



## **Defenders of Sexual Rights and Reproductive Rights: a Briefing Paper to the Special Rapporteur on Human Rights Defenders**

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Since the beginning of the mandate of the U.N. Special Procedure on the situation of human rights defenders,<sup>1</sup> the Special Representative and the Special Rapporteur have worked diligently to raise awareness about the special risks facing certain groups of defenders, including women's human rights defenders and defenders working on the rights of lesbian, gay, bisexual, transgender, and intersex persons. In 2008, the Human Rights Council extended the mandate of the Special Procedure by appointing Ms. Margaret Sekaggya the Special Rapporteur on the situation of human rights defenders and instructed her "[t]o integrate a gender perspective throughout the work of [the] mandate, paying particular attention to the situation of women human rights defenders."<sup>2</sup> This briefing paper was prepared to assist the Special Rapporteur on human rights defenders in implementing the gender focus of her mandate, which builds upon the work of her predecessor, Hina Jilani, who first recognized the important linkages between sexuality and gender.<sup>3</sup> Specifically, the paper provides an analytical framework to identify the unique risks faced by defenders of sexual rights and reproductive rights (SR/RR) and to recommend actions the Special Rapporteur can take to help states strengthen protection mechanisms for this category of human rights defenders.

Part I defines terms and explains why SR/RR defenders experience heightened risk of discrimination and violence due to their work or their identities. Part II sets out the legal framework for protection of SR/RR defenders, focusing on the cross-cutting rights to be free from discrimination and violence. Part III describes the types of human rights violations commonly experienced by this category of defenders and provides examples to illustrate each category of violation. Part IV proposes recommendations to the Special Rapporteur to assist her in her mandate of helping states ensure the rights of SR/RR defenders so that they can pursue their critical work in realizing rights.

## I. Definitions

**Sexual rights** refer to a set of human rights related to human sexuality, including equality, privacy, autonomy, integrity, dignity, and freedom from violence and discrimination.<sup>4</sup> Although there is no standard definition of sexual rights, a working

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<sup>1</sup> Ms. Hina Jilani served from 2000–2008 as the Special Representative of the Secretary-General on the situation of human rights defenders. Her mandate was renewed once by the Commission on Human Rights in 2003, and again by the Human Rights Council in 2007. In March 2008, the Human Rights Council continued the mandate for another three years and appointed Ms. Margaret Sekaggya the new Special Rapporteur on the Situation of Human Rights Defenders.

<sup>2</sup> Human Rights Council, *Report of the Human Rights Council on its Seventh Session*, Ch. 7/8, at 23, U.N. Doc. A/HRC/7/78 (14 July 2008).

<sup>3</sup> While serving as the Special Representative, Hina Jilani courageously revealed the experiences of defenders working on sexual rights and reproductive rights, a decision which placed her and her mandate at the center of critical, yet challenged work within the UN system.

<sup>4</sup> See International Planned Parenthood Federation, *Sexual Rights: an IPPF Declaration*, at 10, available at <http://www.ippf.org/en/Resources/Statements/Sexual+rights+an+IPPF+declaration.htm>; World Ass'n for Sexual Health (WAS), *Declaration of Sexual Rights* (1999), available at [http://www.worldsexology.org/about\\_sexualrights.asp](http://www.worldsexology.org/about_sexualrights.asp); WORLD HEALTH ORG., DEFINING SEXUAL HEALTH: REPORT OF A TECHNICAL CONSULTATION ON SEXUAL HEALTH, 28–31 JANUARY 2002, GENEVA 5 (2006), available at <http://www.who.int/reproductive-health/gender/sexualhealth.html#4> [hereinafter WHO, DEFINING SEXUAL HEALTH, at 5]; *Yogyakarta Principles: Principles on the Application of International*

definition developed during a WHO-convened technical consultation on sexual health in January 2002 defines sexual rights in the following way:

Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the right of all persons, free of coercion, discrimination and violence, to: the highest attainable standard of sexual health, including access to sexual and reproductive health care services; seek, receive and impart information related to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe and pleasurable sexual life. ...<sup>5</sup>

While related to reproductive rights, sexual rights are a distinct set of rights, since not all expressions of sexuality are reproductive.<sup>6</sup>

All individuals have **reproductive rights**, which are grounded in a constellation of human rights guarantees founded upon principles of dignity, equality, privacy, autonomy, and freedom from violence and discrimination. These guarantees, found in numerous human rights treaties and consensus documents, have evolved over time. As stated in Paragraph 7.3 of the 1994 UN International Conference on Population and Development's Programme of Action:

[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.<sup>7</sup>

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*Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), available at <http://www.yogyakartaprinciples.org> [hereinafter *Yogyakarta Principles*].

<sup>5</sup> WHO, DEFINING SEXUAL HEALTH, *supra* note 4, at 5.

<sup>6</sup> *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, para. 96, U.N. Doc. A/CONF.177/20 (1996) [hereinafter *Beijing Declaration and Platform for Action*]; *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 7.2, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*]; Commission on Human Rights, *Report of the Special Rapporteur, Paul Hunt, on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, 60th Sess., paras. 50-56, U.N. Doc. E/CN.4/2004/49 (2004). See also Alice Miller, *Sexual but Not Reproductive: Exploring the Junction and Disjunction of Sexual and Reproductive Rights*, 4 HEALTH & HUMAN RIGHTS 68, available at <http://www.hhrjournal.org/archives-pdf/4065191.pdf>.banned.pdf.

<sup>7</sup> *ICPD Programme of Action*, para. 7.3; see accord *Beijing Declaration and the Platform for Action*, paras. 96, 223.

Further, the right to reproductive health requires that reproductive health care goods and services, as well as programmes, are widely available, economically and physically accessible, culturally acceptable, and of high quality.<sup>8</sup> The right to reproductive autonomy also includes the rights to information, privacy and confidentiality when making decisions about one's reproductive capacity and life.<sup>9</sup>

**Women's human rights defenders**<sup>10</sup> include women active in the defense and promotion of human rights who face unique pressures and challenges because they are women, as well as all those put their own lives, safety, and security on the line while working in the defense of women's human rights.<sup>11</sup> Since the duration of the mandate, the Special Procedure has recognized that women's human rights defenders often face heightened risks because they work on human rights issues considered sensitive or controversial.<sup>12</sup> Backlash occurs, for instance, because their work is "seen as a threat to

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<sup>8</sup> Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No. 14: the Right to the Highest Attainable Standard of Health (Art. 12)*, para. 12, U.N. Doc. E/C.12/2000/4 (July 4, 2000) [hereinafter CESCR Gen. Comment 14]; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/189, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, art. 12, U.N. Doc. A/34/46 (1979) U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW]; *ICPD Programme of Action*, Principle 8.

<sup>9</sup> *Beijing Declaration and Platform for Action*, paras. 106(f), 107(e); CEDAW, arts. 10(h), 16(1)(e); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. res. 44/25, annex, U.N. GAOR 44<sup>th</sup> Sess., Supp. No. 49 at 166, art. 17, U.N. Doc. A/44/49 (1989) *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990); Committee on the Rights of the Child, *General Comment No. 4, Adolescent health and development*, 33<sup>rd</sup> Sess., paras. 10-11, 26-33, U.N. Doc. CRC/GC/2003/4 (2003); *ICPD Programme of Action*, Principle 8, paras. 7.2, 7.3, 7.45.

<sup>10</sup> The term "women human rights defenders" has been adopted by the International Coalition on Women Human Rights Defenders. In this briefing paper, we use the term "women's human rights defenders" to underscore the point that many individuals defending women's rights are not themselves women but may be men, transgender, or intersex.

