

The Relationship between Homophobia, Transphobia, and Women's Access to Justice for the Forthcoming CEDAW General Recommendation on Women's Access to Justice

SUBMITTED TO:

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SUBMITTED BY:

Action Canada for Population and Development (Canada) International Women's Human Rights Clinic at City
Alternative Law Forum (India) University of New York School of Law (United States)
ARC International (Canada, Geneva) Organización de Transexuales por la Dignidad de la
Articulación feminista Por la Libertad de Decidir (Chile) Diversidad (OTD) (Chile)
Arus Pelangi (Indonesia) MADRE (United States)
CAMFAIDS (Cameroon) Rainbow Community Kampuchea (Cambodia)
CEDEP: Centre for the Development of People (Malawi) Red por los DDHH de la Diversidad Sexual (Chile)
Chinese Lala Alliance (China) Russian LGBT Network (Russia)
Closet de Sor Juana (Mexico) Sayoni (Singapore)
Colectivo Feminista Indispuestxs (Chile) Segundo Patio, agrupación política disidente (Chile)
Comité de Servicio Chileno – CoSeCh, (Chile) Swedish Federation for Lesbian, Gay, Bisexual and
Common Language (China) Transgender Rights (RFSL) (Sweden)
Coordinadora Euforia de Género (Chile) TGEU Transgender Europe (TGEU) (Austria)
Feministas Feas (Chile) The International Lesbian, Gay, Bisexual, Trans and
Friends of RAINKA (Zambia) Intersex Association (ILGA) (Belgium)
Fundación Arcoiris por el respeto a la diversidad Women Coalition of HKSAR (Hong Kong)
sexual (Mexico) Women's Health and Equal Rights Initiative
GALZ: Gays and Lesbians of Zimbabwe (Zimbabwe) (WHER Initiative) (Nigeria)
Gay Japan News (Japan) Women's Support Group (Sri Lanka)
GAYa NUSANTARA (Indonesia)
Knowledge and Rights with Young People
through Safer Spaces (Malaysia)
International Gay & Lesbian Human Rights Commission
(IGLHRC) (United States)

CONTACT:

International Gay & Lesbian Human Rights Commission (IGLHRC)
Jessica Stern, jsstern@iglhrc.org

MADRE & the International Women's Human Rights Clinic at CUNY School of Law
Lisa Davis, ldavis@madre.org

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“I was ordered to turn over my daughters within 48 hours, on warning of arrest. As a lawyer and a judge...I was convinced that this would only be temporary and that before the year was up they would be back with me, and we'd be together forever. Nine years have passed since that day, whole lifetimes when it comes to raising children... We were violated, even though the constitution sets forth that as people we are equal in dignity and rights and as citizens we enjoy civil liberties and bear burdens. It is not justified that in the 21st Century, on account of their sexual orientation and gender identity, people cannot access rights, benefits and legal privileges on account of how we live our sexuality and whom we love.”

-- Judge Karen Atala (Chile)¹

1. Introduction

Thirty-five organizations from around the world jointly submit this memo to the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) to encourage the Committee to include explicit reference to the barriers women face in access to justice because of their sexual orientation or gender identity in its forthcoming General Recommendation on this topic.

Lesbian, bisexual and transgender (LBT) people face obstacles in accessing justice because as women, they are subject to the same barriers as all other women, and as people persecuted because of their sexual orientation or gender identity, they are subject to additional barriers that multiply the effects of discrimination.²

LBT people face multiple obstacles to accessing justice.

- Given that sodomy is criminalized in more than 76 countries worldwide and that so-called cross-dressing is criminalized in countless others, LBT people are subject to formal discrimination.³ This means that individuals who have done nothing more than engage in consensual homosexual acts can be arrested, prosecuted and imprisoned. Even when such laws are not applied, their mere existence forces LBT people into double lives branded with shame, secrecy and stigma. Gender and sexuality are integral to what it

¹ Karen Atala is a lesbian, judge and mother who was stripped of custody of her three daughters by the Supreme Court of Chile because of her sexual orientation. The Inter-American Court of Human Rights subsequently ruled that the Government of Chile discriminated against Karen Atala on the basis of her sexual orientation. Karen Atala, Remarks at State Ceremony in Chile lead by Justice Minister Teodoro Ribera, (December 14, 2012.).

