

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER RIGHTS

Although the visibility of lesbian, gay, bisexual, and transgender people throughout the world continued to rise in 2001, their increased visibility was accompanied by attacks based on sexual orientation and gender identity. Human rights activists who sought to use the human rights framework to call to account states that participated in these rights abuses or condoned them also came under attack. In virtually every country in the world people suffered from de jure and de facto discrimination based on their actual or perceived sexual orientation. In some countries, sexual minorities lived with the very real threat of being deprived of their right to life and security of person. A small number of countries continued to impose the death penalty for private sexual acts between consenting adults. In several others, sexual minorities were targeted for extrajudicial executions. In many countries, police or other members of the security forces actively participated in the persecution of lesbians, gay, bisexual, and transgender people, including their arbitrary detention and torture. Pervasive bias within the criminal justice system in many countries effectively precluded members of sexual minorities from seeking redress.

These attacks on human rights and fundamental freedoms also occurred in international fora where states were gathered to promote, not attack, human rights. For example, in New York in June at the U.N. General Assembly Special Session on HIV/AIDS, delegates attempted to ban nongovernmental representative Karyn Kaplan from the International Gay and Lesbian Human Rights Commission (IGLHRC) from speaking at an official roundtable. Delegates from Sudan, Syria, Pakistan, Libya, Malaysia, Egypt, Iran, Saudi Arabia, and Morocco criticized in their verbal statements any recognition of sexual minorities. Although the U.N. General Assembly eventually voted in a closed plenary session to allow Kaplan to speak at the roundtable, the final document did not include any explicit reference to lesbian, gay, bisexual, and transgender people despite the fact that sexual minorities were at increased risk of HIV infection in many countries.

The rights of sexual minorities also came under attack at the U.N. Commission on Human Rights where delegates objected to the inclusion of cases of extrajudicial executions of sexual minorities in the report of the U.N. special rapporteur on extrajudicial, summary, and arbitrary executions. Delegates argued that the special rapporteur overstepped her mandate by addressing these crimes. The resolution renewing her mandate was stripped of language explicitly recognizing that sexual minorities were vulnerable to extrajudicial executions.

Other intergovernmental bodies played a strong role in upholding the rights of lesbian, gay, bisexual, and transgender people. Under article 13 of the Treaty of Amsterdam, which entered into force in 1999, the European Union could adopt measures to combat discrimination based on sexual orientation, among other grounds. In addition, the Charter of Fundamental Rights of the European Union, adopted in December 2000, included sexual orientation among the prohibited

grounds of discrimination. However, the European Union's governing bodies could only act to implement these provisions within their area of competence, which generally excluded criminal law, family law, and education. In a directive that entered into force in December 2000, the European Council called upon member states to take steps within three years to ban sexual orientation discrimination in employment.

The European Union was also required to assess the respect for human rights, including the principle of equality, in the twelve countries with which it had opened negotiations for accession to membership. The twelve countries were Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Romania, Poland, Slovakia, and Slovenia. (In addition, Turkey was a candidate for membership in the European Union but was not currently in negotiations.) Five of the thirteen countries that had applied for membership—Bulgaria, Cyprus, Estonia, Hungary, and Lithuania—maintained discriminatory provisions in their criminal laws, according to the European branch of the International Lesbian and Gay Association. In July, the Romanian government adopted a decree decriminalizing gay relationships between consenting adults, effectively nullifying a law that allowed sentences of up to five years imprisonment for homosexual relationships “occurring in public or which provoke a public scandal.”

After a European Parliament intergroup on gay and lesbian rights held a hearing in June 2001, E.U. Enlargement Commissioner Guenter Verheugen confirmed that “full attention” would be given in the accession review process to issues related to discrimination based on sexual orientation. The European Parliament, which must approve applications for membership in the European Union, stated in 1998 that it would not give its consent to the accession of a country that violated the rights of lesbians and gay men.