<sup>11</sup> INTERNATIONAL COALITION ON WOMEN HUMAN RIGHTS DEFENDERS, CLAIMING RIGHTS, CLAIMING JUSTICE: A GUIDEBOOK ON WOMEN HUMAN RIGHTS DEFENDERS 15 (Chiang Mai, Thailand, 2007) [hereinafter CLAIMING RIGHTS, CLAIMING JUSTICE] (stating "[w]omen human rights defenders include women active in human rights defence who are targeted for *who they are* as well as all those active in the defence of women's rights who are targeted for *what they do*."). The framework for SR/RR defenders contained in this briefing paper builds off the groundbreaking work of the International Coalition on Women Human Rights Defenders as set forth in the "Claiming Justice, Claiming Rights" Guidebook and in other resources that emerged from international consultations. For more information about the Coalition and publications regarding women human rights defenders, visit <http://www.defendingwomen-defendingrights.org>. See, e.g., VICTORIA COLLINS, PROCEEDINGS OF THE INTERNATIONAL CONSULTATION ON WOMEN HUMAN RIGHTS DEFENDERS (Barcia, et al., ed. 2005), at <http://www.defendingwomen-defendingrights.org/pdf/WHRD-Proceedings.pdf>.

<sup>12</sup> Ten years on, human rights defenders continue to pay a high price, Joint Statement by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights; the Commissioner for Human Rights of the Council of Europe; the Director of the OSCE Office for Democratic Institutions and Human Rights; and the Executive Secretary of the Inter-American Commission on Human Rights (United Nations, Dec. 9, 2008) [hereinafter Joint Statement on HRDs] (explaining that "[o]f particular concern for the signatories of this joint statement is the plight of defenders who, due to the sensitivity of their work, are most exposed to attacks and abuses. These include women defenders [and] defenders working ... on rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons..."); Human Rights Council, *Report Submitted by Ms. Hina Jilani, the Special Representative of the Secretary-General on Human Rights Defenders: Promotion and*

patriarchy and as disruptive of cultural, religious and societal mores.”<sup>13</sup> For this reason, women’s human rights defenders often experience violations specific to their gender. Sexual violence and attacks on private family life are common forms of attack, designed to intimidate, shame, and ultimately deter those working on women’s human rights promotion. In addition, women activists face particular challenges in their defense of rights, whether or not they focus on women’s human rights advocacy *per se*.

**SR/RR defenders** face extraordinary discrimination, stigma, and other violations because they are perceived to threaten social norms—often based on traditional gender stereotypes—associated not only with gender and family, but also with sex, sexuality, and reproduction. SR/RR defenders may or may not be women, and they may or may not work on women’s human rights. For instance, SR/RR defenders may be gay, bisexual, or transgender men who work on issues specific to these populations. But either their identities or the focus areas of their advocacy, particularly in terms of work on gender, sexuality or reproductive issues, render SR/RR defenders at risk. Like women’s human rights defenders, SR/RR defenders are highly visible and can become the focus of political and social attacks. They are particularly susceptible to rights violations because they work in advocacy around these charged issues. Advocacy itself elicits scrutiny, for which defenders often pay a price. While the state is the primary perpetrator of human rights violations against SR/RR defenders, private actors, such as community or religious leaders who block challenges to the gender-related status quo, may also violate the rights of women and SR/RR defenders. “In such cases, State authorities have often failed to provide adequate protection for women [and/or SR/RR] defenders and their work against the social forces that threaten them.”<sup>14</sup>

Despite broad recognition of reproductive rights and sexual rights under international law, these rights remain socially and politically under attack around the world and discrimination persists against those asserting claims to them. Advocates working to combat HIV/AIDS,<sup>15</sup> or those who promote women’s access to safe and legal

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*Protection of Human Rights Defenders*, 58<sup>th</sup> Sess., para. 94, U.N. Doc. E/CN.4/2002/106 (2002) [hereinafter *2001 Annual Report of the Special Representative*].

<sup>13</sup> *2001 Annual Report of the Special Representative*, *supra* note 12, para. 94.

<sup>14</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, HUMAN RIGHTS DEFENDERS, PROTECTING THE RIGHT TO DEFEND HUMAN RIGHTS, UNITED NATIONS HUMAN RIGHTS FACT SHEET NO. 29, 14 (emphasis added) [hereinafter OHCHR Fact Sheet No. 29].

<sup>15</sup> Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani*, 4th Sess., paras. 73-74, U.N. Doc. A/HRC/4/37 (2007) [hereinafter *2006 Annual Report of the Special Representative*] (explaining that “[m]any defenders who promote the right to health are working on issues connected to combating HIV/AIDS. The Special Representative is aware of the fact that such defenders are faced with challenges in terms of having their work recognized as human rights work in addition to the stigma attached to this health issue.”); Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani: Addendum: Summary of cases transmitted to Governments and replies received*, 7th Sess., paras. 283-88, U.N. Doc. A/HRC/7/28/Add.1 (2008) [hereinafter *2007 Annual Report of the Special Representative, Addendum*] (expressing concern about lack of government protection in China for individuals working to promote access to treatment for haemophiliacs infected with HIV/AIDS and hepatitis); *id.* paras. 1076-78 (describing the transmission of a letter to the Indian government concerning a transgender peer educator who was detained and beaten by police for her outreach work on HIV/AIDS); *2001 Report of the Special Representative*, *supra* note 12, para. 201 (describing an urgent appeal sent to the government of India

abortion,<sup>16</sup> are frequently attacked because of the social and political controversy surrounding both issues. Discrimination based on gender, sexual orientation, gender identity, and gender expression<sup>17</sup> stems from patriarchy, misogyny, and heterosexism and intersects with other forms of oppression such as racism and classism.<sup>18</sup> An “intersectional analysis” argues that people do not ever carry only one identity; rather, people carry simultaneous identities based on various social factors which can individually or collectively influence how and why they face certain risks. Certain individuals are subjected to intersecting forms of subordination that compound the discrimination against them and place them at greater risk of violence than others. For example, transgender sex workers are highly susceptible to police brutality because of the social stigma attached to both gender-nonconformity and sex work.<sup>19</sup>

SR/RR defenders are also more at risk of certain sexualized and gendered types of violations, which may escape scrutiny under traditional rights lens. Often, the form of the attack aims to undermine the validity and credibility of the sexual and reproductive rights agendas and identity/ies of defenders, as these agendas and identities are perceived to threaten political or social norms.<sup>20</sup> Private actors can encourage discrimination or violence against SR/RR defenders by claiming that such acts are both moral and obligatory for the proper observance of their religious faith; for example, SR/RR defenders in Muslim contexts are routinely accused of inciting women to rebel against divine laws or to disrespect moral values of their culture.<sup>21</sup> For example, laws criminalizing homosexual activity, which do not appear at first glance to implicate advocacy, are often used to silence those promoting the right to non-discrimination based on sexual orientation, an aspect of sexual rights. Meanwhile, defenders of reproductive rights are common subjects of smear campaigns that portray them as destroyers of family

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concerning a police raid on an international organization that provides technical support for the promotion of male sexual and reproductive health in South Asia).

<sup>16</sup> Letter from Santiago Canton and Victor Abramovich to HE Norman Calderas Cardenal, Nicaraguan Minister of Foreign Affairs (Nov. 10, 2006), *available at* [http://www.reproderechos.org/pdf/index\\_nicaragua\\_english.pdf](http://www.reproderechos.org/pdf/index_nicaragua_english.pdf) (condemning, in an official statement by the Inter-American Commission on Human Rights, Nicaragua’s ban on therapeutic abortion because denial of the service not only “endangers women’s lives as well as their physical and psychological integrity” but also “hinders the work of health care professionals, whose mission is to protect the lives of their patients and provide them with adequate treatment.”).

<sup>17</sup> We use the term “gender identity” to refer to a person’s internal, deeply felt sense of being male or female, or something other than or in between male and female. “Gender expression” refers to the external characteristics and behaviors which societies define as “masculine” or “feminine”—including such attributes as dress, appearance, mannerisms, speech patterns, and social behavior and interactions.

