SexPolitics
Reports from the Front Lines

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SEXUALITY
POLICY
WATCH

Brazil | Egypt | India | Peru | Poland | South Africa | Turkey | Vietnam | United Nations | World Bank

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Preface

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SexPolitics: Reports from the Front Lines is a comparative study of the politics of sexuality, sexual health and sexual rights in eight countries and two global institutions.

The work contained in *SexPolitics* has been developed under the auspices of Sexuality Policy Watch (SPW), a global forum composed of researchers and activists from a wide range of countries and regions of the world. Inspired by local and international initiatives, the SPW's mandate is twofold: to contribute to sexuality-related global policy debates through strategic policy-oriented research and analysis projects, and to promote more effective linkages between local, regional and global initiatives.

Over the past few decades, sexuality has become the focal point for political controversy and a key domain for social change. Issues such as protecting sexual freedoms and enhancing access to resources that promote sexual health are among the SPW's central concerns. The documents that are included in *SexPolitics* are based on research that has been carried out between 2004 and 2007 on sexuality and politics in Brazil, Egypt, India, Peru, Poland, South Africa, Turkey, Vietnam, the United Nations and the World Bank. These case studies

are framed, at the outset, by an introductory chapter on sexual rights policies across countries and cultures that seeks to describe some of the conceptual architecture as well as the collaborative process that was used in developing these studies, and at the end, by a cross-cutting analysis of the local and global politics of sex and reproduction that seeks to offer a preliminary analysis of at least some of the issues that emerge from a comparative reading of the diverse case studies included in this work.

Making these studies available to the general public is a key step toward sharing the wealth of knowledge generated by these analyses of sexuality and politics. Sexuality Policy Watch is releasing these findings in the format of an e-book in the hope of making them freely available to the widest possible range of concerned readers and audiences – and with the clear acknowledgment of the fact that the conditions prevailing with respect to sexuality and politics in the world and in the national settings described in this study are not just shifting rapidly but are also often threatening important gains in sexual and reproductive rights made in the last two decades. We hope that the information collected about major forces at play in the various sites investigated in this research, as well as the lessons learned from the experiences examined, may provide useful tools of analysis and inspiration for persons involved in sexual politics in many quarters of the world.

In launching this work, we wish to express our deep gratitude to the various authors who have contributed their analyses: to Richard Parker, Rosalind Petchesky, and Robert Sember, (for overall editing of *SexPolitics*), Rosalind Petchesky (for the introduction), Adriana R. B. Vianna and Sérgio Carrara (Brazil), Hossam Bahgat and Afifi Wesal (Egypt), Radhika Ramasubban (India), Carlos Cáceres, Marcos Cueto, and Nancy Palomino (Peru), Wanda Nowicka (Poland), Belinda Beresford, Helen Schneider and Robert Sember (South Africa), Pinar Ilkkaracan (Turkey), Le Minh Giang and Nguyen Thi Mai Huong (Vietnam), Françoise Girard (the United Nations), Kenneth de Camargo, Jr. and Ruben Mattos (the World Bank), and Constance A. Nathanson, Robert Sember and Richard Parker (for the cross-cutting analysis). We also want to thank all the activists and researchers who participated in the meeting organized in New York, in March 2004, to initially discusss the research scope and frame, as well as in the seminar held in Toronto, in August 2006, to share the preliminary research findings.

Introduction

Sexual Rights Policies across Countries and Cultures: Conceptual Frameworks and Minefields

Rosalind Petchesky

"Sex is always political," and its politicization involves the continual attempt to draw boundaries between "good" and "bad" sex based on "hierarchies of sexual value" in religion, medicine, public policies, and popular culture. These hierarchies "function in much the same ways as do ideological systems of racism, ethnocentrism, and religious chauvinism. They rationalize the well-being of the sexually privileged and the adversity of the sexual rabble." But in some historical periods, negotiations over sexual "goodness" and "badness" become "more sharply contested and more overtly politicized."

These were the insights of U.S. feminist and sexual rights activist Gayle Rubin, in an article written more than two decades ago.[1] But clearly the ethical and political conflicts Rubin warned us about, far from being resolved, are more prevalent today than ever — on a global scale. The revival of religious extremisms of all kinds, the "war on terror" with its rationalization of unrelenting militarism and torture, the shadow of U.S. military hegemony, and an atmosphere of unbridled power create unusually dangerous times for those committed to

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[1] Rubin, G. (1984). Thinking sex: Notes for a radical theory of the politics of sexuality. In C. Vance, (Ed.) *Pleasure and danger: Exploring female sexuality*. London: Routledge and Kegan Paul.

social justice, peace and human rights — particularly the rights to health, bodily integrity, and pleasure. As Rubin suggested, popular anxieties (of straight men, hegemonic and warring ethnic groups, the economically rapacious or insecure) often take the form of "moral panics" that target the sexually vulnerable and marginalized. It is dangerous in very particular ways for sexual and gender outlaws, whether they be gays and lesbians, transgender and inter-sexed people, unmarried youth, commercial sex workers, or heterosexual women trying to live a "non-traditional" social and erotic existence. Concurrently, however, sexuality, more than ever, is part of open public discourse in societies at large, particularly through the media and other communication systems but also in parliaments, courts, and global policy arenas where, in the last two decades, key achievements have been attained in regard to sexuality, health, and human rights.

