

A b s t r a c t

This essay briefly examines the intersection of “health and human rights” strategies with two critical international human rights movements: women’s rights and gay rights. It concludes that within international frameworks defining a woman’s right to health, reproductive health has played a predominant role, and when discussions of health and human rights have addressed issues of homosexuality, they have tended to focus on the explosive conjunction of AIDS and discrimination in the lives of gay men. Nevertheless, despite the fact that strategies for achieving a human right to health have tended to focus on issues less than central to many lesbians’ lives, the emerging health and human rights paradigm—by allowing a “whole person” analysis that takes into account the dynamics of individual and social relations as well as basic human needs—may paradoxically offer lesbians the potential to counteract the harms that have evolved within the arenas of health and human rights independently, while avoiding the pitfalls of identity-based claims.

Este ensayo examina brevemente la intersección de las estrategias “de la salud y los derechos humanos” con dos movimientos críticos de los derechos humanos internacionales: los derechos de la mujer y los derechos de los homosexuales. Este ensayo concluye que dentro de los marcos internacionales que definen el derecho de la mujer a la salud, la salud de la reproducción ha jugado un papel predominante, y cuando las discusiones de la salud y los derechos humanos se han dirigido hacia la homosexualidad, éstas se han enfocado en la conjunción explosiva del SIDA y la discriminación en la vida de los hombres homosexuales. Sin embargo, a pesar del hecho de que las estrategias para alcanzar el derecho humano a la salud se han enfocado principalmente en tópicos un poco menos centrados en muchas de las vidas de las lesbianas, el paradigma emergente de la salud y los derechos humanos - al permitir un análisis de “la persona por completo” que toma en cuenta tanto la dinámica de las relaciones individuales y sociales así como también la necesidades básicas humanas - puede paradójicamente ofrecer a las lesbianas el potencial para contrarrestar los daños que han evolucionado dentro de las arenas de los derechos humanos a la salud independientemente, y al mismo tiempo evitando las fallas de una imposición rígida de categorías de identidad dentro de la ley.

Ce texte examine brièvement deux mouvements cruciaux internationaux des droits de l’homme (le droit des femmes et le droit des homosexuels) face aux stratégies de la santé et des droits de l’homme. Les auteurs concluent que dans le cadre international définissant le droit de la femme à la santé, la santé dans le domaine de la reproduction a joué un rôle prédominant. Lorsque les débats sur la santé et les droits de l’homme ont porté sur l’homosexualité, ils ont été centrés sur la conjonction explosive du SIDA et de la discrimination dans la vie des homosexuels. Néanmoins, malgré le fait que les stratégies cherchant à réaliser un droit de l’homme à la santé ont eu tendance à viser les problèmes les moins importants dans la vie de nombreuses lesbiennes, un paradigme de la santé et des droits de l’homme—en permettant l’analyse “d’une personne à part entière” prenant en considération les interactions individuelles et sociales, aussi bien que les besoins humains fondamentaux—pourrait offrir paradoxalement aux lesbiennes la possibilité de contrebalancer les préjudices qui se sont développés indépendamment dans les domaines de la santé et des droits de l’homme, tout en évitant de tomber dans la rigidité de catégories d’identité à l’intérieur de la loi.

HEALTH, HUMAN RIGHTS AND LESBIAN EXISTENCE

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“When [my parents] found out that I was a lesbian, they tried to force me to find a boyfriend but I could not fit in with what they wanted... My parents decided to look for a husband on my behalf so they brought several boys home to meet me but I was not interested so in the end they forced an old man on me. They locked me in a room and brought him everyday to rape me so I would fall pregnant and be forced to marry him. They did this to me until I was pregnant after which they told me I was free to do whatever I wanted but that I must go and stay with this man or else they would throw me out of the house. They did throw me out eventually... I did not contact them for six months. The police were looking for me so I used to move during the night only. In the end, the police found me and took me home where I was locked up and beaten until I could not even lift my arms or get up.”¹

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“The treatment began with three weeks of sleep therapy. Then I had three sessions of analysis... they carried me on a stretcher, in a wheelchair, and finally kicking and screaming, because the psychiatrist decided they would have to give me shock treatment...Meanwhile, there were drug treatments...hot and cold baths, etc....The psychiatrist, always very aggressively...taught me what it meant to be a homosexual: to suffer a lot, to be wretched...his treatment consisted [in part] of...injections to induce nausea...I spent long hours in an armchair with him projecting slides. They were women undressed...I came to see it with hatred instead of naturally. I started saying exactly what he wanted to hear.”²

As can be seen from the examples above, the “health” issues faced by lesbians are often inextricable from their most basic human rights. Yet, having been invited to contribute this commentary on lesbian health and human rights, we find ourselves faced with a rather extraordinary challenge. In the United States and in a few other countries such as Canada and the United Kingdom, lesbian *health* movements have begun to appear. Simultaneously, there have emerged several successful international demands for gay (and lesbian) *human rights* in the past decade. We have not, however, been successful in our search for scholarly literatures, grass-roots movements, or legal argumentation that specifically combine the concept of lesbian health with the call for lesbian human rights, or that identify health *as* a human right for lesbians.