PERSECUTION

Lesbian, gay, bisexual, and transgender people were vilified by officials of several countries. They were denied equal enjoyment and protection before the law in a significant number of countries. They were arrested and tried, sometimes under national security laws, for private consensual acts. In Namibia, President Samuel Nujoma continued to vilify gay men and lesbians, stating, “The Republic of Namibia does not allow homosexuality, lesbianism here. Police are ordered to arrest you, and deport you, and imprison you too.” The nationally televised speech came just two weeks after the Namibian Supreme Court overturned a lower court ruling recognizing the right of one member of a same sex couple to confer permanent residency on the other. Soon after the speech, the Rainbow Project, a non-governmental human rights organization working with sexual minorities, started receiving reports of harassment and beatings by the Special Field Forces, a security unit reporting directly to the president. Nujoma later clarified his statement, “Traditional leaders, governors, see to it that there are no criminals, gays and lesbians in your villages and regions. We . . . have not fought for an independent Namibia that gives rights to botsotsos [criminals], gays and lesbians to do their bad things here.”

In November, Malaysian Prime Minister Mahathir Mohamad also verbally attacked gays, announcing that he would expel any gay British government minister if he came to Malaysia with a partner. Mahathir explained in an interview with BBC radio, "the British people accept homosexual ministers. But if they ever come here bringing their boyfriend along, we will throw them out. We will not accept them."

In February, confusion reigned about the fate of two women who were reportedly sentenced to death for "unnatural behavior" in the city of Boosaaso in the self-declared autonomous region of Puntland, northeast Somalia. The news of the sentence was first published in a local weekly and was subsequently picked up by the national and international press in Mogadishu. When the reports of the case generated significant international attention on Puntland, the authorities denied the reports and instead accused journalists of inventing the story to discredit the government. The authorities also accused the editor of the weekly paper of making false assertions and published statements. Lost amid all the debate about the politics of the government's relationship with the press was any clarification regarding the two women named in the report.

Lesbian, gay, bisexual, and transgender people faced arrest for consensual sexual activities and many of those arrested reported being tortured by the police. In Egypt, a sixteen-year-old boy was convicted of "debauchery" on September 18 for allegedly engaging in sexual relations with men. The boy received a sentence of three years' imprisonment with labor followed by three years of probation. His sentence was on appeal at this writing. The youth said that police extracted a confession from him after subjecting him to painful beating on the soles of the feet. He did not have access to a lawyer during his interrogation, and he was not allowed to contact his family during the first two weeks of his detention. Press and spectators were allowed to attend and report on the September and October hearings, and the boy's name, photo, and accounts of the charges and sentence have appeared in Egypt's semi-official press.

The boy was one of fifty-three people detained and charged with similar offenses after a crackdown in May against men presumed to be gay. The others, all adults, were arrested and subjected to violations of standard arrest procedures according to their defense attorneys. There were reports that the men were beaten and subjected to forensic examinations in order to ascertain if they had engaged in anal sex. They were prosecuted before an Emergency State Security Court, which reached a verdict on November 14. Twenty-three were sentenced to between one and five years of hard labor; twenty-nine were acquitted. Because the trial took place before an Emergency State Security Court, those convicted could not appeal their sentences.

Despite urgent appeals from the U.N. special rapporteurs on the independence of judges and lawyers, and torture and the Working Group on Arbitrary Detention, the Egyptian authorities not only went through with the prosecutions of the men, but a day after the sentencing in the first case, police arrested and charged four more men on the same grounds. They too were reportedly tortured. As Egypt did not expressly outlaw homosexual acts, the charges included "habitual practice of debauchery" and "contempt of religion."

In March, two men in Lebanon were convicted by a military court of defaming the Vice Squad (Police des Moeurs) and fined U.S. \$200. In July, on appeal to the Military Court of Cassation, the conviction of one of the men was overturned. The case began in April 2000 when two plainclothes police officers from the Vice Squad entered the office of Destinations, an internet service provider (IPS), seeking the identities of the person who had financed and installed a website with gay related content, including the need for legal reform within Lebanon. Ziad Mugarby, the manager of the IPS refused to cooperate with the warrantless search. He was subsequently order to appear the next day for questioning. After repeated threats and interrogations, Mugarby turned to Multi-Initiative on Rights, Search, Assist and Defend (MIRSAD), a human rights nongovernmental organization in Lebanon for support. In July, director of MIRSAD Kamal el Batal was also questioned by the police. The two men were subsequently tried in a military court for defamation based on their publicizing the circumstances of the case. Batal's conviction was overturned.

On July 7, police raided the offices of the Bharosa Trust and the Naz Foundation International in Lucknow, organizations that worked on HIV/AIDS prevention, arresting several staff members. Although subsequently released on bail, the staff members were charged under article 377 of the Indian Penal Code, a provision that prohibited "carnal intercourse against the order of nature." Article 377 had been used repeatedly to justify discrimination and police brutality against gay, lesbian, and bisexual individuals.

