Two Novembers
Movements, Rights, and the Yogyakarta Principles

By Scott Long

1992

In 1992 in Romania, repression was a vivid legacy, privation a lived reality, and intimacy of any kind had to survive in whatever privacy it could garner. That November in the city of Timisoara, Ciprian C., in the last year of high school, met Marian M., two years older. They were both men; they fell in love.[1]

In 1989 Timisoara had begun the revolution against Ceausescu's dictatorship; then, blood stippled the snow. Three years later, suspicion and the police remained. Ciprian's sister informed on the couple. Prosecutors charged them in January 1993 with "sexual relations with a person of the same sex."

> The investigators called me a "whore" repeatedly .... Marian admitted everything during the interrogation. I tried to deny it, until I was shown my diary, which had been brought to the police by my sister. Then I realized I would lose everything.[2]

Those were Ciprian's memories. Timisoara police gave their names and photos to the press, calling Ciprian a "peril to society":

> Looking at the facts and taking into account the age of the accused, you remain shocked by what they were capable of .... [When arrested],

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[1] The author investigated their case in January 1993, interviewing family members and police and prosecutors. He interviewed the two victims both before and after their trial, which he attended in June 1993.

[2] Ciprian C., testimony before the International Tribunal on Human Rights Violations Against Sexual Minorities, organized by the International Gay and Lesbian Human Rights Commission (IGLHRC), October 17, 1995, at www.iglhrc.org/files/iglhrc/reports/Tribunal.pdf. Quotations from Ciprian C. that follow are from this source.

> the two did not admit the incriminating act ... But after the investigation and the forensic report, it was established that this was a typical case of homosexuality.[3]

The two were jailed for months, separated, their families not allowed to visit. Inmates raped each repeatedly because the guards announced they were homosexual. Ciprian remembered that "once, during a religious service in the penitentiary, Marian kissed the cross, as a believer. On his return to the cell, his cellmates beat him for 'defiling the cross.'"

A court convicted the two in June 1993, but—partly through foreign pressure—their prison sentences were suspended.

Hate pursued them. Ciprian's school expelled him; Marian could find no job. In June 1995 Marian M. committed suicide. His mother only found his body weeks later. Ciprian left Romania and gained asylum in another country.

2006

Human rights are a system of law: treaties and jurisprudence, provision and precedent. Looking back six decades to the beginning of that system, with the Universal Declaration of Human Rights, its construction seems one of the major works of the twentieth century.

In 1948, though, few could have imagined the system would eventually acquire the full solidity of positive law. At the time the Declaration looked less like a set of legal norms than a utopian rebuke to existing injustices, with no enforcement or authority on its own. Only slowly did human rights principles harden into law, and assume the expectation that they would protect, not just critique.

In November 2006, 16 experts on international human rights law gathered in Yogyakarta, Indonesia to discuss sexuality, gender, and human rights. They included a special rapporteur to the United Nations Human Rights Council, four present and former members

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[3] Gigi Horodinca, "Anuntul misterios," *Tim-Polis,* February 1993, quoted in Human Rights Watch and IGLHRC, *Public Scandals: Sexual Orientation and Criminal Law in Romania* (New York: Human Rights Watch and IGLHRC, 1997), pp. 19-20.

of UN treaty bodies, a member of Kenya's National Commission on Human Rights, and scholars and activists from—among others—Argentina, Brazil, China, and Nepal.

The result of the meeting is called the "Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity."[4] It contains 29 principles adopted unanimously by the experts, along with recommendations to governments, regional intergovernmental institutions, civil society, and the UN itself.

Everyone understood the meeting was groundbreaking because of what it would cover. Yet the aim was normative, not utopian, to codify what was known: to set out a common understanding developed over three decades. The deliberations drew on precedent and practice by international human rights mechanisms and bodies, but also on national law and jurisprudence from the United States to South Africa.