This essay represents our attempt to initiate such a conversation. In the following pages we will briefly sketch out some of the obstacles to, and potential locations for, a lesbian right to health. We will focus primarily on the issue (and absence) of lesbian health within current human rights norms, rather than, for instance, on how human rights standards might be brought to bear upon lesbian health movements in particular countries or contexts.³

To begin our discussion, it must be noted that health itself is a fraught location for lesbians. Indeed, for lesbians, “‘health’ has often been a site of oppression.”⁴ In the United States and Europe, “Lesbians were said to harbor the same sickness and evil found in gay men; however, several medical theories warned of even greater danger associated with

female homosexuality."⁵ Given a history in which "lesbianism" has been defined as an illness in need of treatment, it might be said that "lesbian health" is something of an oxymoron. Moreover, some of these "treatments" could themselves be described as direct attacks on lesbian health and human rights. For instance, in the United States as in other countries, treatments for lesbianism have included "psychiatric confinement, electroshock treatment, genital mutilation, aversive therapy, psychosurgery, hormonal injection, psychoanalysis, and psychotropic chemotherapy."⁶

It is crucial that we challenge the medicalization of lesbians; however, it is also clear that lesbian well-being depends upon the articulation and recognition of a whole-person analysis that takes into account the dynamics of individual and social relations, as well as basic human needs for "peace, shelter, education, food, income, a stable eco-system, sustainable resources, social justice, and equity."⁷ Indeed, the Institute of Medicine's definition of public health suggests the elements, both material and political, to be included in any dynamic construction of lesbian well-being: "public health is what we as a society do collectively to ensure conditions in which people can be healthy."⁸ By allowing a "whole person" analysis, the health and human rights paradigm may offer lesbians a way to articulate rights claims while avoiding some of the pitfalls that have plagued lesbians' appearance in the few human rights frameworks in which they have been marginally included thus far. It is our contention that the field of health and human rights could become a particularly useful one for lesbians.

However, although strategies for achieving a human right to health may indeed hold special promise for lesbians, recent efforts within this new field—for complex historical and political reasons—have tended to focus on issues not central to lesbians' lives. This essay will examine the intersection of emerging paradigms of health and human rights with two other critical human rights movements: women's human rights and the human rights of homosexuals. We conclude that within international frameworks defining a woman's right to health, reproductive health has played a predominant role, and when discussions of health and human rights have addressed homosexuality, they have tended to focus on

the explosive conjunction of AIDS and discrimination in the lives of gay men. While neither reproductive health nor HIV are irrelevant for lesbians around the world, an explicit focus on lesbians requires us to interrogate the ways in which existing frameworks may preclude our ability to name strategies more conducive to a full range of protections for lesbian health.

A discussion of lesbian health and human rights should not proceed without mentioning two crucial obstacles within international human rights frameworks that have been particularly cumbersome for lesbians attempting to articulate their human rights. The first analytical difficulty has been described in feminist critiques of international human rights law. This critique has called attention to the fact that human rights norms focus on the public sphere as the locus of protected rights, yet women also traditionally face great obstacles and violations in the private spheres of family and home.⁹ This problem is linked to the absence of developed systems of international state accountability for violations of human rights by domestic non-state actors as well as for violations resulting from the policies and practices of international financial institutions and transnational corporations. "By focusing almost exclusively on the behavior of government actors rather than private parties, human rights advocates have tended to exclude numerous aspects of women's lives—and lesbians' lives in particular—from international scrutiny."¹⁰

Secondly, as the universal nature of human rights is one of the most powerful aspects of their claim to legitimacy and respect, any articulation of lesbian claims to these rights must answer to what may appear to be contradictory claims to particularity and cross-cultural relevance. "Not only do individuals who engage in same-sex practices have differing perceptions of their homosexual identity which are linked to their culture, but lesbians have needs and objectives for human rights law that are often distinct from those of gay men."¹¹ In an international context, especially, the meaning of "lesbian" is far from transparent. Further, converging with the first difficulty, existing models for understanding identities such as "lesbian" have largely relied upon the expression of those

identities through actions in the public sphere. Since women in many areas have had limited access to a public sphere, models of identity that rely upon public expression may preclude the “appearance” of lesbians in international human rights discourse.

