK Website (Mar. 31, 2007), <http://www.imaan.org.uk/>; Queer Jihad, Welcome to Queer Jihad (Mar. 31, 2007), <http://www.well.com/user/queerjhd/>; Safra Project (Mar. 31, 2007), <http://www.safraproject.org/about.htm>.

²⁴⁷ The Qu'ran and Homosexuality, *supra* note 240; PM Transcript, *supra* note 238.

²⁴⁸ See The Safra Project, *supra* note 237.

²⁴⁹ U.N. WIRE, *supra* note 230; Cabral, *supra* note 232.

²⁵⁰ See BEATTIE JUNG & JOSEPH ANDREW CORAY, *SEXUAL DIVERSITY AND CATHOLICISM* 292 (Liturgical Press 2001).

²⁵¹ Congregations for the Doctrine of the Faith, Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual People (Apr. 1, 2007), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html; *Homosexual Activists Push Sodomite Lifestyle*, CATHOLIC INSIGHT, Apr. 1, 2004, at 30; Choike- A Portal on Southern Civil Societies, *It's your duty to oppose gay marriage: Vatican tells politicians*, Mar. 31, 2007, http://www.choike.org/nuevo_eng/informes/1302.html#Vatican%20document.

²⁵² Alvaré, *supra* note 240, at 356.

²⁵³ *Id.*

tion, education of children, knowing God, and living in peace with society.²⁵⁴ A second level of “natural law” entails human beings using reasoning to achieve “proximate conclusions” based on the aforementioned basic goods.²⁵⁵ Accordingly, the Catholic tension with homosexuality also stems from the belief that human beings will use their reasoning to promote a certain way of life that has been ordained by God.²⁵⁶

Increasingly, however, more Catholics have engaged in free thought, dissenting from the Church’s position that homosexuality is immoral.²⁵⁷ Recently, some have started to believe that the homosexual orientation is a reality that people discover within, rather than a lifestyle that individuals choose for themselves.²⁵⁸ Additionally, some who believe contempt for GLBT individuals is a form of hypocrisy that the Bible prohibits.²⁵⁹ More and more priests also recognize that homosexuals have an active role in the Christian community.²⁶⁰

Advocates must not abandon attempts for the passage of the resolution. First, the existence of a resolution specifically outlawing persecution based on sexual orientation indicates that states recognize and are aware of the need for human rights protections for sexual minorities.²⁶¹ Further, activists must capitalize on the progress they have made in achieving protection of other rights for sexual minorities through the U.N. and global conferences. Additionally, mass gay activism recently emerged in nations such as India, Brazil, Taiwan and South Africa, which should provide more grassroots support in developing nations for such a resolution.²⁶² Moreover, the Brazilian resolution was tabled instead of vetoed; thus, there remains hope for the passage of such a resolution in the future.

PROPOSED AMENDMENTS TO THE U.N. RESOLUTION ON SEXUAL ORIENTATION

In light of the criticisms of Islamic and Vatican states, activists must alter the language of the Resolution to focus on the more basic human rights for sexual minorities in danger of persecution, such as the right to

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *See id.*

²⁵⁷ Michael J. Perry, *Religion in Politics*, 29 U.C. DAVIS LAW REVIEW 729, 783 (1996).

²⁵⁸ Kenneth J. Moynihan, FUNDAMENTAL DISAGREEMENTS AT HEART OF SAME-SEX MARRIAGE, TELEGRAM & GAZETTE, Apr. 7, 2004, at A1.

²⁵⁹ Marc Shoffman, *Gay group slams “sickening hypocrisy” of Cardinal*, PINK NEWS, May 15, 2006, <http://www.pinknews.co.uk/news/articles/2005-1470.html>.

²⁶⁰ GERALD D. COLEMAN, HOMOSEXUALITY: CATHOLIC TEACHING AND PASTORAL PRACTICE 125 (Paulist Press 1995).

²⁶¹ *See* Redding, *supra* note 247, at 437; *see* Sanders, *supra* note 82.

²⁶² *See* Redding, *supra* note 247, at 441.

be free from arbitrary detention, rather than aim for more sweeping, all-inclusive provisions. Accordingly, I propose the following amendments²⁶³ for a future resolution:²⁶⁴

The Commission on Human Rights,

Reaffirming *the principles set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,*

Recalling that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human race, regardless of *age, race, gender, or other status or those at risk due to sexual practice,* is the foundation of freedom, justice and peace in the world,

Reaffirming that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind,

1. Expresses deep concern at the occurrence of violations of human rights in the world against persons of *other status or those at risk due to sexual practice;*
2. Stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be *undermined based on other status;*
3. Calls upon all States to promote and protect those human rights with respect to *life and liberty* of all persons regardless of *other status;*
4. Notes the attention given to human rights violations on the grounds of *other status* by the special procedures in their reports to the Commission on Human Rights, as well as by the treaty monitoring bodies, and encourages all special procedures of the Commission, within their mandates, to give due attention to the subject;
5. *Mandates that* the United Nations High Commissioner for Human Rights pay due attention to the violation of human rights on the grounds of *other status.*

In proposing a new resolution, activists must first caucus with other nations in advance of proposing the bill to ensure that they can maximize support before facing opposition. One key failure of the first Brazilian proposal was that the nation's representatives did not offer advance

²⁶³ Modifications to Brazil's resolution are indicated in italics.