² The parties to this paper wish to explain to the Committee our use of the language of “people” rather than “women” in this submission. We hope that the inclusion of women who happen to be lesbian or bisexual is within the scope of CEDAW is patently obvious. We hope that the inclusion of transgender people within the context of the CEDAW Convention is equally apparent, but we offer this explanation to any Committee members who would find a clarification useful. Transgender women must fall within the scope of the Convention because regardless of their sex assigned at birth, they live and identify as women, and therefore are subject to discrimination that specifically targets them as women whilst paired with frequently violent transphobia. Transgender men must fall within the scope of the Convention because even though they live and identify as men, the failure in many instances of society and law to recognize them as men means that they continue to be singled out for discrimination and abuse as women.

³ Lucas Paoli Itaborahy, *State Sponsored Homophobia: A World Survey of Laws Criminalising Same-Sex Acts Between Consenting Adults*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (2012) available at http://ilga.org/historic/Statehomophobia/State_sponsored_homophobia_ILGA_07.pdf.

means to be human, and therefore so long as sodomy and cross-dressing laws remain on the books, LBT people will never achieve full and equal access to justice.

- Those persons subject to laws criminalizing homosexuality and cross-dressing are unable to rely on State mechanisms for redress in even mundane matters, such as landlord-tenant disputes, for fear of their sexuality or gender identity being used against them.⁴ There is ample evidence that this fear is justified, wherein the State has failed to provide people who are LBT with basic constitutional guarantees and protections.⁵
- Even where there are no prohibitions on sodomy or cross-dressing, the prevalence of socio-cultural homophobia and transphobia worldwide produces the discriminatory application of seemingly neutral laws such as morality or censorship laws.⁶

There are other, more subtle signs that LBT people are not entitled to justice on equal grounds with other groups. For instance, many States that have prohibited discrimination on the basis of sex, ethnicity, religion, or disability do not prohibit discrimination on the grounds of sexual orientation or gender identity.⁷ Many of the 187 States party to the CEDAW Convention⁸ have laws to protect women from domestic or family violence yet do not protect individuals in same-sex relationships.⁹ When there are protections for some marginalized people and others are excluded, the effect is tacit acceptance of some forms of discrimination.

One of the most important ways to fulfill individuals' human rights is by ensuring that all people have equal access to justice. In order to make that a reality, barriers must be taken into account and addressed, such as those based on sexual orientation or gender identity.

⁴ See Grace Poore, *Human Rights Abuses in Asia On the Basis of Sexual Orientation, Gender Identity and Gender Expression (2000-2009)*, International Gay and Lesbian Human Rights Commission (IGLHRC) (2009); "Report on Discrimination against Women in Singapore based on Sexual Orientation and Gender Identity," Sayoni (June 20, 2011), available at https://salsa.democracyinaction.org/o/1870/images/FINAL_Sayoni_shadow_report.pdf

⁵ *Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Turkey: A Shadow Report*, International Gay and Lesbian Human Rights Commission (IGLHRC) (October 2012) available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/585-1.pdf>.

⁶ For instance: (1) In the Philippines, police have charged LGBT people with violating the "public scandal" provision of the *Revised Penal Code* which is a broadly worded public morality law discriminatorily applied against the LGBT community. "Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines" International Gay and Lesbian Human Rights Commission, et al (October 2012) available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/584-1.pdf>. (2) The deceptively titled Nigerian Same-Sex Marriage Prohibition Bill declares that the "public show of same sex amorous relationship [*sic*] directly or indirectly is...prohibited." The bill appearing to simply ban marriage would criminally punish all same-sex affection. Damian Ugwu, "As the Flames of Homophobia Burn Around the World, Understanding Nigeria's Anti-Gay Bill" Huffington Post, (Dec. 3, 2012), http://www.huffingtonpost.com/damian-ugwu/nigeria-anti-gay-bill_b_2231999.html.