There are models for such a process. In the absence of a single covenant setting out the rights of internally displaced persons, a body of experts in 1998 assembled guiding principles to spearhead human rights approaches.[5] A similar convening produced the 1998 International Guidelines on HIV/AIDS and Human Rights.[6] Such processes explore so-called "emerging issues" or "protection gaps." The gap is between what human rights law says and what it ought to be doing.

Necessary ghosts hover about such a gathering. Although no one mentioned Marian M. and Ciprian C., they were, in a sense, remembered. Behind what was said hung a history of failure: the ones for whom protections against torture, against arbitrary arrest, for health, for family, had not been sufficient. Two sets of questions constantly arose:

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[4] The experts' meeting, held at Gadjah Mada University, was organized by the International Service for Human Rights and the International Committee of Jurists. It was chaired by Sonia Onufer Correa of Brazil and Vitit Muntarbhorn of Thailand, and Prof. Michael O'Flaherty both served as rapporteur to the meeting and played an instrumental role in the development of the Yogyakarta Principles. Human Rights Watch along with ARC International were represented on a secretariat serving the experts and the convening. The principles are available online at www.yogyakartaprinciples.org. The document was later endorsed by eight other UN special rapporteurs, by jurists and human rights experts whose countries of origin included Botswana, Costa Rica, Pakistan, and South Africa, and by a former UN High Commissioner for Human Rights.

[5] See Guiding Principles on Internal Displacement, at http://www.unhchr.ch/html/menu2/7/b/principles.htm.

[6] "HIV/AIDS and Human Rights International Guidelines," at www.data.unaids.org/publications/irc-pub02/jc520-humanrights_en.pdf.

- Who has been left out of existing protections?
- How can those protections then be given real force? How can we expand their reach while acknowledging that their power depends on the idea that they are already "universal?"

The Principles look forward, laying out a program of action for states to ensure equality and eliminate abuse. They can be seen as encoding progress already achieved for lesbian, gay, bisexual, and transgender (LGBT) people, turning it into a new set of norms with the promise of becoming binding.

Yet looking back—toward 1992, or 1948—the experts also saw the modern history of human rights as one of gaps, in which standards never enjoyed stasis. Protections against torture, once solid, could threaten to erode. Moreover, the legal principle and the abstract norm needed constantly to be measured against experience. Protections meant nothing unless some pressure constantly kept forcing the question: did they protect enough? The drive behind the Principles, demanding whether existing understandings of law fitted the real shape of violations, was the drive that made human rights make sense. As South Africa's highest court wrote, "The rights must fit the people, not the people the rights. This requires looking at rights and their violations from a persons-centered rather than a formula-based position, and analyzing them contextually rather than abstractly."[7]

What bridged the gap between the norm and the need was the movement. Human rights movements are often seen only as an adjunct to human rights law, enforcers bringing up the rear. What made the Principles possible, however, was the steady press of movements representing lesbian, gay, bisexual, and transgender people, presenting violations and demanding that institutions act. They both established that law was not living up to its obligations, and pointed the way for it to do so.

So-called "social movements" are not just political actors, but repositories of experience, telling new kinds of stories that demand new responses from human rights systems, as well as governments and societies. One can see LGBT people's

[7] National Coalition for Gay and Lesbian Equality et. al. v. Minister of Justice et. al., 1999 [1] SA 6 (S. Afr. Const. Ct.), at 112-114.

movements as opening "new conceptual space,"[8] producing previously unrecorded knowledge about how lives were lived and violations happened, thus reconfiguring both the ambit of rights and the expectations on them. The Yogyakarta Principles not only codify norms but condense what movements have learned. Even looking between the lines of a few Principles can show something of how lesbian, gay, bisexual, and transgender people moved human rights.