<sup>18</sup> “Classism” refers to bias, prejudice, or discrimination based on social or economic class.

<sup>19</sup> The drafters of this paper do not intend to espouse a particular position on sex work/prostitution. The term “sex worker” is used because it is the language that sex workers interviewed by the LGBT Program of Human Rights Watch use to describe themselves.

<sup>20</sup> OHCHR Fact Sheet No. 29, *supra* note 14, at 13-15; CLAIMING RIGHTS, CLAIMING JUSTICE, *supra* note 11, 46-47; Pinar Ilkharacan & Susie Jolly, *Gender and Sexuality: Overview Report*, 4-8 (Bridge, Institute of Development Studies, University of Sussex, Jan. 2007), *available at* <http://www.bridge.ids.ac.uk>.

<sup>21</sup> See Stasa Zajovic, *Religious fundamentalisms and repression of reproductive and sexual rights* (Women Living Under Muslim Laws, 2004), *at* [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-546841](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-546841); Women’s Reproductive Rights in Muslim Communities and Countries: Issues and Resources (Women Living Under Muslim Laws, 1994), *at* [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-3028](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-3028).

life or traditional values.<sup>22</sup> Because of the unique risks SR/RR defenders face, states must undertake targeted and effective efforts to protect them.

It is not only advocates who may be considered SR/RR defenders. Some individuals who may not be primarily identified as human rights defenders may qualify as such when they make a “special effort” to conduct their work in a way that promotes human rights.<sup>23</sup> For example, the former Special Representative has recognized that medical professionals deserve recognition as human rights defenders when they face unique threats or pressures in their work advancing the right to health.<sup>24</sup> Similarly, professionals such as physicians, owners and administrators of reproductive health clinics, health counselors, and HIV/AIDS outreach workers may qualify as SR/RR defenders when they provide sexual or reproductive health services in the face of attacks that jeopardize their work, safety or well-being.

## II. Legal Framework Protecting Defenders of SR/RR

The Declaration on Human Rights Defenders (“the Declaration”),<sup>25</sup> adopted by consensus by the UN General Assembly in 1998, affirms the rights of human rights defenders and reminds states of their international legal duties to ensure human rights for all. In order to protect, promote, and implement human rights, states are responsible for creating the conditions necessary for all persons to enjoy rights in practice.<sup>26</sup> The Declaration makes it clear that *all* human rights defenders—whether they work on civil and political rights, economic social and cultural rights, or other emerging human rights ideas and principles—have the right to be free from discrimination and violence as they promote and defend the human rights of others.

The Special Procedure on the situation of human rights defenders has reiterated that, because of the unique risks they face, women’s human rights defenders “need

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<sup>22</sup> CYNTHIA ROTHSCHILD, CENTER FOR WOMEN’S GLOBAL LEADERSHIP & INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION, WRITTEN OUT: HOW SEXUALITY IS USED TO ATTACK WOMEN’S ORGANIZING (Susana T. Fried & Scott Long, eds. 2000, *rev’d* 2005), available at <http://www.cwgl.rutgers.edu/globalcenter/publications/written.htm>.

<sup>23</sup> OHCHR, Fact Sheet No. 29, *supra* note 14, at 7.

<sup>24</sup> See *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, 4<sup>th</sup> Sess. paras. 70-72, U.N. Doc. A/HRC/4/37 (2007) (reporting that since the establishment of her mandate, the Special Representative has sent 36 communications to countries in all regions concerning the right to health and has raised issues ranging from threats to health providers treating civilians in the Occupied Territories to those assisting people living with HIV/AIDS in China); Commission on Human Rights, *Report Submitted by Ms. Hina Jilani, the Special Representative of the Secretary-General on the Situation of Human Rights Defenders*, 59<sup>th</sup> Sess., para. 50, U.N. Doc. E/CN.4/2003/104 (2003) (explaining that “human rights defenders in such capacities as medical personnel ... make essential contributions to the achievement of [the Millennium Development] goals.”); *2007 Annual Report of the Special Representative, Addendum*, *supra* note 15, paras. 285-88, 1080-83 (summarizing urgent appeals the Special Representative made to governments in 2008 regarding physicians who work with especially vulnerable populations, including people living with HIV/AIDS and access to health care for victims of sexual abuse).

<sup>25</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *adopted* Mar. 8, 1999, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (1999) [hereinafter Declaration on Human Rights Defenders].

<sup>26</sup> Declaration on Human Rights Defenders, art. 2(1).



specific and enhanced protection, as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and more accepting one.”<sup>27</sup> As the Special Rapporteur recognized in her 2008 priorities presented to the Human Rights Council, defenders of SR/RR also deserve special focus because of the risks they face.<sup>28</sup> Also in recognition of the fact of unique threats to sexual rights defenders, sixty-six members of the U.N. General Assembly recently issued a joint statement urging all member states “to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.”<sup>29</sup>

This section sets out the existing legal framework for protection of SR/RR defenders. It focuses on the right to be free from discrimination and violence because, as noted above, as visible challengers of societal discrimination and inequality, often in relation to gender, SR/RR defenders endure violence and harassment by those who oppose changes to the status quo. Discrimination and actual or threatened violence against SR/RR defenders interferes with their enjoyment of all substantive rights, which are discussed in greater detail in the next section.

### *The Rights to Be Protected from Discrimination and from Violence*

Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights set forth the right to be protected from discrimination, requiring governments to ensure human rights without distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States are further obligated under the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments to take special measures to eliminate discrimination against women.<sup>30</sup> In addition, international human rights bodies and experts have affirmed that the principle of non-discrimination prohibits unequal treatment based on sexual orientation.<sup>31</sup> Increasingly, treaty bodies and

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<sup>27</sup> Joint Statement on HRDs, *supra* note 12; Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, 7th Sess., para. 64, U.N. Doc. A/HRC/7/28 (2008) [hereinafter *2007 Annual Report of the Special Representative*].

<sup>28</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, 10th Sess., para. 21, U.N. Doc. A/HRC/10/12 (2009) [hereinafter *2008 Annual Report of the Special Rapporteur*] (explaining that her priority populations will be “women defenders; defenders working on economic, social and cultural rights; defenders working on the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people.”).

<sup>29</sup> Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly, 63rd Sess., U.N. Doc. A/63/635 (2008) [hereinafter *Joint Statement on Human Rights, Sexual Orientation, and Gender Identity*]. In March 2009, the United States expressed its wish to be aligned with the Joint Statement, bringing the number of affiliated states to 67.

<sup>30</sup> *See, e.g.*, CEDAW, art. 7(c) (mandating that[s]tates Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right ... [t]o participate in non-governmental organizations and associations concerned with the public and political life of the country.”).

<sup>31</sup> Committee on Economic, Social, and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, 42<sup>nd</sup> Sess., para. 32, U.N. Doc. E/C.12/GC/20

experts are espousing protections from discrimination for diverse expressions of gender identity.<sup>32</sup> These human rights bodies also take into account that not all people experience discrimination in the same way, and that those facing multiple forms of discrimination are particularly at risk of rights abuses.<sup>33</sup> International and regional human rights bodies have condemned violence as a manifestation of discrimination against women,<sup>34</sup> and there is increasing recognition at the international level that discrimination against people based on their perceived or actual sexual orientation or gender identity, their self-identification as lesbian, gay, bisexual, transgender, or intersex (LGBTI) people, or their engagement in same sex sexual practices and relationships, leads to violence.<sup>35</sup> Article 9 of the ICCPR guarantees to everyone the right of security of person.