⁷ Turkey, Honduras, Jamaica, Marshall Islands, Micronesia, Mongolia, Greece, Papua New Guinea, Togo, and Switzerland do not include sexual orientation and gender identity as prohibited grounds in existing anti-discrimination legislation. Comprehensive Analysis of UPR Conclusions by IGLHRC. Information on file at IGLHRC. See also Appendix II.

⁸ For reference of number of States party to CEDAW see United Nations Treaty Collection database, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

⁹ A total 185 states have ratified CEDAW, 122 of which have legislation prohibiting domestic violence. A partial listing of states that exclude domestic violence protections for same-sex couples: Antigua and Barbuda, Barbados, Belize, Grenada, Guatemala, Guyana, Kyrgyzstan, Malawi, Malaysia, and Namibia. A partial listing of states with "ambiguous" language regarding domestic violence protections for same sex couples: Bahamas, Indonesia, Montenegro, Philippines, Romania, Thailand and Vietnam. "The UN Secretary-General's database on violence against women," UN WOMEN, (2011), <http://sgdatabase.unwomen.org/country.action>.

2. The Use of General Recommendations to Interpret and Update CEDAW

Since its inception, the CEDAW Committee has worked to ensure that the Convention is a flexible, living document. The Committee has depended on General Recommendations to interpret concepts embedded within the Convention text and to update its relevance by addressing contemporary issues in women's lives.

Nowhere has CEDAW's commitment to the clarification of the Convention been more obvious than in its treatment of the concept of equality. The language of equality embedded within the Convention focuses on a comparative concept between women and men. Yet, the Committee has repeatedly used General Recommendations to capture broader dimensions of inequality, including inequalities between women themselves. In pursuit of a robust definition of equality, the Committee has addressed the disproportionate burdens born by rural women, women with disabilities, and women with HIV/AIDS, among others.¹⁰ After years of attention to the individual inequalities experienced by women, the Committee in 2010 took a systematic approach by issuing *General Recommendation 28* to address State responsibility to undertake corrective action against all forms of discrimination against women.¹¹

One of the best-known examples of the evolutionary nature of the Convention is its treatment of gender-based violence. When the Convention was drafted, violence against women was not recognized as widespread, structural, or serious enough to require response from States parties as a matter of law and policy. Yet today, legal frameworks have evolved to condemn violence against women, and some of that progress has been the result of CEDAW's emphatic interpretation of violence against women as a violation of international human rights law.¹² As with violence against women generally, violence experienced by women based on sexual orientation or gender identity has a long history, and the time to formally recognize its impact and provide means of redress has come.¹³

Thus, it would be entirely consistent with the practice of the Committee as well as with the meaning of *General Recommendation 28* for it to explicitly name the obstacles LBT people face in access to justice.

3. Gender Equality Requires Substantive Equality

CEDAW has emphasized that the concept of equality requires more nuance than treating all persons the same way. CEDAW has repeatedly set forth that equal treatment of persons in unequal situations will perpetuate injustice and that true equality can only emerge from efforts that would correct underlying imbalances. This broader view of equality has become the final goal of the struggle for women's human rights.

The Convention pioneered recognition of the concept of substantive equality for women by requiring that they enjoy formal equality in law and policy as well as equality with men in real

¹⁰ Art. 12(1); Art. 14; GR 19 ¶(24(O); General Recommendation No. 24 - Women and Health (Article 12)

¹¹ CEDAW, Gen. Rec. No. 28, December 16, 2010, ¶18.

¹² CEDAW, Gen. Rec. No. 12, 1989.