Denial and Recognition

Principle 3: *Everyone has the right to recognition everywhere as a person before the law. … Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.*

"Recognition before the law" is principally a guarantee of judicial personality. It arose in Yogyakarta in the histories of people whom law or society refused to acknowledge because their given identity did not match their appearance or their gender as they lived it. In Nepal in 2007, for instance, Human Rights Watch spoke to many people who identified as *metis* (an indigenous term for those born male who reject being "masculine"): they could not get jobs, find homes, or sometimes even see doctors because the government denied them necessary IDs.

Many would recognize their situation as a symptom—not only of the economic and legal consequences of inequality, but of how governments, where sexuality and gender are concerned, can erase the idea of difference itself.

When Mahmoud Ahmadinejad visited the US in 2007, he made a stir by saying: "We in Iran … we do not have homosexuals [*hamjensbaz*, a derogatory term] as you have in your country …. In Iran, absolutely such a thing does not exist as a phenomenon." The US press treated the statement as a strange outrage, but it was nothing new. Politicians had long been making comparable claims. Namibia's President Sam Nujoma blasted an interviewer in 2001 who raised the subject: "Don't repeat those

[8] Ron Eyerman and Andrew Jamison, *Social Movements: A Cognitive Approach* (New York: Polity Press), p. 55.

words ["gay" and "lesbian"]. They are unacceptable here .... Those words you are mentioning are un-Namibian."[9]

Nujoma was defending Namibia's law prohibiting homosexual conduct. His tirade showed a syllogism which recurs around the subject.

- We do not have these people here;
- We need laws against them.

The paradox is vicious. Whenever southern African leaders said homosexuality was imaginary in their countries, real people suspected of it were beaten or arrested. The talk about terminology elides the jailed bodies, the broken bones, the eliminated lives involved. Ahmadinejad's statement seemed more shocking only because Iran's criminal code provides penalties, up to death, for homosexual conduct. His language described an absence. His laws enforce it.

However, the Yogyakarta Principles themselves are ambivalent about these words. They use "lesbian," "gay," "bisexual," "transgender," only sparingly. Their authors dealt in terms, not of identities, but status: "sexual orientation," "gender identity," all given as much space as possible to be "self-defined."

One could see this wordsmithing as ignoring common experience. Yet the experts hoped to capture that "experience" is never unproblematically "common."

No reasonable standard of "cultural authenticity" exists by which to judge that words or identities do not belong. There is, however, a standard of autonomy and dignity saying people should be able to determine who they themselves are in the course of their lives. In the US, a 2003 Supreme Court decision overturned laws against consensual homosexual conduct by citing "an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."[10] The European Court of Human Rights

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9 Quoted in Human Rights Watch and IGLHRC, *More than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa* (New York: Human Rights Watch, 2003).

10 *Lawrence and Garner v. Texas*, Supreme Court of the United States, 539 US (2003).

has called defining one's own gender identity "one of the most basic essentials of self-determination."[11]

The Yogyakarta Principles attempt to treat sexuality and gender in ways they have not usually been treated by the law: not as embarrassments better left alone, but as places where human beings do things that help define themselves. This implies a fuller notion of the "person" who is the subject of human rights. Her self becomes more capable, and more capacious. The Principles deepen the ordinary right to recognition as a person, finding in it not just legal subjectivity,[12] but personal self-determination. Recognizing this also means respecting that people will define themselves in diverse ways.

Ahmadinejad talks of *hamjensbaz*, a Farsi insult—derogating the thing he denies. Nujoma, for years, turned "lesbian" into a curse against all Namibian feminists. Laws likewise need to lump in categories in order to punish or repress. Ciprian C. and Marian M. became just "a typical case of homosexuality."

Meanwhile, people and movements group under different banners to talk back. "Lesbian," "gay," "transgender," are only some of the more familiar. In fact, there is no global "lesbian, gay, bisexual, and transgender movement," because it is fruitless to try to sum up people's experiences of gender and sexuality, and the violations they face, in one vocabulary. There are people and movements pursuing different goals, defining themselves in different relations to those terms. The Yogyakarta Principles seek space for the diverse ways people name themselves and form solidarities.