With our use of the term “lesbian” in this article, we do not want to assume that a lesbian identity or orientation—that is, a sustained affectional and sexual identification with other women—is uniformly present across cultures.¹² Nonetheless, women who are identified by state or private actors as “deviant” because of their same-sex relationships may be stoned to death, raped, forced into marriage, or denied housing, jobs, or education despite their apparent lack of a public lesbian identity.¹³ We wish to extend our analysis to include such women regardless of whether they are explicitly understood to be “lesbians.”¹⁴

Engendering Human Rights: Lesbians as Women

The goal of putting women on the human rights agenda has entailed painstaking review of existing human rights norms and standards in all areas—civil, political, social, cultural, and economic. Some of these strategies have focused on the application of sex-based anti-discrimination norms to rights within existing human rights treaties; others attempt to re-conceptualize human rights norms or to integrate gender perspectives into existing institutions.^{15,16}

One of the most critical aspects of the international women’s rights movement has been its development of a gender-specific notion of discrimination within international human rights standards. “Discrimination” is defined by the Women’s Convention¹⁷ and elaborated by the Committee on the Elimination of Discrimination Against Women (CEDAW) to address issues of great concern to women such as violence and the right to equality within the family. However, CEDAW has as yet only addressed a few particular aspects of women’s right to health, for example, discrimination against women in the context of HIV/AIDS, education concerning the health effects of “female circumcision [sic]” and issues involving family planning and reproductive choice.¹⁸ The value of the Women’s Convention’s construction of non-discrimination

for lesbians has yet to be explored, although theoretically, it might allow for review of laws and practices that discriminate against lesbians *as women* in public life and private spheres such as employment, family, and health care.

From the Women's Convention definition of discrimination comes, in part, the recognition of violence against women — including its adverse health effects — as a human rights concern. Indeed, the recognition that violence is a public health issue has been internationally accepted in the context of women's rights, and represents perhaps the most useful arena in which to seek protections for lesbian health.¹⁹ The Declaration on the Elimination of Violence Against Women, adopted in December of 1993 by the UN General Assembly, defines violence occurring in the family, in the community, and "perpetrated or condoned by the State," as a violation of human rights.²⁰ By recognizing that violence against women violates, impairs, or nullifies the enjoyment of their human rights and fundamental freedoms, the Declaration uniquely addresses "physical, sexual, and psychological violence" in public *and* private life.

The Declaration would appear to be an especially promising site for the protection of lesbians who often face violence in their families and communities, and for whom legal systems for protection or redress are inaccessible or non-responsive. As yet, violence that targets women because of their homosexual practices, or something that might be called their "sexual identity," or "orientation" (whether committed in the name of "medical treatment" or in the course of other forms of torture), has not been addressed by international human rights mechanisms or bodies. However, recent attention to *sexual* violence begins to indirectly suggest the possibility of an articulation of "bodily integrity" that includes the protection of sexual identity and/or expression.²¹

Finally, the preparatory processes leading up to the Fourth World Conference on Women in Beijing have provided a setting for some of the first sustained lobbying campaigns for recognition of sexuality as an axis of women's personhood. An international network of lesbian activists and supportive organizations has contributed to official delegation submissions to the draft of the Platform for Action stating the need to end "discrimination on the grounds of sexual orientation."²²

Also included in the draft is recognition of sexual orientation as a factor akin to “race, language, ethnicity, culture, religion...disability, socio-economic class...” or status as migrant or refugee women.²³ However, there are only three references, all “bracketed,” to sexual orientation throughout a document that addresses such varied areas of concern as the burden of poverty on women, unequal access to education, inequalities in health care and services, violence against women, armed conflict, inequality between women and men in decision-making, access to economic structures, and women and the environment.²⁴

Women’s Human Rights, Women’s Health: (Hetero)Sexuality and Reproduction

The women’s international health movement has emerged from a creative and dynamic collaboration among health professionals and activists, human rights activists, and legal scholars. It is broadly international in rhetoric, if not yet fully international in reality, and it is committed to elucidating the connections between women’s right to health and the construction of gender in family and society.²⁵ It has also devoted itself to the critical examination of institutionalized distinctions between public and private life and the nature of state obligations in relation to non-state actors.

The field of women’s human right to health has included attention to three aspects of the interrelation of human rights and health.²⁶ First, there has been a particularly sustained focus on “family planning” programs and public health policies governing reproduction and their assumptions about, and effects on, women’s roles in various societies. Second, there has been a re-examination of human rights violations as direct hazards to women’s *health*, and an effort to broaden the interpretation of existing human rights law to include gender-specific violations. There has been increasing recognition that violence, including sexual violence, in particular, violates human rights to bodily integrity and privacy, and that these abuses have disastrous effects on women’s ability to enjoy their human right to health. Third, international women’s rights advocates recognized early that a woman’s social, economic, and political status is inextricably linked to her health.²⁷

Despite this rich and varied set of interventions, however, the call for women's human right to health has achieved most attention and controversy at the international level in relation to reproductive health. As a result, the gendered impacts of health concerns like anemia, tuberculosis, and occupational health have been overshadowed by debates about sexual and reproductive health and, in turn, concepts of sexual health have been defined to a large degree in relationship to reproductive health.