¹³ CEDAW Concluding Observations: Chile U.N. Doc. CEDAW/C/CHL/CO (October 24, 2012) ¶16.

terms.¹⁴ Reality goes beyond the confines of *de jure* equality concerned only with the inadequate promise of equal treatment of women and men. Recognizing that lived experience must dictate the terms of equality, CEDAW champions substantive equality as a way to ensure women enjoy equality of opportunity, equal access to opportunity, and equality in results.¹⁵ By requiring States to take all appropriate measures to eliminate prejudices and practices based on stereotypical and gendered ideas of inferiority or superiority, the Convention requires a transformation of States, communities, and families. With this approach, CEDAW became the most effective UN instrument to address inequality and discrimination between women and men.

Thus, as part of CEDAW's commitment to substantive equality, it is crucial that the Committee engage with the specific vulnerabilities of different kinds of women, including those who are LBT, as articulated in *General Recommendation 28*, in its conceptualization of women's access to justice.¹⁶ Recognizing difference among women's lived experiences is vital to equal access to the articles of the Convention.

4. Gender Stereotypes Undergird Misogyny, Homophobia and Transphobia

Article 5 of the Convention finds that gender stereotypes create the social, economic, cultural, and legal deprivations of women and that States should take appropriate measures to modify factors that produce the subordination of women.¹⁷ The CEDAW Committee further acknowledges the hierarchical impact that adherence to gender stereotypes and roles has on women and men and calls for States to address and eliminate individual practices, laws and policies that adversely impact women.¹⁸ This understanding of gender clarifies that women and men's gender identities are experienced as real but are imposed by society.

By definition, LBT individuals defy gender stereotypes. The construction of gender stereotypes ultimately rests on the assumption that there are two opposite and mutually exclusive biological sexes. The assumption of heterosexuality is central to this gender binary. In a patriarchal context, some of the most serious transgressors are thus: a woman who renounces a man sexual partner or an individual assigned female at birth who renounces womanhood, thereby rejecting the patriarchal system and all other forms of male supervision and control, and an individual assigned male at birth who embraces womanhood, thereby abandoning privilege in favor of that which is deemed subservient, femininity.

The root of prejudice against LBT people is the belief that their derivations from culture, religion, and tradition is a choice. Consequently, those who arrest, beat and otherwise punish LBT people on the basis of their sexual orientation or gender identity believe they deserve to be punished. However, the Committee's stance on gender stereotyping is clear: rejection of gender

¹⁴ CEDAW, Gen. Rec. No. 25: Art. 4(1) ¶¶ 6-8 (2004).

¹⁵ "IWRAP Asia Pacific Knowledge Portal," IWRAP Asia Pacific (2009) available at <http://www.iwraw-ap.org/convention/equality.htm>.

¹⁶ CEDAW, Gen. Rec. No. 25, *supra* note 15.

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, New York, December 18, 1979, Article 5: "States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (...)."

¹⁸ CEDAW, Gen. Rec. No. 28, *supra* note 12.

roles is no excuse for violence and discrimination, and LBT women, like all women, require protection from violence for defying traditional interpretations of gender.¹⁹

Thus, in keeping with the Committee's interpretation of the socially-constructed and harmful impact of gender stereotyping on women's lives, the harmful impact of stereotypical notions of sexual orientation and gender identity must be acknowledged as barriers to women's access to justice.

5. Intersectional Forms of Discrimination

In *General Recommendation 28*, the Committee identified intersectionality as a "basic concept for understanding the scope of the general obligations of States parties."²⁰

It proceeded to state,

The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and **sexual orientation** and **gender identity**.

Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences."

(Emphasis added.)

For heterosexual and/or cis-gendered women, speaking out about gender-based discrimination, harassment, rape, and/or domestic violence is dangerous.²¹ Yet, when conditions are bad for heterosexual women, they will be equally perilous if not worse for those who are lesbian, bisexual or transgender.