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(2009) [hereinafter CESCR, General Comment No. 20]; Committee on Economic, Social, and Cultural Rights, *General Comment No. 14: the Right to the Highest Attainable Standard of Health (Art. 12)*, 22<sup>nd</sup> Sess., para. 18, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, *General Comment No. 14*] (explaining that the right to non-discrimination under art. 2(2) of the Covenant on Economic, Social, and Cultural Rights includes protected categories of health status (including HIV/AIDS) as well as sexual orientation); Human Rights Committee, Communication No. 488/1992, *Toonen v. Australia*, U.N. Doc. CCPR/C/50/D/488/1992 (1994) (affirming that the prohibition on discrimination based on “sex” under article 2(1) of the International Covenant on Civil and Political Rights includes sexual orientation); OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, 2008 REPORT: ACTIVITIES AND RESULTS, at 45, available at [http://www.ohchr.org/Documents/Press/OHCHR\\_Report\\_2008.pdf](http://www.ohchr.org/Documents/Press/OHCHR_Report_2008.pdf) [hereinafter OHCHR, 2008 Report] (quoting a statement from Ms. Navanethem Pillay, U.N. High Commissioner for Human Rights, explaining that “[t]hose who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family and are entitled to be treated as such...”).

<sup>32</sup> CESCR, General Comment No. 20, *supra* note 31, at para. 32 (recognizing gender identity as a protected ground of discrimination); OHCHR, 2008 Report, at 45.

<sup>33</sup> CESCR, General Comment No. 2, *supra* note 31, at para. 17; Committee on the Elimination of Racial Discrimination, *General Recommendation 25: Gender Related Dimensions of Racial Discrimination*, 56<sup>th</sup> Sess., para. 1, U.N. Doc. A/55/18, annex V at 152 (2000); CESCR, *General Comment No. 14*, *supra* note 31, paras. 20-27 (urging states to address the needs of certain groups, including women, children, persons with disabilities, and indigenous people, who face unique barriers to exercising their right to health); Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Women and Health*, 20<sup>th</sup> Sess., para. 6, U.N. Doc. A/54/38 (1999) (stating that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups...”). See also *Yogyakarta Principles*, *supra* note 4, Principle 2 (noting “[d]iscrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.”).

<sup>34</sup> *Beijing Declaration and Platform for Action*, para. 119 (recognizing “[v]iolence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement.”); Committee on the Elimination of Discrimination Against Women, *General Recommendation 19, Violence against women*, 11<sup>th</sup> Sess., para. 1, U.N. Doc. A/47/38 (1993) (stating, “[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, preamble, 33 I.L.M. 1534 (1994), *entered into force* March 5, 1995 (expressing concern “that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men”).

<sup>35</sup> Statement by UN High Commissioner for Human Rights, Ms. Navanetham Pillay, to the U.N. General Assembly (New York, N.Y., Dec. 18, 2008), available at <http://www.netherlandsmission.org/files/pdf/unhchrpillay.pdf> (claiming that “[n]o human being, simply because of their perceived sexual orientation or gender identity, may be denied their human rights. ... No human being, simply because of their perceived sexual orientation or gender identity, may be subject to

## *Discrimination Against Defenders of Sexual Rights*

Throughout her mandate, the Special Representative on human rights defenders sent several communications to States related to discrimination against defenders working on sexuality in multiple spheres. The Special Procedures within the Human Rights Commission and Human Rights Council have recognized that defenders working on rights claims around same-sex sexuality and HIV/AIDS are driven underground by laws that criminalize same sex relations.<sup>36</sup> This in turn exposes them to harassment and violence; they may be subject to arbitrary detentions and ill-treatment or even killed.<sup>37</sup> Those advocating for comprehensive sexuality education or access to health care for lesbian and transgender women face often prohibitive government restrictions on their work. Around the world, governments threaten organizations defending sexual rights with closure, with state officials arguing that their societies do not want these

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discrimination, violence, criminal sanctions, or abuse” and applauding the “considerable body of decisions [by human rights treaty bodies] affirming that discrimination on the basis of sexual orientation is contrary to international human rights law.”); Organization of American States, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2435 (XXXVIII-O/08) (*adopted June 3, 2008*) (“express[ing] concern about acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity”); Joint Statement on Human Rights, Sexual Orientation, and Gender Identity, *supra* note 29, para. 5 (recognizing that “violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses.”). *See also* U.N. General Assembly, *Draft resolution XV, Extrajudicial, summary or arbitrary executions*, 63rd Sess., U.N. Doc. A/63/430/Add.2, at 143 (2008) (calling for an end to “killings committed for any discriminatory reason, including sexual orientation”); *Yogyakarta Principles*, *supra* note 4, Principle 5 (“Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.”).

<sup>36</sup> Statement by U.N. High Commissioner for Human Rights, Ms. Navanetham Pillay, to the U.N. General Assembly (New York, N.Y., Dec. 18, 2008), *available at* <http://www.netherlandsmission.org/files/pdf/unhchrpillay.pdf> (explaining that laws criminalizing homosexuality make SR/RR defenders are “particularly vulnerable” to violations, and “[t]he stigma attached to these issues means that violence and discrimination often go unpunished, as victims dare not report their cases and the authorities do not pay sufficient attention to those who do.”).

<sup>37</sup> *Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, para. 48, U.N. Doc. E/CN.4/2001/9 (2001); para. 31, U.N. Doc. E/CN.4/2001/9/Add.1 (2001); para. 63, U.N. Doc. E/CN.4/2002/74 (2002). *Reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, para. 151, U.N. Doc. E/CN.4/2000/9 (2000); para. 25, U.N. Doc. A/56/156 (2001); para. 1153, U.N. Doc. E/CN.4/2001/66 (2001); paras. 1878, 1899, U.N. Doc. E/CN.4/2004/56/Add.1 (2004). *Report of the Special Rapporteur on the independence of judges and lawyers*, para. 43, U.N. Doc. E/CN.4/1998/39 (1998). *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 50, U.N. Doc. E/CN.4/2005/51/Add.1 (2005). *Reports of the Special Representative of the Secretary-General on the situation of human rights defenders*, para. 7, U.N. Doc. A/55/292 (2000); para. 89(g), U.N. Doc. E/CN.4/2001/94 (2001); paras. 172-73, U.N. Doc. E/CN.4/2002/106/Add.2 (2002); paras. 51, 61, 83, 104, 115, U.N. Doc. E/CN.4/2002/106 (2002); para. 284, U.N. Doc. E/CN.4/2003/104/Add.1 (2003); paras. 27, 46, 94, U.N. Doc., E/CN.4/2005/101 (2004); paras. 238, 481, 487, U.N. Doc. E/CN.4/2004/94/Add.3 (2004). U.N. General Assembly, Working paper on further proposals for the work of the World Conference submitted by Mr. Paulo Sérgio Pinheiro in his capacity as the representative of the Sub-Commission at the Preparatory Committee and the World Conference, para. 5, U.N. Doc. A/CONF.189/PC.2/19/Add.1(2001).

organizations legally registered because such organizations threaten dominant perceptions of morality. Within the myriad organizations working on sexual rights, some are particularly at risk, like those defending women engaged in sex work or opposing practices such as “honor crimes,” adultery, or female genital mutilation/cutting.