²⁶⁴ Compare with Human Rights and Sexual Orientation, *supra* note 230.

warning that they would be proposing the bill to gain support.²⁶⁵ Additionally, advocates should focus on the aforementioned U.N. Treaties and Documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since these documents provide the greatest basis for anti-discrimination measures against sexual minorities.²⁶⁶

In proposing a new resolution, the omission of references to broader rights such as the right to family and custody is also critical. In the past, the inclusion of these references ignited Islamic and Roman Catholic states since these rights and privileges directly conflict with traditional notions of “natural law” and morality.²⁶⁷ Indeed, Pakistan opposed one version of the Brazilian Resolution because the document contained three references to family and adoption.²⁶⁸

Activists must also build upon the successes of past treaties and decisions such as *Toonen* and the June 2001 General Assembly Special Session on AIDS/HIV.²⁶⁹ As demonstrated by the first Brazilian Resolution on Sexual Orientation,²⁷⁰ explicit language regarding “sexual orientation” is unlikely to pass the Vatican and Islamic alliance.²⁷¹ However, more general language such as “other status” and “those at risk due to sexual orientation” has represented some compromise between Western nations and the Catholic-Islamic alliance at past conferences.²⁷² More

²⁶⁵ Sanders, *supra* note 82

²⁶⁶ Universal Declaration of Human Rights, *supra* note 115; International Covenant on Civil and Political Rights, *supra* note 117.

²⁶⁷ See JUNG & CORAY, *supra* note 251, at 64; see also *Homosexual Activism Pits Third World and Vatican Against UN Secretariat, Canada and EU*, LIFESITE (Mar. 16, 2004), <http://www.lifesite.net/ldn/2004/mar/04031603.html>.

²⁶⁸ Sanders, *supra* note 82.

²⁶⁹ *Id.*

²⁷⁰ Text of Brazilian Resolution on Sexual Orientation: 1. Expresses deep concern at the occurrence of violations of human rights all over the world against persons on the grounds of their sexual orientation; 2. Stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation; 3. Calls upon all States to promote and protect the human right of all persons regardless of their sexual orientation; 4. Notes the attention given to human rights violations on grounds of sexual orientation by the special procedures in their reports to the Commission on Human Rights, as well as the treaty monitoring bodies, and encourages all special procedures of the Commission on Human Rights, within their mandates, to give due attention to the subject; 5. Requests the High Commissioner for Human Rights to pay due attention to violations of human rights on the grounds of sexual orientation; 6. Decides to continue consideration of the matter at its sixtieth session under the same agenda item. *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

general references, coupled with supporting debate or notes in the legislative history of the resolution may provide a stronger basis for protections due to sexual orientation since activists will have a stronger frame of reference than in the past.

Even given these revisions to the Resolution, progress in obtaining rights for sexual minorities on the international level will be limited given the opposition. However, it is important to capitalize on past successes in the area of GLBT rights by continuing to test the boundaries of offending states. Once the basic rights addressed in this Note receive protection, advocates will then have a greater foundation to advocate for other rights.

CONCLUSION

Attacks on sexual minorities are among the fastest growing types of aggression in the world.²⁷³ The number of incidents that remain unreported due to fear of persecution is even larger.²⁷⁴ Sexual minorities have gained some legal protections of their rights within national and regional arenas. However, as evidenced by the many examples provided, international protections have lagged far behind. In light of the atrocities against GLBT individuals around the world, human rights activists and organizations must demand greater human rights protections for sexual minorities. Without a stronger position taken by international human rights bodies, gay and lesbian rights activists have no unifying, guiding principle on which to base their arguments.²⁷⁵

As the largest international body and a self-proclaimed proponent of human rights, the United Nations must take a more active role in compelling action against offending states. Continued documentation, investigation and news reporting are necessary to ensure that systematic GLBT persecution is exposed. Other states and regional bodies that become aware of atrocities must take action through imposing sanctions on offending states. Although states and international bodies may amend their laws, advocates must not become complacent; new legislation which confers greater protections on GLBT individuals does not necessarily translate into governments effectively enforcing these laws. The effectiveness of any law will ultimately depend on the willingness of judges and lawmakers to ensure that the rights of sexual minorities are preserved. Advocates must also be cautious that what appears to be progress doesn't mask pervasive discrimination.

When Canadian Professor Douglas Sanders first addressed the United Nations on behalf of the IGLA in 1991, he believed that it would take 10 years for sexual minorities to achieve basic protections of their funda-

²⁷³ HEINZE, *supra* note 1, at 8.

²⁷⁴ HEINZE, *supra* note 1, at 8-9.

²⁷⁵ See generally, DeLaet, *supra* note 17.

mental rights. He was incorrect. To date, no nation in the world fully respects the identities and rights of its sexual minorities.²⁷⁶ As such, we must join to advocate on behalf of sexual minorities in developing nations who are silenced and persecuted by their governments and extra-judicial organizations. Ultimately, everyone is deserving of equal protection under international human rights law regardless of sexual orientation.

²⁷⁶ AART HENDRIKS, ET AL., *THE THIRD PINK BOOK: A GLOBAL VIEW OF LESBIAN AND GAY LIBERATION AND OPPRESSION* 17 (Prometheus Books 1993).