Yet they also try to get at something deeper. The Principles locate an elemental source of rights back where diversity as well as solidarity begins—the struggle for autonomy and self-determination.

Private and Public

Principle 6: *Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference …. The right to privacy*

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[11] *Van Kuck v. Germany*, 35968/97, European Court of Human Rights 285 (June 12, 2003), at 69.

[12] Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl: N. P. Engel, 1992), pp. 282-83.

ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

When Marian M. and Ciprian C. were arrested, over 100 countries around the world had laws against consensual sex between adult men, and sometimes between adult women. In some places the prohibitions were part of religious law or tradition. Most, though, were tied to modern state authority.

Romania's sodomy law, for instance, had appeared only 60 years before—in the 1930s, as the country moved toward fascism. In the 1960s, as Ceausescu's dictatorship tightened the screws, punishments for homosexual acts drastically increased. Simultaneously, draconian new laws banned all birth control as well as abortion, and subjected women to regular gynecological exams, all intensifying the policing of private life.[13]

Moral pretext blended into political purpose as the state turned totalitarian. In the twentieth century, many regimes used laws on "private" behavior to expand and secure their power. When Stalin's Soviet Union criminalized homosexual conduct, one of his prosecutors explained that the least permitted privacy could breed political dissent: "classless hoodlums" would "take to pederasty," and in their "stinky secretive little bordellos, another kind of activity takes place as well—counter-revolutionary work."[14]

In the United States since the 1960s, it has become a commonplace that sexual and reproductive rights need the judiciary to shelter them from the overreachings of majoritarian rule.[15] From that vantage, it is surprising how often, after the Berlin Wall fell, expressing the diversity of sexuality was connected to democracy.

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[13] See Human Rights Watch and IGLHRC *Public Scandals*, and Gail Kligman, *The Politics of Duplicity: Controlling Reproduction in Ceausescu's Romania* (Berkeley: University of California, 1998).

[14] Quoted in Vladimir Kozlovsky, Argo russkoy gomoseksualnoy subkultury: Source Materials (Benson, Vermont, 1986), p. 154, cited in Human Rights Watch and the International Lesbian and Gay Association – Europe, "'We Have the Upper Hand': Freedom of assembly in Russia and the human rights of lesbian, gay, bisexual, and transgender people," June 2007.

[15] Opposition to "judge-made law" has been a focus of activism against reproductive rights in the US since the 1970s (as it was against the civil rights movement after *Brown v. Board of Education*), and after a Massachusetts court opened civil marriage to lesbian and gay couples in the state in 2004, identification of equal protection with "anti-democratic" judicial intervention has, if anything, intensified. However, it was an elected California legislature that twice passed a bill ensuring marriage equality for same-sex couples (the governor vetoed it in 2005 and 2007). See Human Rights Watch, "Letter Urging Gov. Schwarzenegger to Sign 'The Religious Freedom and Civil Marriage Protection Act,'" September 10, 2007.

It was not just a matter of rolling back the surveillance powers of dictatorships which had spread sodomy laws from Bucharest to Vladivostok. The totalitarian state had erased the line between public and private: campaigners for sexual rights created new knowledge about public and private spheres and how the two could relate.

They showed that the right to remain private was fused with the right to become public, the right to conceal with the right to disclose, intimacy with association and expression. In post-1989 Romania, defending privacy and dismantling the instruments of intrusion were critical. The struggle against the repressive sodomy law, however, had to be highly public.

For almost a decade after 1993, while allying with other victims of (ethnic and religious) inequality, the campaign brought something new to Romanian politics: evidence that an intimate fact could become a basis of community and action. In 2001 Parliament finally annulled the law that had allowed to jail Ciprian C. and Marian M.[16] In doing so it protected privacy and also, in a sense, broke down the prison walls around it. The Romanian movement attested that people cannot enjoy their privacies without public freedoms; securing democracy meant giving those interrelations institutional recognition.