- Even in countries like India, where prohibitions on forced marriage exist, the context of family and community control over women's gender and sexuality is so strong that heterosexual women and lesbians rarely take advantage of the law(s). The fear of exposure or retaliation is so great that women still find themselves in marriages not of their choosing.²² Forced marriages often have dramatic consequences on LBT people,

¹⁹ See for instance: (1) Bahamas, CEDAW/C/BHS/CO/1-5, July 27, 2012, Para. 19: "The Committee expresses its deep concern at the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family [...], in the workplace, in politics and in society. The Committee notes that stereotypes contribute to sex-based inequalities in all areas of life and the persistence of violence against women." (2) CEDAW, Chile, *supra* note. (3) Indonesia, CEDAW/C/GUY/CO/7-8 "The Committee [...] notes that stereotypes contribute to the persistence of violence against women".

²⁰ CEDAW, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. December 16, 2010, Para. 18

²¹ A cisgender person is someone who identifies as the gender and sex that person was assigned at birth.

²² Interview by Sahayatrika, an LBT group in Kerala, on file at IGLHRC, 2009.

resulting in some lesbian couples even committing suicide.²³ The potential elimination of the sodomy law, Section 377A of the *Indian Penal Code*, is important to LGBT human rights generally, however advocates fear that lesbians' lives will not substantially change because of the overwhelming family and community pressure to conform to expectations to be a dutiful, married woman.²⁴

- In Guyana, LBT people who have reported homophobic crimes have had local police attempt to intimidate them into withdrawing their complaints and refuse to investigate the allegations. In one instance, police arbitrarily detained an individual who was reporting a homophobic hate crime. An LBT person told local human rights defenders, "I was attacked once for being gay and reported it to them [*the police*], and they told me to change my lifestyle."²⁵
- On June 28, 2012, police arbitrarily detained María Ignacia, a 22-year-old transgender woman from Antofagasta, Chile.²⁶ The police insulted her for being transgender and forced her to perform oral sex on several officers at the police station. When María Ignacia attempted to report the incident to the police department charged with internal investigations, the officers threatened her. After obtaining assistance from a local transgender organization and the national human rights institute, the prosecutor of Antofagasta agreed to investigate her case.²⁷

Intersecting forms of discrimination can determine the form or nature that discrimination takes, the circumstances in which it occurs, its consequences and the availability of appropriate measures. Thus, the Committee's recognition that discrimination against women is inextricably linked to other factors such as discrimination based on sexual orientation and gender identity indicates that it should also recognize the ways intersectional discrimination manifests around specific issues such as women's access to justice.

6. Religious and Cultural Challenges to Women's Rights and LGBT Rights

The Committee's Concluding Observations on many State parties' reports reflect the continuing challenge of dealing with patriarchal cultures and resistance to change. Yet according to the Committee, the principles of equality and non-discrimination must prevail over cultural or traditional practices that adversely affect women's lives, and religious and other leaders must be engaged in the process of combating negative practices and social attitudes. The Committee has underscored State parties obligations to address cultural obstacles to equity rather than relying on

²³ Between June 1995 and November 2002, 13 lesbian couples in different Indian cities committed suicide to escape family violence, forced confinement, separation from each other, and forced marriage to men. See IGLHRC/ILGA-Europe, *United Nations: CEDAW Debates Equality (Joint Statement)*, 2008.

²⁴ Information provided by an LBT Indian activist from PAYANA to IGLHRC, 2011, available at <http://vimeo.com/22535533>.

²⁵ IGLHRC, Guyana Rainbow Foundation (Guybow), Society Against Sexual Orientation Discrimination (SASOD) *Human Rights Violations of Lesbian, Bisexual, and Transgender (LBT) People in Guyana: A Shadow Report*, Submitted for consideration at the 52nd session of the Committee on the Elimination of Discrimination Against Women, July 2012.

²⁶ *Brutal actuar de carabineros en contra de mujer transexual y posteriormente del subcomisario de investigaciones en antofagasta* (Brutal acts by soldiers against transexual women and following of the subcommission of investigations in Antofagasta), ORGANIZACIÓN DE TRANSEXUALES POR LA DIGNIDAD DE LA DIVERSIDAD, (29 Junio 2012), <http://transexualesdechile.org/?p=6559>; Francisco Alemán C., *Transexual denuncia haber sido abusada sexualmente por Policía de Carabineros de Antofagasta*, Magazin (3 Julio, 2012), <http://www.radiomitos.cl/magazin/?p=9442>.