Members of sexual minorities also faced detention in psychiatric hospitals in several countries. In April, the National Human Rights Commission of India missed a significant opportunity to address this violation when it announced that it did "not want to take cognizance" of a case brought before the commission objecting to involuntary aversion therapy and other forms of psychiatric abuse aimed at "converting" homosexuals. The commission explained its decision by stating, "sexual minority rights did not fall under the purview of human rights."

More than a year after the murder of transgender activist Dayana (Jose Luis Nieves), transgender people living in Venezuela continued to face unrelenting police harassment. The Commander of Police in the state of Carabobo announced, "homosexuals and prostitutes are to be ruled by the police code. They cannot move freely in the streets." Activists reported that this attitude by the police had led to an atmosphere of fear and intimidation within the transgender community.

Another transgender activist, Diane Sacayan in Argentina, who had publicly denounced police harassment and abuse of transvestites, was arrested in the city of Don Bosco in February and charged with robbery. As of this writing, she was still in detention and had not had the evidence against her presented at a preliminary hearing. Sacayan reported being tortured by the police and alleged that that she was arrested not for robbery but for refusing to pay a bribe to the local police. Stigmatization of transgender people made them particularly vulnerable to abuse by the authorities. Transvestites in Argentina were arrested under a law prohibiting the wearing of the clothes of the opposite sex, a *prima facie* violation of freedom of expression.

The persecution of transgender people in Argentina led to a historic meeting of

activists with U.N. Special Rapporteur on Freedom of Expression Dr. Abid Hussain. The meeting followed the issuing of a joint statement by six U.N. experts urging lesbian, gay, bisexual, and transgender activists to send them information regarding human rights violations based on sexual orientation or gender identity.

DISCRIMINATION

Although lesbian, gay, bisexual, and transgender people continued to experience *de jure* and *de facto* discrimination in virtually every country in the world, several significant changes occurred in 2001. Netherlands became the first state to allow same sex couples to marry. Just three years after implementing a domestic partnership law, the legislature, by a significant majority, passed a law to end discrimination in marriage. The law went into effect on April 1. The law required that at least one partner be a Dutch citizen or resident, as required for heterosexual couples who marry.

In another groundbreaking decision, Colombia's Supreme Court issued a decision on October granting conjugal visits to a lesbian in prison and her partner. The decision in the Montoya case not only ended the practice of gender and sexual orientation based discrimination regarding conjugal visits for prisoners. The ruling could also resolve the ongoing case of Marta Alvarez, who faced similar discrimination and brought the first sexual orientation-related case ever presented to the Inter-American Commission on Human Rights. The case was heard by the commission in October 1999. After the hearing, the parties entered into settlement negotiations. The law, prior to this decision, granted conjugal visits to heterosexual male inmates but limited conjugal visits to the spouses of heterosexual female inmates. The government admitted that its practice was discriminatory but argued that the restrictions on conjugal visits promoted security, discipline, and morality in the prisons. The government also argued that Latin American cultures did not tolerate homosexuality.

In September, Judge Kathleen Satchwell, a judge in South Africa, won the right for her female partner to enjoy the same benefits as those previously reserved for "spouses" of married heterosexual judges. Although South Africa continued to take the lead on human rights protections for gays and lesbians, Minister of Justice Penuell Maduna fought the Satchwell case to the bitter end, revealing deep-seated reservations about the constitution's equality clause. Also in September, a South African Court ruled that gay and lesbian couples could adopt children. The judgment was appealed to the Constitutional Court.

The issue of bias remained a serious concern for sexual minorities worldwide. A report released in February by the Judicial Council of California, revealed that anti-gay bias was a major problem in the court system statewide in California. Over half of all gay men and lesbians interviewed regarding their court experiences reported hearing anti-gay comments or experiencing anti-gay actions when sexual orientation became an issue. Nearly a third of all court employees believed that it was unsafe for them to be openly identified as gay or lesbian in the workplace. This bias remained even though California was one of the United States' most progressive states regarding lesbian and gay equality.

In Finland, a new law allowed gays and lesbians to register as couples and obtain some of the same benefits previously reserved for married couples or relatives, such as the right to inherit property and to visit if one partner was hospitalized. However, unlike in South Africa, gay and lesbian couples were still banned from adopting children or taking a common surname.