Background to the research

These are the paradoxical conditions that inspired the International Working Group on Sexuality and Social Policy — now Sexuality Policy Watch (SPW)— to launch an ambitious transnational, cross-cultural research initiative that might capture some dynamics of sexual politics in our time. What we originally (and rather grandiosely) called the "global monitoring project" began in 2004 with a set of framing questions intended to give some kind of common ground to 10 very diverse political, social, and historical settings. We started with a broad meta-question: How and why are gender and sexuality being used in political power struggles within and across countries and institutions? The researchers in all 10 case studies were asked to investigate this question through three analytical streams — hegemonic discourses, political processes, and key actors — and to contextualize existing policies within the following areas of inquiry or second-order research questions:

1. *Cultural assumptions (cultural context)*: What are the commonly circulating discourses about sexuality and gender that form part of the landscape behind the formation and implementation of policies in this setting? The objective here was to identify the most prevalent assumptions (about normative sexuality, "manhood," "womanhood," appropriate behavior of youth, etc.) lurking behind the policies and processes being investigated and to uncover deployments of sexual and gender discourses to promote particular political and social agendas.

2. *Risks and opportunities (historical context)*: What circumstances and conditions — both internal and external — seem to trigger moral panics, controversies, hysteria, taboos, repression or liberalization regarding sexual issues and particular bodies? We aimed to chart specific moments or conjunctures when gender and sexuality emerge as public problems and to identify "triggers" of such panics, such as regime changes, epidemiological crises, ethnic or communal conflicts, etc. At different times, we anticipated, these moments might be largely regressive, largely progressive or contain both regressive and progressive elements.

3. *Tensions within/between norms and realities*: What are the dominant discourses at work concerning the politicization of sexuality, gender, and the body, and the tensions and contradictions among different normative frames? These might include contradictions between constitutional law and customary practice; adoption of a civil rights law or international human rights agreement with no intention or plan for implementation; tensions between individual rights and group rights, or between national or local norms and international ones; or tensions between or among opinions of courts and policies of executive, legislative, or religious authorities.

4. *Alternative discourses and new sites of resistance*: What alternative discourses and sites of resistance bearing on the case at hand (including assertions of new visions and alternative identities) are emerging both locally, within the site, and globally? What role do diverse constituencies and actors — for example, women's groups, youth, LGBT movements, people with AIDS, sex workers, religious groups, indigenous groups — play in formulating these alternative visions?

5. *State and civil society responses to 2), 3) and 4)*: What is the process of negotiation whereby local and global forces are presently contending over sexuality issues as framed by different actors? What sorts of political power struggles — including backlashes, conflicts among actors, and trade-offs — have emerged in relation to these public debates?

6. *Outcomes, expectations for the future and strategy recommendations*: What are the most important outcomes — both negative and positive — in terms of law, policies, implementation, practices, and public opinion that these battles over sexuality have produced? What possible scenarios for the future do these outcomes and the foregoing analysis portend, and how should we analyze the potential consequences — for heterosexual women, lesbians, gay men, transgender people, sex workers, youth — of these different scenarios? What lessons can we draw for progressive strategies and campaigns?

Selecting the eight countries (Brazil, Egypt, India, Peru, Poland, South Africa, Turkey, Vietnam)[2] and two international institutions (United Nations, World Bank) that have formed the basis of this project involved both a commitment to capturing a degree of global and inter-regional diversity and an unavoidable arbitrariness. The vagaries of finding available, willing, and knowledgeable researchers to take on and complete a long (three years, as it turned out) and somewhat murkily defined task partly determined the choice of cases as well as the regrettable geographic gaps in the studies that follow. At the same time, the decision to include two global institutions along with the country-based cases was quite deliberate. It reflects a strong sense among the SPW researchers, coordinators, and advisory group — based on our collective political experience — that the local and the global are always and necessarily intertwined and that our studies needed to show this two-way reverberation.