²⁷ Office of the Prosecutor of Antofagasta, Case Number: RUC 1200651304-0.

culture as an excuse for lack of progress.²⁸

Similar to women's rights, there are those who would claim their culture or religion encourages them to discriminate against LBT people.

- In Indonesia, religious extremists have usurped the decentralization process to create discriminatory bylaws in their provinces and enforce them in the name of morality and religion. In particular, some have regulated women's dress code, including penalties for butch lesbians for not looking "feminine enough" or transgender women (*waria*) for "acting like women."²⁹ In Aceh, laws have been passed implementing dress and conduct regulations purportedly based on Islam. In 2009, a virulently discriminatory adultery law, applicable under the Sharia, was passed that punishes homosexuality – defined as same-sex activity outside of marriage – with up to 100 lashes and eight and a half years imprisonment.³⁰
- In 2007, Ayu, a transgender woman, was beaten and detained by the Melaka Islamic Religious Affairs Department/Malaysia Department of Islamic Development (JAKIM). She was convicted of violating the Syariah dress code (Section 72) and fined RM1,000 (US288).³¹
- In 2008, the Malaysian National Fatwa Council passed a fatwa against both lesbians and tomboys, stating, "Women who have the appearance, mannerisms and sexual orientation similar to men is *haram* in Islam."³²

Thus, as it has done with regard to women's rights more broadly, the Committee should reject arguments that tradition or culture can ever justify preventing LBT women's access to justice.

7. The Universality of Human Rights Produces Reference to LGBT Rights across the UN

Increasingly over the past two decades, the UN system has acknowledged its obligation to protect the right of LGBT persons to be free from discrimination within an ever-expanding number of bodies and branches.

²⁸ See for instance, (1) Conc. Obs. Algeria CEDAW/C/DZA/CO/3/4, ¶¶27-28, Art. 5, Art. 10; (2) Congo CEDAW/C/COG/CO/6, ¶12, 13; and (3) Sri Lanka CEDAW/C/LKA/CO/7, ¶16, 17.

²⁹ Grace Poore, "Indonesian Government Questioned About LBT Rights Violations," IGLHRC BLOG (Jul. 13, 2012), <http://iglhrc.wordpress.com/2012/07/13/indonesian-government-questioned-about-lbt-rights-violations>.

³⁰ Ibid.

³¹ Poore, *supra* note 4.

³² The fatwa states: "Women who have the appearance, mannerisms and sexual orientation similar to men is haram in Islam. We urge parents and the Muslim community to pay serious attention to this problem. Emphasis should be on teaching and guiding young girls, especially on the aspects of their clothing, behaviour and appearance, so that this problem may be avoided because it runs counter to their fitrah [the innate natural sexual inclination that each human is born with and which does not change. In Islam, if a person is born male, he is masculine and is sexually attracted to women; and if a person is born female, she is feminine and sexually attracted to men] and Allah's way." Ibid *citing* "In Malaysia, fatwa condemns tomboys," *Asia News.it*, (Oct. 24, 2008).

Available online at: <<http://www.asianews.it/index.php?l=en&art=13569&size=A>>.

A. Human Rights Treaties

The monitoring bodies of UN human rights treaties have consistently made explicit reference to protections against violations on the basis of sexual orientation. Many of the references to sexual orientation throughout the UN system began after the Human Rights Committee's landmark decision in *Toonen v. Australia*.³³

Since at least 1994, CEDAW has been a platform for LBT people to grieve rights violations and seek redress.³⁴ Protecting individuals on the basis of sexual orientation and gender identity under the Convention has taken many forms, including at the most recent session, when the Committee expressed grave concern for women who face “multiple forms of discrimination and violence on grounds such as sexual orientation and gender identity.”³⁵ In more recent years, the Committee has systematized its recognition of sexual orientation and gender identity by naming them in general recommendations. In 2010, the CEDAW Committee adopted *General Recommendation 27* on elderly women and *General Recommendation 28* on States' obligations to implement Article 2 of the Convention, both referencing the hidden aspects of multiple forms of discrimination: the interlocking and cross-cutting nature of human rights violations. In recent years, the Committee has increasingly been an invaluable place for LBT people to find protection and recompense.