The link between sexual and reproductive health has derived in part from the success of women's rights advocates in forcing the dual recognition that women's human rights must take into account not only civil and political rights, but also social and economic rights, and that women's equality with men in all spheres is intimately related to their sexual and reproductive freedom. This success has combined synergistically with global concern over population growth and recently led to an important consensus at the Cairo International Conference on Population and Development. The Cairo Conference's Programme for Action notes a significant connection between sexuality and equality in gender relations: "Human sexuality and gender relations are closely interrelated and together affect the ability of men and women to achieve and maintain sexual health and manage their reproductive lives."²⁸

While recognition that women's reproductive rights are dependent upon equality with men is certainly useful, it has also, unfortunately, continued the conflation between reproductive and sexual rights.²⁹ A similar conflation can be seen even in the more promising articulation of "sexual rights" that has appeared in a preparatory draft of the Beijing "Platform for Action." In "bracketed" language, the draft's section on health defines "sexual rights" as "includ[ing] the individual's right to have control over and decide freely in matters relating to her or his sexuality, free of coercion, discrimination and violence."³⁰ While this language is encouraging for lesbians, the right is contained by the context of heterosexual relations. The next and final sentence of the paragraph again links "sexual rights" with reproduction: "Equal relationships between women and men in matters of sexual relations and reproduction...require mutual consent

and willingness to accept responsibility for the consequences of sexual behavior."³¹

By linking sexual rights to heterosexual couples' reproductive rights, lesbians are effectively excluded. For lesbians, "sexual rights" and reproductive rights, while both important, require conceptual frameworks that do not conflate the two. While lesbians have reproductive health concerns, and certainly face problems stemming from gender inequality, connecting one to the other will not address the most significant health or human rights concerns faced by lesbians.

Some of these health concerns have begun to be named at national levels; reviews of the English language literature reveal that there is a small but growing body of medical and public health work addressing lesbian health. These studies tend to discuss two factors negatively affecting lesbians' right to health in the countries they address: systemic barriers to effective health care services such as heterosexism, homophobia, or inadequate research on issues such as breast and cervical cancers in the context of lesbian health; and specific health problems manifested by lesbians, such as alcoholism, suicide, or mental and physical effects of homophobia, externally manifested and/or internalized.³² Such studies are obviously limited in their international applicability, as they rely both upon Western constructions of identity and personhood, and particular assumptions about the available systems of medical care. Both cross-cultural and cross-disciplinary research integrating human rights analyses with discussion of the conditions necessary for lesbian health—at home, in the workplace, in communities—have yet to be done.

Breaking the Silence: Lesbians as Homosexuals

Over the last 15 years, important strides have been taken toward fulfilling the promise that all human rights should apply to all people. The movement for the human rights of homosexuals has rested on the understanding that gay rights are not "special rights" separate from "general" human rights; instead they require the non-heterosexually-biased application of general human rights norms.³³ Through a range of strategies, especially via legal challenges to sodomy statutes, this

understanding has been upheld: a few key regional and international legal decisions and some first steps by mainstream human rights NGOs demonstrate that the human rights of homosexuals have found an early voice in some fora.

The idea that lesbian and gay rights are an integral part of international human rights has been most widely accepted in Europe. The two most successful strategies have built upon protection of the rights to privacy and non-discrimination.³⁴ While it may seem that protecting the human right to privacy would be a progressive step for lesbians who, as we have noted, may not have a strong "public" identity, the principle has not yet been explicitly extended to cover the right to privacy for lesbians.³⁵ Thus far, the three successful cases have dealt only with laws prohibiting male homosexual conduct.³⁶

The seemingly more promising strategy for gay rights — the right to non-discrimination on the basis of "other status" or "sex"—has been less widely accepted. The proscription of discrimination against minorities has achieved special prominence in Europe; it is a well-developed strategy for other statuses and identities in the international arena (e.g., race, ethnicity, religion, sex, or status as a refugee, a child, an indigenous person, or a member of a linguistic minority).³⁷ On the other hand, it has raised particular obstacles to the assertion of a "whole-person" analysis: one that does not parse the individual into isolated and independently affected identity fragments. If "homosexuals" wish to assert their right to live free from anti-gay discrimination, will they need a new convention definitively articulating homosexuality as a transnational identity (akin to the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention Concerning Indigenous and Tribal Peoples, or the Women's Convention)? Problems with such an approach are manifold (not least, the reduction of an individual to his or her sexual behavior) and are quickly glimpsed when one considers how this strategy might affect lesbians. In the brief history of international attempts to protect homosexual rights, sexual orientation has been discussed apart from gender. Without specific attention to gender as an axis both of identity and oppression, the "lesbian" in "lesbian and gay rights" has tended to disappear.³⁸

Recently, the right to non-discrimination has gained a unique international hearing in a case combining this principle with the right to privacy for homosexuals. In *Toonen v. Australia*, a petition reviewed in the spring of 1994 before the United Nations Human Rights Committee, Tasmanian statutes that criminalized homosexual sodomy were found to violate both the right to privacy and the right to non-discrimination protected by the International Covenant on Civil and Political Rights (ICCPR).³⁹ But the *Toonen* decision foregrounds the critical paradox confronting advocates for gay and lesbian human rights. Its strength lies in the fact that it interprets an existing international human rights covenant to *include* prohibition of discrimination based on sexual orientation, thus implicitly assuming that sexual orientation is an aspect of the totality of an individual's make-up. This would seem to suggest that the additional and problematic step of explicitly drafting, for instance, a "homosexual" non-discrimination convention, is unnecessary. Without an explicit statement from an authoritative body guaranteeing non-discrimination based on sexual orientation, however, the future of homosexual anti-discrimination claims is tenuous at best.⁴⁰