### *Discrimination Against Defenders of Reproductive Rights*

Those who advocate for or provide reproductive rights enable women to exercise their human rights to reproductive health and reproductive autonomy. Some individuals or groups who oppose women’s equality, or hold gender stereotyped views that deny women’s autonomy regarding reproduction and family roles, seek to silence women’s human rights defenders from asserting claims to these fundamental rights.<sup>38</sup> Defenders who advocate for or provide women’s right to safe legal abortion have been harassed, forced to defend themselves against spurious legal charges, and exposed to various forms of violence.<sup>39</sup> The Special Procedure on human rights defenders has taken action to address attacks on reproductive rights advocates, such as those targeted for campaigning against forced sterilizations and forced abortions<sup>40</sup> or coercive family planning policies.<sup>41</sup> Recently, the Committee Against Torture expressed profound concern regarding systematic harassment and death threats against reproductive rights advocates in Nicaragua and condemned the state for penalizing medical professionals for exercising their professional duties to fulfill women’s right to therapeutic abortion.<sup>42</sup>

### *State Responsibility for Violations against SR/RR Defenders*

The advancement of sexual rights and reproductive rights as “legitimate” areas of human rights focus continues to meet strong resistance from many of the same cultural and political forces that oppose gender equality. Nevertheless, the Declaration on Human

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<sup>38</sup> 2001 Annual Report of the Special Representative, *supra* note 12, para. 92 (explaining that “women’s professional integrity and standing in society can be threatened and discredited in ways that are specific to them, such as the all too familiar pretextual calling into question of their probity when - for example - women assert their right to sexual and reproductive health, or to equality with men, including to a life free from discrimination and violence.”).

<sup>39</sup> Center for Reproductive Rights, *Recognizing Abortion Providers as Human Rights Defenders*, at <http://reproductiverights.org/en/project/recognizing-abortion-providers-as-human-rights-defenders>; Press release, Commission on Human Rights, *Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani: Mission to Nigeria*, 62nd Sess., para. 86, U.N. Doc. E/CN.4/2006/95/Add.2 (2006) [hereinafter, *2006 Report by the Special Representative: Mission to Nigeria*]

(expressing concern that in Nigeria “[o]rganizations working on reproductive rights and health issues have been subjects of slander campaigns and attacks against them.”); Human Rights Watch, *Nicaragua: Protect Rights Advocates from Harassment and Intimidation* (Oct. 28, 2008), at <http://www.hrw.org/en/news/2008/10/28/nicaragua-protect-rights-advocates-harassment-and-intimidation>;

<sup>40</sup> 2007 Annual Report of the Special Representative, *Addendum*, *supra* note 15, para. 55; Human Rights Council, *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Addendum: Summary of cases transmitted to Governments and replies received*, 10th Sess., para. 559, U.N. Doc. A/HRC/10/12/Add.1 (2009) [hereinafter *2008 Annual Report of the Special Rapporteur, Addendum*].

<sup>41</sup> 2008 Annual Report of the Special Rapporteur, *Addendum*, *supra* note 40, para. 592.

<sup>42</sup> Committee Against Torture, *Concluding Observations: Nicaragua*, 42<sup>nd</sup> Sess., paras. 16, 18, U.N. Doc. CAT/C/NIC/CO/1 (2009).

Rights Defenders clearly sets forth the duty of states to respect, protect, and fulfill the rights of all human rights defenders, including those who advocate for emerging human rights norms and principles.<sup>43</sup> A government's failure to *respect* the rights of SR/RR defenders may be clear, as when it criminalizes human rights activity and makes it impossible for defenders to do their work. But governments are no less responsible when state institutions fail to *protect* rights defenders who have been threatened with violence by private actors, such as community members, social groups, or religious institutions. At times, government inaction directly abets private harassment, as when private citizens are able to use a state's justice system as a tool to harass rights defenders. Finally, the state has an obligation to *fulfill* the rights of all, including SR/RR defenders, by creating an enabling environment for SR/RR, through *inter alia* publicizing information about human rights including SR/RR, educating and training public officials about rights and obligations, and creating state mechanisms for promoting human rights.

### **III. Violations Against SR/RR Defenders**

This Part provides specific examples of violations frequently experienced by SR/RR defenders which illustrate the breadth of persecution but are by no means comprehensive. The framework used to assess human rights violations explicitly draws upon the Declaration on Human Rights Defenders, the most widely accepted articulation of international norms pertaining to those who place themselves at risk to defend the rights of others. The Declaration does not create new rights but rather draws upon well accepted and legally binding rights and principles contained in international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The typology of violations discussed below also draws upon the categories set forth by the International Coalition on Women Human Rights Defenders as set forth in the guidebook, *Claiming Justice, Claiming Rights*,<sup>44</sup> with specific application here to SR/RR defenders.

#### **A. Attacks on life or bodily integrity**

Every year, an alarming number of people are killed around the globe for their work defending women's human rights. These situations, along with sexual violence and death threats against women defenders, have been widely documented by the Special Procedure on human rights defenders<sup>45</sup> and non-governmental organizations.<sup>46</sup> As these

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<sup>43</sup> Declaration on Human Rights Defenders, art. 7 (stating, "[e]veryone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."). See also *Yogyakarta Principles*, *supra* note 4, Principle 27 (stating, "[e]veryone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity. This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss new human rights norms and to advocate their acceptance.").

<sup>44</sup> CLAIMING JUSTICE, CLAIMING RIGHTS, *supra* note 11.

<sup>45</sup> Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, 4<sup>th</sup> Sess., paras. 100, 102, U.N. Doc. A/HRC/4/37 (2007) (explaining that since the establishment of her mandate, the Special Representative acted on 449 cases of violations

examples show, SR/RR defenders face physical violence or threats of violence by those opposed to assertions of sexual rights or reproductive rights. These actions contravene Article 12 of the Declaration, which ensures the right of defenders to be protected against violence, threats, retaliation, discrimination, or any other action seeking to deter their human rights work.

- Dr. George Tiller, owner and Medical Director of Women’s Health Care Services in Wichita, Kansas, USA, was assassinated on May 31, 2009 in the foyer of his church, where he was serving as an usher for Sunday morning services. Dr. Tiller was one of only a few doctors in the U.S. who performed legal abortions in the third trimester of pregnancy in order to preserve a woman’s health or life. His heroic defense of reproductive rights made him the target of anti-abortion violence for over three decades. He survived one assassination attempt in 1993, when he was shot in both arms by an anti-abortion extremist. He was also the victim of severe intimidation and harassment, including being featured in “most wanted” posters put up by private anti-abortion extremist groups that offered a \$1,000 reward for stopping physicians from performing abortions. Despite these unrelenting threats, U.S. law enforcement failed to provide effective and consistent protection to Dr. Tiller.<sup>47</sup>
- Unknown assailants murdered Cynthia Nicole, a 32-year old transgender and sex workers rights defender, in the early hours of January 9, 2009 in Honduras. According to testimonies by other rights activists, three unknown men in a blue car shot Nicole in a drive-by shooting in Barrio Guaserique in Comayaguela, a town just outside Tegucigalpa. The transgender rights activist received three shots in the chest and one in the head. The general attorney’s office commenced an investigation but as yet no one has been arrested.<sup>48</sup>
- Starting in mid-2007 up to May 2008, Abby Johnson, the health center manager of a reproductive health clinic in Bryan, Texas, USA, has had her life threatened six times because of her work as an abortion provider. The threats came in the form of notes, each one more overt and detailed than the last. The last one came to the clinic and was a 40-day “countdown” on her life, which had already begun. She called the

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against women human rights defenders out of more than 1,300 cases. Forty-three of these women defenders were killed in connection with their human rights work.)

<sup>46</sup> Several prominent human rights organizations have documented threats and violations against defenders for many years, including: Amnesty International (<http://www.amnesty.org/en/human-rights-defenders>), Human Rights Watch (<http://www.hrw.org/en/our-work/defenders>), Frontline (<http://www.frontlinedefenders.org/>), and World Organization Against Torture (<http://www.omct.org/index.php?id=OBS&lang=eng>). See also CLAIMING RIGHTS, CLAIMING JUSTICE.

<sup>47</sup> Center for Reproductive Rights, Letter to Secretariat of the Human Rights Tulip Award, Aug. 29, 2008, available at <http://reproductiverights.org/en/document/nomination-of-dr-george-tiller-for-the-human-rights-defender-tulip-award>; Joe Stumpe & Monica Davey, *Suspect Is Identified in Killing of Abortion Doctor*, N.Y. TIMES (online), June 1, 2009.