Other treaty monitoring bodies have also routinely addressed human rights violations against LGBT people.

- The Human Rights Committee took official note welcoming positive legislation for same-sex couples as early as 1993³⁶ and has in the subsequent decades repeatedly called upon States to stop violence and discrimination against LGBT people. In fact, the Committee has made more than thirty specific references to LGBT people, sexual orientation and/or gender identity in its concluding observations across different States in the last five years alone.
- The Committee on Economic, Social and Cultural Rights has addressed the place of LGBT people within its Convention by issuing a general comment that interprets its articles to include sexual orientation and gender identity among the prohibited grounds of discrimination.³⁷

³³ In *Toonen*, the Human Rights Committee addressed the equality provisions contained within the International Covenant on Civil and Political Rights (the “ICCPR”) under the category of “sex” as including protection from sexual orientation and gender identity discrimination. *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, ¶¶ 8.1, 8.7 (1994).

³⁴ In 1994, the CEDAW Committee commended New Zealand and the Netherlands for expanding their protections of discrimination with issues of “sexual orientation” and “sexual preference.” CEDAW Con. Obs.: New Zealand U.N. Doc. A/49/38, (April 12, 1994); Netherlands, U.N. Doc. A/49/38 (Apr. 12, 1994).

³⁵ CEDAW Con. Obs: Chile, U.N. Doc., C/CHL/CO 5-6 ¶16 (October 24, 2012).

³⁶ ICCPR, Conc. Obs: Norway, U.N. Doc., CCPR/C/79/Add.27 (Nov. 4, 1993).

³⁷ CESCR Gen. Comm. No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2 ¶2), E/C.12/GC/20, July 2, 2009, ¶ 32 “‘Other status’ as recognized in article 2(2), includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.”

- The references by the Committee Against Torture's to LGBT people has been a part of its explicit concerns since at least 2002 and has since then repeatedly acknowledged LGBT people as a vulnerable group specifically targeted for violence.³⁸
- The Committee on the Rights of the Child has issued both general comments and concluding observations over the past ten years specifically directed at eliminating violence and discrimination against LGBT children and youth.³⁹

B. U.N. Resolutions

The UN General Assembly and Human Rights Council have both passed resolutions which reference the vulnerability LGBT people endure as a result of their sexual orientation and gender identity. For the past twelve years, the Third Committee in the General Assembly has called upon States to ensure individuals are not unlawfully executed as a result of their sexual orientation and in 2012 increased its concern to add reference to gender identity as well.⁴⁰ In 2011, the Human Rights Council passed the first resolution to bring specific focus to human rights violations based on sexual orientation and gender identity.⁴¹ The resolution affirms the universality of human rights and notes concern about acts of violence and discrimination based on sexual orientation and gender identity.

C. U.N. Leaders

U.N. leaders have issued statements repeatedly acknowledging that the UN has an affirmative responsibility to protect against discrimination on the basis of sexual orientation and gender identity. In March 2012, Ban Ki-Moon stated, "Any attack on you [LGBT people] is an attack on the universal values of the United Nations that I have sworn to defend and uphold."⁴² The same day, Navi Pillay stated that criminalization of same-sex relations reinforce stigma against LGBT people and fuel violence against them.⁴³ Both of these leaders have called for necessary attention and inclusion of LGBT people into the human rights framework of the UN.