A third strategy, one that aims to protect homosexuals from state-sponsored violence, such as torture, ill-treatment, and extra-judicial execution, has perhaps been the most prominent in international arenas.⁴¹ It has proceeded most smoothly because it addresses harms traditionally recognized by international human rights instruments: violations of civil and political rights by state actors. For the same reason, it leaves lesbians unprotected against many types of abuse. While lesbians do sometimes face traditional human rights violations, the limited information we possess about lesbians in different countries would seem to indicate that they are especially vulnerable to abuses in the private sphere by non-state actors.⁴²

Homosexuality and the Right to Health

Although the AIDS pandemic has proven to be a crucial arena for the developing field of health and human rights, especially in the context of gay men struggling against discriminatory practices and violence targeted at them, it has

obscured more than it has clarified in regard to lesbian health needs.⁴³ The “lesbian” in “lesbian and gay” has a special status in demands for human rights in the face of HIV/AIDS: one that marginally includes lesbians in legal victories but also obfuscates the realities of lesbians’ lives as distinct from those of gay men.

Discrimination against groups perceived to be “carriers” of HIV has been a constant in the pandemic. In many parts of the world, the spread of HIV has been associated primarily with gay men. This has led to discrimination and human rights violations against men who are, or are perceived to be, homosexual. “Gay men are often considered to be ‘AIDS carriers,’ and as a result, may be subjected to ill-treatment at the hands of government authorities. In addition, activists who are working to prevent the spread of the AIDS virus in gay communities may be targeted for human rights abuses.”⁴⁴ Although attention has focused principally on gay men, in some instances lesbians, because of their homosexuality, have been similarly labeled as “carriers” of HIV.⁴⁵

Ironically, human rights abuses such as these have indirectly led to some of the first legal victories for the protection of homosexuals from discrimination. In the *Toonen* decision discussed above, the Tasmanian state government had defended the Tasmanian statute proscribing male same-sex sexual activity by arguing that it served as a public health measure against AIDS. The Human Rights Committee “openly acknowledge[d] the anomaly of using criminal sanctions to prevent the spread of HIV infection,” and called on the Australian government to repeal the law.⁴⁶ This victory and others like it have the potential to protect lesbians as well as gay men, but as we have tried to show, such protection will be far from automatic.

A second consequence of the association of HIV/AIDS with gay men has been reinforcement of the general lack of attention paid to women’s health needs. Effects of this discrimination are particularly dangerous, since women are at high risk for infection in many areas of the world. When AIDS prevention policies have not been limited to gay men, they have tended to figure women similarly, as “carriers.” They have often focused exclusively on women in their roles as sex partners of men, or as child-bearers — that is, as threats

of contagion to men and infants. This obscures the fact that, in many cases, women are placed at risk because of their exclusion from information, or as a result of their lesser power to negotiate safe sex in heterosexual relations, whether within a couple or family or in commercial sex situations.⁴⁷

Unfortunately, a more accurate inclusion of women within the international HIV/AIDS picture, however crucial, is still at several steps' remove from drawing lesbians into the realm of health and human rights. To the extent that lesbians suffer from the effects of HIV/AIDS and the medical neglect and human rights abuses that often accompany it, health and human rights policies that are developed in relation to HIV/AIDS will hopefully benefit lesbians as well as gay men and non-lesbian women. However, as a result of the international emphasis on risk *groups*, rather than risk *behaviors* in the transmission of HIV, the field of health and human rights has been caught up in efforts to protect perceived risk groups: predominantly, gay men and, more recently, men and women involved in heterosexual sexual activity. Thus, the alchemy of history, discrimination, activism, and policy-making has created a situation in which lesbians (as a putative group) have effectively been constituted out of the most vital arena of health and human rights to develop so far.

Conclusion

This article emerged out of our recognition that a literature on lesbian health *and* human rights simply does not exist. As some have observed, professional concepts of "health" in lesbian lives have been either absent or malevolent. Where efforts have been made to directly address lesbian health, they have primarily been directed at undoing the harms experienced by lesbians at the hands of health care practitioners and funding institutions. Attempts to articulate international "human rights" for lesbians are even less well developed. To speak of lesbians in the field of "health and human rights," then, is to strain even the reach of a *transitive* property: if lesbians are both homosexual and female, and, if it can be argued that women and homosexuals appear within the emerging health and human rights movement, then perhaps lesbians may find a space there as well.⁴⁸

As we have tried to show, there are two emerging arenas within international human rights in which the coalescence of health and human rights could have been usefully extended to include lesbians: women's sexual and reproductive health, and homosexual rights in the context of HIV/AIDS. The convergence of health and human rights that is occurring in these realms is important and productive. Yet, as the health and human rights conversation has veered in one direction within the international movement for women's right to health and in others within the mutual constitution of gay rights and AIDS policies, it is clear that lesbians have fallen through the cracks. If lasting policies for health and human rights—those that include attention to human sexuality—are developed principally within the arenas of heterosexual couple-based reproduction and AIDS, the danger exists that their very structure will continue to preclude articulation of a lesbian human right to health.