<sup>48</sup> Press Release, Human Rights Watch, Honduras: Investigate Murder of Transgender Activist (Jan. 12, 2009), at <http://www.hrw.org/en/news/2009/01/12/honduras-investigate-murder-transgender-activist>; Press Release, Amnesty International, Transgender Human Rights Defender, AMR 37/001/2009 (Jan. 21, 2009), at <http://www.asylumlaw.org/docs/sexualminorities/Honduras012109.pdf>.

police after receiving the first threat, but they refused to take action on grounds that the threats were not overt. As the threats continued, the police referred her to the U.S. Federal Bureau of Investigation, but the case remains unresolved.<sup>49</sup>

## **B. Attacks against privacy, family, personhood and reputation**

Attacks on SR/RR defenders' privacy, home life, or family members seek to harm or stigmatize defenders within their communities and deter them from continuing their work for fear of putting loved ones or colleagues at risk. In addition, state and non-state actors may attempt to discredit SR/RR defenders and organizations by waging smear campaigns against them. These campaigns may take aim at their personal or professional reputations, intending to inhibit or delegitimize defenders' human rights work, or to discourage others from associating with them or taking on similar agendas.<sup>50</sup> These varied attacks on privacy and reputation violate the state's duty under Article 2 to take "such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields" to ensure that defenders "are able to enjoy all [the] rights and freedoms [set forth in the Declaration] in practice." Such steps may include, as specified in Articles 14 and 15, educating the public about sexual rights and reproductive rights and training appropriate individuals to support defenders of this work.

- Dr. J. Christopher Carey is an OB/GYN physician in the US who is committed to providing training in abortion to medical students in their residency training programs. He supervised a medical residency program in Maricopa County Hospital in the state of Arizona, U.S.A. From 2003-2004, he publicly worked to block efforts of the County Board of Supervisors and members of the hospital's staff to prevent OB/GYN residents from receiving training in abortion—training that guidelines in medical graduate education require for all residents who seek it. Because of this advocacy, he filed a lawsuit alleging he was subjected to groundless and repeated investigations on trumped-up charges of professional misconduct, denied legal process to address the allegations, and removed from his leadership positions, ultimately leading to termination of his employment.<sup>51</sup>
- In July 2005, local officials in Uganda illegally raided the home of LGBTI activist Victor Mukasa, looking for "incriminating material." They seized documents and other materials related to LGBTI organizing in Uganda. Mukasa was not home, but police officers arbitrarily detained another activist, Oyo Yvonne, who was there at the

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<sup>49</sup> Center for Reproductive Rights, Interview with Abby Johnson, Health Center Manager of Bryan Planned Parenthood, Bryan, Texas (Dec. 8, 2008).

<sup>50</sup> See ROTHSCHILD, WRITTEN OUT, *supra* note 22 (explaining how "sexuality baiting"—the practice of labeling women rights defenders as lesbians, sexually promiscuous, or sexually deviant as a result of their work, who they are seen to be—is intended to harass, intimidate, and delegitimize these individuals as defenders of human rights).

<sup>51</sup> Center for Reproductive Rights, Carey v. Maricopa County, *available at* <http://reproductiverights.org/en/case/carey-v-maricopa-county-az>. In May 2009, the parties reached a settlement in the case favorable to Dr. Carey. See Press release, Center for Reproductive Rights, Ex-Ob-Gyn Chief in Arizona Receives Million-Dollar Settlement in Discrimination Case (May 22, 2009), *available at* <http://reproductiverights.org/en/press-room/ex-ob-gyn-chief-in-arizona-receives-million-dollar-settlement-in-discrimination-case>.

time. Oyo Ivonne tried to stop the raid and asked for a police warrant. The police officers accused her of “idle and disorderly” conduct and took her to the Kamuli police station. According to the activist, the officer in command forced her to undress “to prove that she was a woman.” That same year, Mukasa and Oyo filed a case against the Attorney General. In December 2008, Justice Stella Arach issued a ruling in their favor and awarded financial damages.<sup>52</sup>

### C. Criminalization of human rights activity

Article 11 guarantees the right of defenders to the lawful exercise of their profession. In addition, states have an obligation under Article 2 to create the conditions necessary to ensure that defenders are able to perform their activities promoting human rights. Many states attempt to silence human rights defenders by bringing spurious charges against them or by criminalizing their work in general. Defenders of SR/RR are therefore particularly vulnerable under criminal laws to arbitrary arrest and detention and physical deprivation of liberty.

- On January 6, 2009 a court in Senegal sentenced nine men involved in HIV/AIDS prevention work on charges under article 319.3 of Senegal’s penal code of “indecent and unnatural acts.” They were also found guilty of “criminal association” in violation of article 238 of the penal code. These nine men apparently were arrested on the theory that HIV/AIDS work must mean that somewhere, at some time, they were engaging in homosexual conduct. The arrest links these activists’ work on HIV/AIDS prevention with LGBT identity and reinforces stereotypes that LGBT individuals are HIV positive.<sup>53</sup>
- In November 2007, the government of Nicaragua charged nine renowned women’s rights activists with criminal charges and summoned them to appear in Court. They were charged with “associating for the purpose of solicitation” and “apology to abortion” in connection with a case of a 9-year-old girl who became pregnant following a rape and received a therapeutic abortion. (Therapeutic abortion was legal in 2003 when the case occurred; in 2006, the Penal Code totally criminalized all forms of abortion.) A month earlier, on October 10 and 11, 2008, police raided the headquarters of two women’s rights NGOs.<sup>54</sup> The government also initiated charges

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<sup>52</sup> Press Release, International Gay and Lesbian Human Rights Commission, Sexual Minorities of Uganda, Uganda Human Rights Activists Violated by Police and LC1 (July 28, 2005), *available at* <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/368.html>; Press Release, International Gay and Lesbian Human Rights Commission, *Uganda: Victory for Human Rights* (Dec. 23, 2008), *at* <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/829.html>.

<sup>53</sup> Press Release, Human Rights Watch, Senegal: Free Aids Activists, Jan. 9, 2009, *at* <http://www.hrw.org/en/news/2009/01/09/senegal-free-aids-activists>.

<sup>54</sup> *Semanario El 19*, Edition No. 2, at 18-19 (Aug. 28-Sept. 3, 2008); <http://nuevaya.com.ni>; Antonio Gutiérrez, *Denuncian uso de organizaciones no gubernamentales contra el gobierno nicaragüense*, LA VOZ DEL SANDINISMO (Sept. 10, 2008), *at* <http://www.lavozdelsandinismo.com>.



of money laundering against NGOs active in opposing the abortion ban, charging them with illegally receiving funding from international funders.<sup>55</sup>

- On February 27, 2008, two lesbian Rwandese human rights defenders were arrested at Kigali Airport on their way to Maputo, Mozambique, to attend the third Leadership Institute of the Coalition of African Lesbians (CAL). They were accused of forging visa documents and not having the required travel visas, even though they had letters of invitation that would have guaranteed them visas upon arrival in Mozambique. They have since been released on bail but bail conditions do not allow them to leave Kigali.<sup>56</sup>

#### **D. Legal Provisions or Practices Restricting Advocacy and Organizational Association**

Article 11 of the Declaration sets forth the legal right of human rights defenders to the lawful exercise of their profession. For many SR/RR defenders, forming and working within non-governmental organizations (NGOs) is critical to their ability to promote human rights. The Declaration recognizes this fact in Article 5, which protects the right of defenders “to form, join and participate in non-governmental organizations, associations or groups.” In addition, Article 13 protects the right of defenders “to solicit, receive and utilize resources” in order to support human rights organizations. Despite these explicit protections for human rights organizations, states often deny groups the ability to legally register as NGOs working on sexual rights or reproductive rights. Alternatively, states single out SR/RR groups for highly restrictive regulations, subject them to onerous requirements not imposed on other NGOs (e.g., unannounced investigations, repeated audits), or even force them to close altogether.