³⁸ CAT, Conc. Obs.: United States of America, CAT/C/USA/CO/2, May 17-18, 2006, ¶32, 37; Concl. & Recomm.: Poland, CAT/C/POL/CO/4, May 15, 2007, Para. 20; Latvia, CAT/C/LVA/CO/2, February 19, 2008, Para. 19; Costa Rica, CAT/C/CRI/CO/2, July 7, 2008, Para. 11 and 187; Concluding Observation Peru, CAT/C/PER/CO/6, December, 2012 *Attacks against members of the LGBT community*, ¶ 22; Russian Federation, CAT/C/RUS/CO/5, December 11, 2012, Para. 15; Norway, CAT/C/NOR/CO/6-7, December 13, 2012, ¶ 21; Norway, CAT/C/NOR/CO/6-7, December 13, 2012, ¶ 21; Armenia, CAT/C/ARM/CO/3, July 6, 2012, ¶ 19.

³⁹ The Convention on the Rights of the Child has issued the following General Comments addressing sexual orientation and gender identity: CRC Gen. Comm. No. 3: HIV/AIDS and the Rights of the Children, CRC/GC/2003/3 (March 17, 2003), The right to non-discrimination (art. 2), ¶ 8, Gen. Comm. No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4 (July 1, 2003), *The right to non-discrimination*, ¶ 6,

⁴⁰ General Assembly Res. 67th Session, Third Committee "Extrajudicial, summary or arbitrary executions," ¶ 6(b) U.N. Doc., A/C.3/67/L.36 (Nov. 9, 2012).

⁴¹ Human Rights Council Res. 17/19, UN H.R.C. Res. 17th Sess. May 30 – June 17 2011, "Human rights, sexual orientation and gender identity" U.N. Doc., A/HRC/Res/17/19 (Jul. 14, 2011).

⁴² United Nations Secretary-General Ban Ki-Moon address to the United Nations Human Rights Council (March 7, 2012).

⁴³ United Nations High Commissioner for Human Rights Navi Pillay address to the United Nations Human Rights Council (March 7, 2012).

D. UN Special Rapporteurs

UN Special Rapporteurs, including the Special Rapporteur on Violence Against Women, have talked about sexual orientation in relation to a diverse range of concerns, including but not limited to: the right to work, the right to the highest attainable standard of health, adolescent health and development, anti-discrimination legislative protections, the necessary repeal of sodomy laws, hate crime laws, and in relation to LGBT people targeted for intimidation, violence, torture, murder, and rape.⁴⁴ The Special Rapporteur on Violence Against Women, Rashida Manjoo, recognizes the impact the struggle for women's rights and equality has on LGBT people by noting the "paradox" of advancement in protection sexual rights on the one hand, and the "increasing escalation of homophobic crimes on the other."⁴⁵ As a result of this relationship, she concludes, LGBT people, including women, are "especially vulnerable" to violent crime.⁴⁶

8. Conclusion and Recommendations

The 35 organizations that have jointly submitted this paper to CEDAW respectfully request that its forthcoming General Recommendation on women's access to justice include provisions that specifically name vulnerabilities that make it difficult for women to access justice, including obstacles based on sexual orientation and gender identity.

⁴⁴ "As academics have noted, there is a paradox in the advancement in the protection of individuals' sexual rights on the one hand, and the increasing escalation of homophobic crimes on the other. In this sense, LGBTIQ persons, including women, are especially vulnerable to many kinds of violent crime, from killings in private homes to killings in public spaces known as —social cleansing, extortion by blackmailers who threaten to reveal their identity to the public, and abuse from officials, especially the police, who sometimes arrest them." Human Rights Council 20th Sess. June 18-July 6, 2012, "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo" ¶ 72, U.N. Doc., A/HRC/20/16 (May 23, 2012) available at <http://www.unhcr.org/refworld/pdfid/5008088f2.pdf> citing Julieta Lemaitre, —Love in the Time of Cholera, Sur, International Journal of Human Rights, Argentina, 2010. The report, which documents gender-based killings lists violent crimes LGBTIQ women are particularly vulnerable to as: killings in private homes to killings in public spaces, extortion by blackmailers who threaten to reveal their identity to the public, and abuse from officials, especially the police, who sometimes arrest them.

⁴⁵ Ibid.

⁴⁶ Ibid.