Our consideration of these potential locations for a lesbian human right to health has foregrounded the absence of protection for sexual autonomy and the multiple processes of sexual definition. Mindful of the warnings with which we began, we cannot comfortably end our discussion with any simple call for global recognition of "lesbian identity" or the need for "lesbian health care." Instead, we would like to advocate development of more mobile and dynamic models of sexual selves—or rather, selves that may choose to express themselves sexually. Ideally, such selves should be protected, not so much by guarantees of the expression of particular named identities, as with the conditions necessary for multifaceted human development. The sexual self we envision is one that can be expressed publicly, yet is not solely defined by public expression—one that can also be freely developed privately, within conditions of both public and private safety. We recognize, however, that under current conditions, the full enjoyment of a complete range of human rights by lesbians may remain elusive without an explicit articulation of a right to a "sexual self" in international law.

Nevertheless, we are encouraged by the promises of the developing field of health and human rights. Paradoxically, consideration of health and human rights as a conjunction may offer lesbians the potential to counteract the harms and

erasures that have evolved within each arena independently. As their interrelationship has been posed by Mann et al., and others, the confluence of these two arenas provides unique opportunities for the formulation of "whole person" analyses within international human rights laws and guidelines. Not only can lesbians benefit from such analyses, but also inclusion of lesbian health concerns may help advance the work of health and human rights activists, by forcing sustained attention to the difficulties of constructing common principles that will allow people to be both different and healthy across a wide range of cultural contexts.

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11. Helfer and Miller, see note 10, p. 5.

12. Stevens and Hall, see note 5, p. 234.

13. Amnesty International USA, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation* (1994) and *Human Rights are Women's Rights* (1995); R. Rosenbloom, ed., *Unspoken Rules: Sexual Orientation and Women's Human Rights* (San Francisco: International Gay and Lesbian Human Rights Commission, 1995).

14. It is important to note that self-identified lesbian groups do exist in many countries and on every continent. *Breaking the Silence*, see note 13, and J. Dorf and G. Careaga Perez, "Discrimination and the Tolerance of Difference: International Lesbian Human Rights," Peters and Wolper, see note 9, p. 324. Additionally, as noted below in the context of discussions on women and HIV/AIDS, exclusive focus on one aspect of lesbian identity—such as definitions that limit the application of the term *lesbian* to women who have not had sex with a man in a particular number of years—may contribute to inadequate or inappropriate health care. Similarly, women who self-identify as lesbians but in fact have heterosexual relations—for example, in the context of commercial sex—may have health concerns overlooked for the opposite but equally problematic definitional reason.

15. See generally, A. Bayefsky, "The Principle of Equality or Non-Discrimination in International Law," *Human Rights Law Journal* 11 (1990): 1-34; R. Cook, "International Human Rights Law Concerning Women: Case Notes and Comments," *Vand. J. Transnat'l L.* 23 (1990):779-818. Additionally, much of the progressive work in applying the UN Convention on Refugees and its Protocol should be considered in this context. See N. Kelly et al., *Guidelines For Women's Asylum Claims* (Cambridge: Women Refugees Project, 1994); Immigration and Refugee Board, *Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 1993). It is also important to note the strategies for addressing homosexuals as a social group for purposes of refugee protection; see note 39.

16. For an introduction to the work applying feminist theory to international law, see generally, C. Bunch, "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights" *Human Rights Quarterly* 12 (1990): 486-498; A. Byrnes, "Women, Feminism, and International Human Rights Law—Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation? Some Current Issues," *Australian Year Book International Law* 12 (1992):205-241; H. Charlesworth, C. Chinkin, and S. Wright, "Feminist Approaches to International Law," *American Journal of International Law* 85 (1991):613-645; K. Knop, "Why Rethinking the Sovereign State is Important for Women's International Human Rights Law," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca Cook (Philadelphia: University of Pennsylvania Press, 1994): 153-164.

17. The Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter Women's Convention) defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition,

enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social and cultural, civil or any other field." Article 1, Convention on the Elimination of Discrimination Against Women, adopted by G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1980) entered into force September 3, 1981.

18. See General Recommendations No. 12, 19 (violence against women), No. 14 (Female circumcision); No. 15 (Avoidance of discrimination against women in national strategies for the prevention of acquired immunodeficiency syndrome (AIDS)); No. 21 (Equality in marriage and family relations. General recommendations adopted by the Committee on the Elimination of Discrimination against Women as included in *Compilation Of General Comments And General Recommendations Adopted By Human Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 (1994).