- In December 2008, at the request of abortion opponents, the President of the House of Representatives of Brazil agreed to create an official Parliamentary Commission of Inquiry (CPI) to investigate the illegal commerce of “abortive substances.” The CPI was meant to respond to abortion opponents’ allegations of widespread violations of Brazil’s abortion laws (abortion is criminalized in Brazil except in cases where the woman’s life is in danger or pregnancy results from rape, or incest). The CPI authorized sweeping police investigations of feminist organizations and reproductive

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<sup>55</sup> Press Release, Human Rights Watch, Nicaragua: Protect Rights Advocates from Harassment and Intimidation (Oct. 28, 2008), at <http://www.hrw.org/en/news/2008/10/28/nicaragua-protect-rights-advocates-harassment-and-intimidation>; Movimiento Autonomo de Mujeres, Centro de Derechos Constitucionales, & International Women’s Human Rights Law Clinic (CUNY Law School), *Report on violations of women’s human rights to therapeutic abortion and emergency medical care, and the rights of women’s human rights defenders: Shadow report submitted to the UN Human Rights Committee*, 94th Sess., at 8-9, (2008) available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MAM\\_CDC\\_IWHR.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MAM_CDC_IWHR.pdf).

<sup>56</sup> Amnesty International, *International Briefs: Rwanda - Human rights activists arrested while traveling to a conference*, posted Mar. 18, 2008, at <http://www.amnestyusa.org/lgbt-human-rights/international-briefs/page.do?id=1106556>.

health clinics,<sup>57</sup> institutionalizing the police practice of invasive raids that previously have resulted in the failure of police to follow even minimal procedural safeguards to protect the privacy of patients' medical files. A raid in 2007 in a clinic in the state of Mato Grosso do Sul resulted in police confiscating the medical records of nearly 10,000 women, and authorities allowing members of the public to view the records upon request.<sup>58</sup>

- On May 29, 2008, a local court in the Beyoglu district of Istanbul, Turkey ruled in favor of a complaint brought by the Istanbul Governor's Office, and ordered the closing of Lambda Istanbul, a group advocating for lesbian, gay, bisexual, transsexual, and transgender (LGBT) people's human rights. The local court found that Lambda Istanbul's objectives were "against the law and morality" as well as Turkish family values. The Supreme Court of Turkey overruled the lower court and held that it was not against public morality for sexual orientation or gender identity to appear in the name or purpose of the organization. However, the Supreme Court acknowledged that if in the future Lambda Istanbul "promoted or encouraged widespread sexual orientation as LGBT, dismissal of the organization is beyond question." Thus, while the organization's right to exist was upheld, it is far from clear the group will be able to pursue its activities to promote sexual rights.<sup>59</sup>
- On January 6, 2009, the Ethiopian parliament passed the Charities and Societies Proclamation. The law labels every Ethiopian civil society organization that receives more than 10 percent of its funding from sources outside of Ethiopia as "foreign." These "foreign" groups are barred from doing any work that touches on human rights. The law also creates a new agency with extraordinarily broad powers to interfere with and even shut down the operation of local NGOs, with severe limitations on the right to appeal its decisions to the court. While some particularly onerous provisions were dropped from previous drafts, the version that became law expanded the definition of human rights work to specifically include issues related to gender equality.<sup>60</sup>

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<sup>57</sup> Phydia de Athayde, *Cuidado ou cadeia?*, CARTA CAPITAL (Mar. 6, 2009), available at <http://www.cartacapital.com.br>; Iolando Lourenço, *Representantes de entidades femininas fazem ato contra CPI do aborto*, AGÊNCIA BRASIL (Mar. 31, 2009), available at <http://www.agenciabrasil.gov.br>; Carollina Andrade, *Presidente da Câmara é vaiado por instalar CPI do Aborto*, ÚLTIMO SEGUNDO (Dec. 15, 2008), available at <http://ultimosegundo.ig.com>.

<sup>58</sup> HUMAN RIGHTS WATCH, *WORLD REPORT 2009*, 164 (2009), available at <http://www.hrw.org>; IPAS, *PROCESSOS JUDICIAIS ENVOLVENDO ABORTAMENTO: NEGAÇÃO DOS DIREITOS REPRODUTIVOS DAS MULHERES EM MATO GROSSO DO SUL* (2008), available at [http://www.ipas.org.br/arquivos/RelatorioMS\\_FINAL.pdf](http://www.ipas.org.br/arquivos/RelatorioMS_FINAL.pdf).

<sup>59</sup> Press Release, Human Rights Watch, *Turkey: Court Shows Bias, Dissolves Lambda Istanbul* (June 1, 2008), <http://www.hrw.org/en/news/2008/06/01/turkey-court-shows-bias-dissolves-lambda-istanbul>; Press Release, Human Rights Watch, *We Need a Law for Liberation: Gender, Sexuality, and Human Rights in a Changing Turkey* (May 21, 2008), at <http://www.hrw.org/en/reports/2008/05/21/we-need-law-liberation-0>; Appeals court says gay rights unit is OK, HURRIYET DAILYNEWS.COM, Jan. 24, 2009, at <http://www.hurriyet.com.tr/english/domestic/10844193.asp>.

<sup>60</sup> Press Release, Human Rights Watch, *Ethiopia: New Law Ratchets up Repression* (Jan. 8, 2009), at <http://www.hrw.org/en/news/2009/01/08/ethiopia-new-law-ratchets-repression>; Letter from Lotte Leicht, EU Director, Human Rights Watch & Georgette Gagnon, Africa Director, Human Rights Watch to the Foreign Minister of the European Union, Feb. 10, 2009, at <http://www.hrw.org/en/news/2009/02/10/letter-european-union-their-disappointing-reaction-ethiopian-ngo-law>.

- A women's health clinic in Baseco, one of the biggest settlement areas in Manila, the capital of the Philippines, with about 65,000 people, was closed down in 2005 and denied renewal of its license to operate. The NGO-run clinic was accused of violating an Executive Order (EO) issued by the former mayor of Manila that prohibits the distribution of modern contraceptives. Because of the EO, NGOs that have attempted to provide family planning information and services have suffered harassment including admonitions against renewal of permits to operate, dismissal of government doctors who provide referrals to NGOs that make contraceptives accessible to women, censorship of family planning educational and informational kits, and summons to city hall and withdrawal of support for the distribution of contraceptives in health centers.<sup>61</sup>

### **E. Violations of freedom of expression, association, assembly, and movement**

SR/RR defenders are frequently prevented from exercising their rights to assembly, information, expression, opinion, and participation in public life as protected by Articles 5, 6, 7, and 8 of the Declaration. Rights violations may include prohibitions on protests, marches or gatherings. In addition, SR/RR defender organizations are often raided in an attempt to intimidate defenders or make it difficult or impossible for them to continue their human rights work.

- On June 3, 2008, police in Kampala, Uganda detained three HIV/AIDS and LGBTI human rights defenders while they were demonstrating during the HIV/AIDS Implementers Meeting, a conference aimed at sharing lessons learned and best practices for HIV/AIDS programs. The three activists were protesting remarks made the day before by the chair of the Uganda AIDS Commission, Kihumuro Apuuli, who had declared that "gays are one of the drivers of HIV in Uganda," and that the government could not afford direct HIV/AIDS prevention and care. The three activists were charged with "criminal trespass."<sup>62</sup>
- CIMAC is an organization that uses the media to promote women's rights to equality in Mexico. They have been particularly active in providing information regarding women's reproductive rights, including abortion rights, in Mexico. In July 2008, unknown men ransacked CIMAC's (Women's Communication & Information) offices in Mexico. Twelve computers, documents, and files were stolen, including those containing confidential information about special investigations and coverage by CIMAC.<sup>63</sup>

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<sup>61</sup> CENTER FOR REPRODUCTIVE RIGHTS, LIKHAAN, & REPROCEN, IMPOSING MISERY: THE IMPACT OF MANILA'S BAN ON CONTRACEPTION 27-30 (2007) *available at* <http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/Philippines%20report.pdf>.