Where democracy is fragile in post-1989 Eastern Europe, lesbians and gays have come under new attack. In Russia, assaults on peaceful Gay Pride marchers in 2006 and 2007 displayed the rollback in political rights. As police wielded nightsticks on the streets, politicians sneered that homosexuals should stick to freedom in the bedroom. "There is another way," one lesbian countered after she was released from jail. "I love my girlfriend, and I want to be allowed to say that in my own country." [17]

Equality and Politics

Principle 2: *Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity .... Discrimination based on sexual orientation*

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[16] Sustained pressure from the Council of Europe, and especially from the European Union—which made repeal of the law an effective condition for Romania's accession—assisted the decision. However, the very fact that these institutions applied such pressure was partly due to advocacy by groups (especially ACCEPT, the main LGBT organization) within Romania.

[17] Quoted in Human Rights Watch and ILGA-Europe, "'We Have the Upper Hand.'"

or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

As dictatorships fell in Europe and Latin America in the 1990s, sodomy laws went too. In 2007, though, over 85 still remain worldwide.[18] Almost all are a legacy of colonialism.

White colonizers legislated inequality, creating segregated categories with radically incommensurate rights. Colonial rulers saw "native" sexuality as feral, requiring constant restriction. Laws around it helped keep subjugated people under both stigma and surveillance.

Great Britain imposed a sodomy law on its Indian possessions in 1837.[19] The Indian Penal Code, a vast imperial experiment in making a conquered territory submit to codified Western law, criminalized "unnatural lust." The provision spread to other colonies; today, the Republic of India, Bangladesh, Singapore, Malaysia, Kenya, Uganda, and Tanzania are among its inheritors.[20] Other colonizers—French, Dutch, German—imposed their own penalties for homosexual acts.

Yet 50 years after anti-colonial struggles for liberation, the laws have stayed behind. Jamaican leaders defend an imported law on "buggery" as intrinsic to their culture. The Indian government still asserts in court that a Victorian paragraph remains relevant after viceroys have gone.[21] In many places, the old laws have offered post-colonial leaders a convenient prop for the state's rickety power.

And yet:

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[18] The most thorough survey is Daniel Ottoson, International Lesbian and Gay Association,"State-Sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults," 2007. However, because the application of many laws and the legal interpretation of their terminology remain unclear to outsiders and fluid at home, an exact number is impossible.

[19] This section draws gratefully on still-unpublished research for Human Rights Watch by Alok Gupta, now clerk to the South African Constitutional Court. See also Martin L. Friedland, "Codification in the Commonwealth: Earlier Efforts," *Criminal Law Journal,* Vol. 2 (1), 1990.

[20] English settlers in east Africa exposed the purpose of the code when it was introduced, protesting a policy of placing "white men under laws intended for a coloured population despotically governed." Friedland, "Codification in the Commonwealth," p. 13.

[21] See Arvind Narrain and Brototi Dutta, Naz Foundation International, "Male-to-male sex, and sexuality minorities in South Asia: An analysis of the politico-legal framework," 2006, pp. 26-27.

> A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are.... Respect for human rights requires the affirmation of self, not the denial of self.... At issue is a need to affirm the very character of our society as one based on tolerance and mutual respect.[22]

That was the South African Constitutional Court in 2005, mandating equal recognition of lesbian and gay relationships in law. The 1996 South African Constitution was the world's first to include sexual orientation as a protected status. This came through long campaigning by LGBT activists who were also veterans of the anti-apartheid movement. It came in a country where criminalizing sex—whether interracial or otherwise "deviant"—had been a foundation of apartheid rule.

South Africa's record since 1996 is full of failures to defend human rights (including LGBT rights) in international arenas, and failures to make them meaningful at home. The murders of three black lesbians in South African townships in 2007 point to prejudice's persistence in places where unresolved poverty turns to violence.