19. See generally, L. Heise, "Violence Against Women: Translating International Advocacy Into Concrete Change," *American University Law Review* 44 (4)(1995):1206, and specifically her discussion of attention to violence against women by both WHO and PAHO, pp. 1210-1211.

20. Declaration on the Elimination of Violence against Women, U.N. Doc. A/RES/48/104 (February 23, 1994).

21. For examples in the mainstream of human rights reporting, see: Human Rights Watch/Women's Rights Project, *A Matter of Power: State Control of Women's Virginity in Turkey* (Washington, DC: Human Rights Watch, 1994); A. Tierney Goldstein, *Recognizing Forced Impregnation as a War Crime Under International Law* (New York: The Center for Reproductive Law & Policy, 1993); International Human Rights Law Group, *Token Gestures, Women's Human Rights and UN Reporting: The UN Special Rapporteur on Torture* (Washington, D.C.: International Human Rights Law Group, 1993); and R. Copelon, "Gendered War Crimes: Reconceptualizing Rape in Time of War," in Peters and Wolper, see note 9, pp. 197-214.

22. Proposals for Consideration in the Preparation of a Draft Declaration and the Draft Platform for Action (hereinafter Platform for Action), paragraph 232 (h), UN Doc. future A/CONF.177/L.1 (May 15, 1995)(advance unedited version).

23. Platform for Action, see note 22, paragraphs 46, 226. The further contentiousness surrounding "sexual orientation" within the Beijing process is demonstrated by response to the use of the term "gender" throughout the Platform for Action. This debate explicitly surfaced some delegates' fears that "gender" was a concept disguised to introduce the social toleration of multiple forms of sexuality—specifically homosexuality, transsexuality and bisexuality.

24. Language in the Platform For Action about which participating governments could not come to agreement at the final preparatory meeting has been placed in brackets. It will be the subject of further negotiations prior to and during the Beijing Conference. (EDITOR'S NOTE: See M. Haslegrave and J. Havard, this volume for further explanation).

25. D. Sullivan, "Introduction to the Conference on the International Protection of Reproductive Rights," *American University Law Review* 44 (4) (1995):969-973.

26. See the articulation of a provisional framework for health and human rights, J. Mann, L. Gostin, S. Gruskin et al., "Health and Human Rights," *Health and Human Rights* 1 (1994):7-23.

27. See generally, L. Freedman and S. Isaacs, "Human Rights and Reproductive Choices," *Studies in Family Planning* 24 (2)(1993):18 - 30; and R. Cook, "International Human Rights and Women's Reproductive Health," *Studies in Family Planning* 24 (2) (1993):73-86. For a discussion on vio-

- lence as a health problem, see L. Heise, note 19.
28. Programme for Action of the International Conference on Population and Development (hereinafter ICPD) Ch. VII, sec. D, Report of the International Conference on Population and Development, 5-13 September 1994 UN Doc. A/CONF.171/13.
29. ICPD, see note 28.
30. Platform for Action, see note 22, paragraph 97.
31. Platform for Action, see note 22, paragraph 97. Further, the equation between sexuality and reproduction has re-contained both within the heterosexual family structure. This raises the intriguing question of whether there may be room within current international human rights standards to articulate the right to found an alternative family. The intensity of the debates over "families" and "alternative families" within the ICPD and the final Programme for Action of the World Summit for Social Development suggest that this nexus has been recognized. A resolution to this question will be crucial since such authoritative documents as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights recognize the family as "the natural and fundamental group unit of society." However, these discussions have not by their terms included alternative lesbian families.
32. R. Friedman and J. Downey, "Homosexuality," *New England Journal of Medicine* 331 (1994):923-929; Janice Hitchcock, "Bibliography: Lesbian Health," *Women's Studies* 17 (1989):139-144; P. Noerager Stern, see note 6.
33. See A. Clapham and J. Weiler, "Lesbians and Gay Men in the European Community Legal Order," in *Homosexuality: A European Community Issue: Essays on Lesbian and Gay Rights in European Law and Policy*, eds. K. Waaldijk and A. Clapham (Boston: Martinus Nijhoff, 1993):7-69. See also, J. Wilets, "International Human Rights Law and Sexual Orientation," *Hastings International and Comparative Law Review* 18 (1)(1994):1-120.
34. Helfer and Miller, see note 10, p. 3. See also, Wilets, Clapham, note 33.
35. Even the right to privacy, as it is linked to protections guaranteed against interference with family life, was refused to lesbians by the European Commission, in a case upholding denial of a permanent residence permit to the foreign partner in a lesbian couple and their daughter. *X. @ Y. v. United Kingdom*, App. No. 9369/81, 32 Eur. Comm'n H.R. Dec. & Rep. 220 (1983).
36. Specifically, this refers to the right to respect for private life enshrined in the European Convention on Human Rights, as interpreted in *Modinos v. Cyprus*, 259 Eur. Ct. H.R. (ser. A)(1993), *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser. A)(1988), and *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A)(1981).
37. "Homosexuals in Europe are perceived less as a criminal class and more as a non-ethnic minority." Clapham and Weiler, see note 33, p. 14. See, for example, the 1984 European Parliament Resolution on Sexual Discrimination in the Workplace, which called for an end to discrimination in laws and practices at the national and EC/EU level. Peter Ashman, "Introduction," in *Homosexuality: A European Community Issue*, see note 33, p. 4. Also, The European Parliament, in its 17 May 1995 Intergovernmental Conference Resolution stated prohibitions on discrimination based on sexual orientation should be included in the revision of the Treaty of the European Union. Rex Wockner, "Euro Parliament Endorses Gay Protections," *International News* 58 (June 8, 1995).
38. See for example, A.M. Smith, "Resisting the Erasure of Lesbian Sexu-