<sup>62</sup> Press Release, Human Rights Watch, Uganda: Drop Charges against Sexual Rights Activists (June 10, 2008), *at* <http://www.hrw.org/en/news/2008/06/10/uganda-drop-charges-against-sexual-rights-activists>.

<sup>63</sup> Association of Women in Development, CIMAC, *Feminist International Radio Endeavour-Fire: Ransacking of Longtime Women's News Agency in Mexico City Raises Concerns about Motives* (July 30, 2008), *at* <http://www.awid.org>.

- GAMCOTRAP is a women’s rights organization in Gambia working on early marriage, Female Genital Mutilation (FGM), and forced marriage. Religious scholars in Gambia have been using state institutions to preach a religious discourse against those defending sexual rights and reproductive rights and women’s rights more broadly. SR/RR defenders Isatou Touray and Amie Bojang-Sissoho, as well as other workers at GAMCOTRAP, have been threatened and insulted on community and national radio stations. In May 2009, President Yahya Jammeh threatened to permanently silence one of the outspoken religious leaders in the country, Imam Baba Leigh, who has always preached against the traditional practice of FGM as a violation of women’s sexual and reproductive rights.<sup>64</sup>
- The second annual Gay Pride Parade scheduled for February 21, 2009, in Chiang Mai, Thailand, was cancelled when the parade organizers—all local LGBTI activists—were locked in the compound where they were gathering and subjected to violence by the Rak Chiang Mai 51 political group, also known as the ‘red shirts’ in reference to the attire they wear to signify their loyalty to the Thai Rak Thai political party. Parade organizers and participants were harassed, hurt, and prevented from leaving or entering the compound for 4.5 hours while 150 police looked on, refusing to intervene or respond to the parade organizers’ pleas for security. The police encouraged the gay pride organizers locked inside to give in to the demands of the ‘red shirts’ to apologize for organizing a pride parade as a way to resolve the situation.<sup>65</sup>

#### **F. Non-recognition of violations and impunity**

Article 9 of the Declaration guarantees the right of defenders to an effective investigation and remedy in the event of a rights violation. Nevertheless, law enforcement often fails or refuses to investigate human rights violations against SR/RR defenders. Perpetrators go unpunished, denying justice and deterring defenders from continuing with their lawful human rights work for fear of further retaliation.

- Ms. Mao Hengfeng was dismissed from work for deciding to continue the pregnancy of her third child contrary to China’s one-child family planning policy. When she appealed her job dismissal, a judge told her he would rule in her favor if she terminated the pregnancy. She did so against her wishes but out of concern for her family’s welfare, but still the court ruled against her. Despite repeated appeals against the termination of her job, the abortion she was coerced into obtaining, and other denials of her basic rights, Chinese authorities have forcibly detained her several times in prison and psychiatric hospitals. She has become a well-known advocate for reproductive rights in China. In April 2004 she was sent to a “Reeducation through Labor” camp, where she was subjected to torture and ill

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<sup>64</sup> *President Jammeh Threatens Imam Baba Leigh, Bans Annual Pilgrimage to Sheikh Omar Futiyou Site in Gunjur*, SENEGAMBIA NEWS (May 27, 2009), available at <http://www.senegambianews.com>.

<sup>65</sup> Press Release, International Gay and Lesbian Human Rights Commission, Thailand: Violence Against Gay People (16 March 2009), available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/873.html>.

treatment for a year and a half. She was arrested in November 2008 again after a peaceful protest and is currently being held in detention.<sup>66</sup>

- Jorge López Sologaitoa, the Director of the Organization to Support an Integrated Sexuality to Confront AIDS (OASIS) in Guatemala City, is a leading advocate for LGBTI communities and sex workers. On July 4, 2008, López assisted a group of sex workers to lodge a complaint with the National Civil Police about various violent attacks suffered by sex workers the day before his arrest. Despite his pleas for greater security for sex workers and warnings of an imminent attack against them, a sex worker named Laila was brutally assaulted that evening. López later filed a complaint against the police for misconduct in failing to act to protect the sex workers. On November 4, 2008, he was arrested for the attempted murder of Laila, despite no evidence linking him to the crime. The police have failed to properly investigate the attack against Laila, nor the alleged police misconduct asserted in López's complaint.<sup>67</sup>

#### **IV. Recommendations**

Our organizations request that the Special Rapporteur on the situation of human rights defenders consider the following principles and actions when implementing her mandate:

- *Promoting respect for SR/RR defenders:* Raising the profile of SR/RR defenders builds legitimacy and respect for their work as human rights defenders. Potential actions include: conducting outreach to SR/RR defenders in countries where they are particularly marginalized; meeting with SR/RR defenders in country visits, as well as in UN settings; inviting SR/RR defenders to participate in dialogues with international and regional mechanisms on human rights defenders; and speaking out publicly about the importance of the work of SR/RR defenders.
- *Taking action on individual cases:* Issuing communications to governments concerning individual SR/RR defenders facing persecution or heightened risk, and following up on state responses, will help ensure that defenders who are harmed receive appropriate remedies and that state mechanisms are designed and implemented to address root problems of discrimination, stigma, and other violations.
- *Collaborating with other Special Procedures and the Human Rights Council:* Initiate collaborative efforts with other Special Procedures mandate holders and other mechanisms of the Human Rights Council designed to call attention to the particular risks faced by SR/RR defenders and to develop a consistent message to

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<sup>66</sup> Amnesty International, *China: Mao Hengfeng*, at <http://www.amnestyusa.org/violence-against-women/support-and-defend-women-human-rights-activists/china-mao-hengfeng/page.do?id=1108330>; *2008 Annual Report of the Special Rapporteur, Addendum, supra* note 40, para. 592.

<sup>67</sup> Letter from 1,135 signatories to Dr. José Amílcar Velásquez Zárate, Attorney General of Guatemala, regarding the arrest warrant issued against Jorge Luis López Sologaitoa (Jan. 22, 2009), *available at* <http://www.humanrightsfirst.org/pdf/090123-HRD-lopez-pet-eng-no-sig.pdf>.

help states improve protection strategies.

- *Sensitizing UN human rights bodies and other mechanisms to the protection needs of SR/RR defenders:* Developing and sustaining working relationships with international mechanisms and bodies, in particular treaty bodies such as the Committee on the Elimination of Discrimination Against Women, will help ensure these institutions address and condemn the discrimination and violence directed against SR/RR defenders. Working with UN treaty bodies to develop more effective accountability mechanisms for non-state actors who commit violations against SR/RR defenders will build a more protective rights framework.
- *Encouraging and supporting national human rights institutions to include SR/RR defenders in their mandates:* By urging states to explicitly recognize sexual rights and reproductive rights as human rights, document violations against SR/RR defenders, and include information about attacks against SR/RR defenders in their human rights reports to international and regional human rights bodies, states will build their institutional capacity to respond to rights violations. The Special Rapporteur can further assist by highlighting models of law and policy that protect defenders while strengthening sexual rights and/or reproductive rights.
- *Helping states build capacity of regional human rights mechanisms to improve urgent action responses for SR/RR defenders:* The Special Rapporteur can help states promote cross-sectoral collaborations between international and regional human rights bodies working to protect human rights defenders, and encourage these institutions to share best practices on fighting discrimination against SR/RR defenders and ending impunity for perpetrators.