South Africa, though, still shows that sexual and gender rights are not a detour from the post-colonial path to self-determination. The confluence making its progressive constitution possible came partly from the length of its liberation struggle, and the way it engaged almost the whole society—so that liberation was accepted in many different meanings. The document had to take in compounded forms of discrimination, as well as economic and social injustices that limited the reach of rights on paper.

LGBT activists in the rest of the world like to point to the South African example as though the relevant parts can be detached and taken to Zimbabwe or the US, much as colonists carried their laws like baggage. That is not its lesson. Rather, it teaches about integrating rights struggles with one another: how one group's claims achieve greater meaning and reach in connection with another's. The interdependence of human rights is fully revealed in the politics of movements, in how they support one another but also learn from one another, and deepen the sense of the terms—"freedom" or "equality"—they use.

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[22] Minister of Home Affairs and Others v. Fourie and Bonthuys and Others, Constitutional Court of South Africa, CCT 10/05, at 61 and 60.

Local and International

Principle 27: *Everyone 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.*

"What are the lesbians doing here?" the journalist demanded:

> What can they ask for? Do they want now to inscribe their pathologic irregularity in the Charter of Human Rights? ... They have discredited this Conference and distorted the true purposes of woman's emancipation.[23]

He was describing participants at the World Conference on Women in Mexico City in 1975 who had formed an International Lesbian Caucus. When even the idea of crossing borders to advocate for human rights was relatively new, lesbians were there—and lesbian and bisexual women have steadily been at the forefront of international women's activism. LGBT people's movements, too, have continued to seek transnational alliances and demand action from the international community.

Activists have turned to international bodies despite lack of resources to get there, and lack of results when they go home. In 1995 women worldwide mobilized to support references to "sexual orientation" in the final document of the Fourth World Conference on Women in Beijing. On the meeting's last night, debate dragged on until the language was deleted. In 2004 dozens of national LGBT groups campaigned for a resolution introduced by Brazil before the Commission on Human Rights, on basic protections around sexual orientation. Brazil withdrew it at the last moment.

The reasons for persisting are not self-evidently practical. Mere visibility has not justified the expense and effort. To be sure, international institutions have furthered issues of sexual orientation and gender identity. International jurisprudence has established the

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23 Pedro Gringoire in *Excelsior,* July 1, 1975, quoted in Charlotte Bunch and Claudia Hinojosa, "Lesbians Travel the Roads of Feminism Globally," in John D'Emilio, William B. Turner and Urvashi Vaid, eds., *Creating Change: Public Policy, Civil Rights and Sexuality* (New York: St. Martin's, 2000).

reach of basic rights to both privacy and non-discrimination.[24] Many UN special rapporteurs have responded effectively to abuses against LGBT people. However, with the exception of the European Union and the Council of Europe (which have both made non-discrimination a clear, common standard), the political sides of international institutions have shown little will to address even grave abuses related to sexuality or gender identity. In the UN, neither the old Commission, the Human Rights Council, nor the Office of the High Commissioner for Human Rights have shaken loose the obstructionism of abusive states to affirm clear principles, or accepted the jurisprudence as a mandate to act. Now, with the efficacy of the UN's human rights institutions increasingly under fire, LGBT movements—still waiting for most of those bodies to give them simple recognition—are well qualified to join the firing squad.

The process leading to Yogyakarta began after the 2004 Commission resolution failed. The experts believed that if the UN's institutions could not say the obvious about how human rights applied to sexuality and gender, they would do so themselves. At the same time, they knew the movements in question were *not* going to join the firing squad. International solidarity and standards continue to be essential to how most LGBT activists see their future.