ality: A Challenge for Queer Activism," in *Modern Homosexualities*, ed. K. Plummer (London: Routledge, 1992):201-212.

39. *Nicholas Toonen v. Australia*, UN GAOR, Hum Rts Committ., 15th Sess., Cas 488/1992, UN Doc. CCPR/c/50/D/488/1992 (April 1994) (hereinafter *Toonen*).

40. The Committee located its protection of sexual orientation in the prohibition against discrimination on the basis of "sex" rather than "other status." For a discussion of the potential implications of this aspect of the decision, see, for example, Helfer and Miller, note 10. Also, see Robert Wintemute, "Sexual Orientation Discrimination as Sex Discrimination: Same Sex Couples and the Charter in Mossop, Egan and Layland," *McGill Law Journal* 39 (1994):429-478; Andrew Koppelman, "Why Discrimination Against Gays and Lesbians is Sex Discrimination," *New York University Law Review* 69 (1994):197-286. Additionally, *Toonen* again concerned a law which criminalized only male homosexual sex. As we have noted, abuses suffered by lesbians do not appear to stem as frequently from the specific criminalization of their sexual activity, as is the case for gay men. However, the Committee's broad language in *Toonen* offers the prospect that prohibitions against lesbian same-sex activity may be similarly construed to violate protections guaranteed in the ICCPR, though as yet this has not been tested.

41. *Breaking the Silence*, see note 13, and Willets, see note 33. Additionally, the successful strategies for obtaining political asylum for persecuted homosexuals directly manifest this traditional recognition of harms. See S. Goldberg, "Give Me Liberty or Give Me Death: Political Asylum and the Global Persecution of Lesbians and Gay Men," *Cornell International Law Journal* 26 (3)(1994):605-623.

42. *Breaking the Silence*, see note 13; J. Dorf and G. Careaga Perez, "Discrimination and the Tolerance of Difference: International Lesbian Human Rights," in Peters and Wolper, see note 9, pp. 324-334.

43. "AIDS is the first worldwide epidemic to occur in the modern era of human rights. For the first time, public health practitioners [were] being held to a dual standard in the design and implementation of public health programs, in this case to prevent HIV transmission... as understanding of the pandemic evolved, the relationship between societal discrimination or marginalization and the risk of becoming HIV-infected became more evident." K. Tomasevski, S. Gruskin, Z. Lazzarini, and A. Hendriks, "AIDS and Human Rights," in *AIDS in the World: A Global Report*, eds. J. Mann, D. Tarantola, and T. Netter (Cambridge: Harvard University Press, 1992), p. 538.

44. *Breaking the Silence*, see note 13, p. 34. Two HIV educators working in the gay community in Mexico were sentenced to imprisonment following an unfair trial, and in Turkey, twenty-eight gay rights advocates from outside the country were asked to submit to HIV tests during detention for their activism (p. 35).

45. Rubenstein, see note 4.

46. Helfer and Miller, see note 10, p. 11. The *Toonen* opinion builds upon a recognition in international and national fora of the need to apply the norm of non-discrimination to homosexuality in the context of HIV/AIDS. See, for example, the Resolution of the European Parliament of 30 March 1989 on the fight against AIDS, *Official Journal of the European Community* 158 (June 26, 1989):477.

47. Women, (whatever their sexual orientation) involved in commercial sex face a variety of working conditions variously affecting their vulnerability to HIV infection. Forced prostitution poses particular risks, as H.H. Pyne notes when discussing Burmese women forced into prostitu-

tion in Thailand: "The HIV/AIDS pandemic has given a new urgency to the problem of trafficking women and girls into prostitution. The women lack access to health care, information, and support networks. They possess no bargaining power with either brothel owners or clients, and live in constant fear of torture and psychological abuse. All these factors place [them] in a position of extreme vulnerability to the AIDS virus." H.H. Pyne, "AIDS and Gender Violence: the Enslavement of Burmese Women in the Thai Sex Industry," in Peters and Wolper, see note 9, p. 223.

48. This is an extension of Meg Satterthwaite's remark that lesbians might be said to derive human rights by "the transitive property: if lesbians are women, and women have human rights, then lesbians have human rights...." Keynote Address, Amnesty International, U.S.A., Southern Regional Conference, Atlanta, Georgia, February 25, 1995.