Seven years after the military's "Don't Ask, Don't Tell" policy was codified as law and implemented, the United States military's own surveys and investigations found that training on how to implement the law was deficient and that anti-gay harassment remained pervasive in the military. Many military personnel who faced verbal or physical harassment and feared for their safety made statements acknowledging they were gay, knowing that it would mean the end of their careers, but also aware that if they complained officially about anti-gay harassment they would probably themselves face an intrusive inquiry and discharge. They also knew that harassers were rarely punished.

Although the "Don't Ask, Don't Tell" policy was ostensibly intended to allow gay, lesbian, and bisexual service members to remain in the military, discharges increased significantly after the policy's adoption. From 1994 to 2000, more than 6,500 servicemembers were discharged under the policy, with a record number of 1,231 separations during 2000. Women were discharged at a disproportionately high rate, while the policy provided an additional means for men to harass women service members by threatening to "out" those who refused their advances or threatened to report them, thus ending their careers.

The U.S. was increasingly out of step internationally in maintaining restrictions on homosexuals serving in the military. Most of its NATO and other allies either allowed homosexuals to serve openly or had no policy on the issue. In September 1999, the European Court of Human Rights rejected a United Kingdom ban on homosexuals serving in the military; the justification for that ban had been similar to that used to defend the U.S. military's "Don't Ask, Don't Tell" policy.

Each day was a test of survival for many lesbian, gay, bisexual, and transgender students in U.S. public schools. Our 2001 report, based on interviews in rural and urban areas of seven U.S. states, documented rampant discrimination against those who failed to conform to rigid rules of how boys and girls should behave. We found that harassment often began at an early stage and escalated rapidly in middle and high school. Teachers, administrators, and counselors not only neglected to defend students from harassment but in some cases participated in discriminatory behavior themselves.

As a result, many lesbian, gay, bisexual, and transgender students remained closeted, unable to express a fundamental aspect of their identity. Students who were more vocal about their sexual orientation or gender identity were targeted for physical and psychological violence. Girls in general and lesbians in particular were especially vulnerable to the compounded effects of sexism and homophobia, which they frequently suffered in silence, ignored by school authorities. The physical and psychological toll of unaddressed verbal and physical abuse was often profoundly debilitating, affecting students' schoolwork and their mental well-being; some students dropped out of school, sank into depression, or even attempted suicide.

In response to increasing evidence of harassment of lesbian, gay, bisexual, and transgender students in U.S. schools, Senator Paul Wellstone introduced legislation

to conduct a federal study of the level of sexual harassment against sexual minority students by peers and school officials. The study would include analysis of the effectiveness of guidelines issued by the Office of Civil Rights at the U.S. Department of Education in 1997 that specifically addressed the safety of gay and lesbian students. As of this writing, the bill was in committee.

Relevant Human Rights Watch Reports:

United States: Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools, 5/01

PRISONS

Prisoner numbers continued to rise in countries all over the world, resulting in severe overcrowding of prisons and other detention facilities. Even where legislation permitted alternatives to incarceration as a criminal sanction, authorities in most countries neglected them in preference to confinement.

While conditions of detention varied greatly from country to country and facility to facility, standards in most countries were shockingly low, and in some cases horrific. Prisons and jails in even the richest and most developed countries were plagued by massive overcrowding, decaying physical infrastructure, inadequate sanitation, lack of medical care, guard abuse and corruption, and prisoner-on-prisoner violence. In many countries abysmal prison conditions were life threatening, leading to inmate deaths from disease, malnutrition, and physical abuse. With few exceptions, neither the public nor political leaders were willing to commit the financial resources needed to improve prison conditions. By barring human rights groups, journalists, and other outside observers access to their penal facilities, prison officials in many countries sought to shield substandard conditions from scrutiny.

ABUSIVE TREATMENT OF PRISONERS

Violence was rife in many prisons. In some countries, including Brazil, Kenya, Venezuela, and Panama, prison homicides were so frequent as to seem routine. Inmates were usually killed by other inmates rather than by guards, but inmate-on-inmate violence was often the predictable result of official negligence. By neglecting to supervise and control the inmates within their facilities, by failing to respond adequately or at all to incidents of violence, by corruptly allowing the entry of weapons and drugs into the prisons, and by generally abetting the tyranny of the strongest prisoners over the weakest, prison authorities were directly complicit in the violence against their charges. In some countries, for example Mexico, inmates were able to control fellow inmates with little interference from prison