One reason is the intense opposition so many movements face from national governments—the bald insistence that LGBT people have *no* human rights, coupled with brutality. Fanny Ann Eddy, a lesbian activist from Sierra Leone, testified to the UN Commission in 2004 that "because of the denial of our existence,"

> we live in constant fear: fear of the police and officials with the power to arrest and detain us .... We live in fear that our families will disown us .... We live in fear within our communities, where we face constant harassment and violence from neighbors and others. Their homophobic attacks go unpunished by authorities, further

[24] The European Court of Human Rights, in a series of landmark decisions beginning in the 1980s, held that privacy rights were incompatible with the criminalization of consensual homosexual sex, and later established protections against discrimination based on both sexual orientation and gender identity. The UN Human Rights Committee in its landmark decision in Toonen v. Australia in 1994 found that "sexual orientation" should be understood as protected under the International Covenant on Civil and Political Rights; in successive decisions it has extended the implications of the conclusion.

encouraging their discriminatory and violent treatment of lesbian, gay, bisexual and transgender people.[25]

State denial leaves the international sphere the only place where many activists can be heard. And when some governments repeat by rote that LGBT people are not human, human rights seem like a last affirmation of humanity.

International pressure can bring significant success, from mitigating individual injustices such as Ciprian C.'s and Marian M.'s imprisonment, to forcing the repeal of intolerable laws. Sexual rights activists face the additional challenge, though, of building global connections that reflect the real diversity of identities they defend: a visible global movement broad enough to refute the discrediting slur that bodily autonomy and dignity are imported freedoms, "Western" or "Northern" concerns. Meanwhile, LGBT campaigners are likely to remain—for worse or better—internationalists caught between hope and desperation.

Conclusion

At the UN Human Rights Council in September 2006, Nigeria, a member, scoffed at "the notion that executions for offences such as homosexuality and lesbianism is excessive": "What may be seen by some as disproportional penalty in such serious offences and odious conduct may be seen by others as appropriate and just punishment."[26]

At that time, Nigeria's government was trying to pass a draconian bill providing harsh criminal penalties for supporting the rights of lesbian and gay people, or for public display of a "same sex amorous relationship." Handholding could be criminalized. The bill failed in 2007, but could still be revived.

Dismissal abroad, discrimination at home: these point to the challenges ahead of LGBT lives, and of the Yogyakarta Principles. Where the most basic rights, including

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25 "Testimony by Fanny Ann Eddy at the U.N. Commission on Human Rights," Item 14 – 60th Session, U.N. Commission on Human Rights, at http://hrw.org/english/docs/2004/10/04/sierra9439.htm. Eddy was murdered in her office, under unclear circumstances, later that year.

26 "Recognizing Human Rights Violations Based on Sexual Orientation and Gender Identity at the Human Rights Council, Session 2", ARC International (2006); also available on Human Rights Council Website, www.unhchr.ch.

life, are threatened because of gender identity or sexual orientation, the UN's central human rights institution does little. The Human Rights Council has been widely criticized for reticence over major humanitarian crises such as Darfur. Another test of its credibility will be whether it can respond to the control of sexuality and gender underlying almost daily violence in every country. Inaction on the everyday violations, as on the exceptional ones, will undermine it.

In November 2007 Argentina, Brazil, and Uruguay cosponsored a panel on the Yogyakarta Principles at the UN in New York. Their representatives highlighted their governments' commitment to protecting sexual rights at national and international levels. More than 20 countries' diplomats attended; a Netherlands Foreign Ministry spokesman announced his government's intent to use the Yogyakarta Principles as a guide for anti-discrimination components of its foreign policy and aid. These indicate an awareness, arching across the latitudes, of the urgent necessity of action. The onus is on institutions to respond.

We talk of human rights as things, as possessions humans have, but they are strange ones. For the most part, people only declare they *have* a right at the moment they are denied it—the instant it is not theirs. We realize how vital rights are only in the lack of them. Human rights end as norms and laws, but they begin as human hurts, hopes, and needs felt in innumerable daily lives. The task of human rights movements is to turn those needs into viable claims, then into standards that bind. Their task also is to remind institutions when they are failing, by taking them back to the needs where the norms began. The Yogyakarta Principles are part of this double work. They help remember the Novembers when the law fell short. They point forward to where the law should go.

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