Conceptually, we borrowed a number of insights from at least two decades of intellectual work across the globe on the history, cultures, and politics of sexuality.[3] Primary among these were certain motivating propositions that formed a common theoretical framework, just as the six questions above formed a common methodological framework, for the project. First, we agreed that *sexuality is not reducible to a body part or a drive; it must be understood as integral to an entire matrix of social, economic, cultural, and relational forces; it is constructed rather than given*. This proposition has important theoretical implications. For one thing, it belies the conventional sex-gender dualism that has been a mainstay of women's studies and sexology literatures for decades — that is, the assumption that one can clearly distinguish between "sex," understood as some fixed biological substratum or drive (whether genetic, hormonal, anatomical, or psychic), and "gender," understood as the behavioral and social meanings and power relations attached to sex. To the contrary, the work of scholars such as Michel Foucault, Judith Butler and Anne Fausto-Sterling demonstrates that sex, the body, "simultaneously produces and is produced by social meanings," and that, most dramatically in the case of inter-sex infants, culture, discourse, and

[2] The project originally included a U.S. country case but in the course of project development a decision was taken to publish it separately. See Di Mauro, D., & Joffe, C. (2007). The religious right and the shaping of sexual policy: An examination of reproductive rights and sexuality education. *Sexuality and Social Policy*, 4(1): 67-92.

[3] For a selection of these works see the bibliography at the end of this article.

society influence the material body from its prenatal and neonatal beginnings.[4] On another level, as the case studies that follow illustrate so well, the forces with which sexuality most crucially intersects — though differently in distinct cultural and historical contexts — are those related to gender, race, ethnic, class, and colonial relations of power.[5]

A second theoretical proposition has to do with the *independence, yet interdependence, between sexuality, sex and gender*. Social historians and ethnographers of sexuality have generated compelling qualitative data to show that sexuality, like gender, is complex and multi-layered. This means that sexual *behavior* (what people do) is different from both sexual *orientation or desire* (object choice or fantasy) and sexual *identity* (which may or may not coincide with behavior or desire). And all three are distinct from gender behavior, gender orientation, and gender identity (subjectivity).[6]

"Pluralist" or "developmental" theories of sexuality shatter nature-culture dualism and biological determinism in regard to sexuality as well as gender. This is because, notwithstanding certain religious dogma, sexualities are complex and changing (over the life cycle or even from one week to the next) and develop *always within a social system*. As Fausto-Sterling makes very clear in her repudiation of the notion of a "gay gene," such a notion is based on a misunderstanding of biology itself. Genes do not function in isolation; they need a whole environment of proteins and cellular structure to operate. At the cellular level as much as the societal and planetary ones, living things can only develop in interdependent, interactive relationship with other living things. Thus it makes no sense to say that a particular gene or a particular sex organ or anatomical structure can determine something as complex and variable as sexuality or gender.

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[4] According to Michel Foucault (1978) in *The History of Sexuality, Volume 1: An Introduction*, (New York: Pantheon): "Sex . . . is the most speculative, most ideal, and most internal element in a deployment of sexuality organized by power in its grip on bodies and their materiality, their forces, energies, sensations, and pleasures." See also, Butler, J. (1993). *Bodies that matter: On the discursive limits of "sex."* New York and London: Routledge, and Fausto-Sterling, A. (2000). *Sexing the body: Gender politics and the construction of sexuality.* New York: Basic Books.
[5] For a selection of related texts see the bibliography at the end of this article.
[6] ". . . it was quite possible in the ancient Mediterranean world for a male to desire and to pursue sexual contact with other males without impugning in the slightest his own masculinity or normative identity as a man — just so long as he played an insertive sexual role, observed all the proper phallocentric protocols in his relations with the objects of his desire, and maintained a normatively masculine style of personal deportment. Unlike the modern homosexual, then, the *kinaidos* was not defined principally by his sexual subjectivity [but rather by his] betrayal of his masculine gender identity." Halperin, D. (2002). Forgetting Foucault: Acts, identities, and the history of Sexuality. In M. C. Nussbaum & J. Sihvola, (Eds.) *The sleep of reason: Erotic experience and sexual ethics in Ancient Greece and Rome*. Chicago and London: University of Chicago Press.

Third, we affirmed that *sexuality is not a side issue but a core issue that lies at the heart not only of the HIV/AIDS pandemic but also of realities and debates about the family, the place of women in society, reproductive self determination — in particular abortion — the meanings of masculinity, and expressions and corruptions of political power*. Writing in the early 1990s, during some of the bleakest moments of the pandemic, Australian social scientist Dennis Altman suggested that AIDS had a positive side because it had opened up a space for talking more publicly about what was previously taboo: diverse sexualities, gender identities, and inequalities. "AIDS has made it harder to deny the enormously political significance of what is often defined as belonging to the personal sphere," he wrote.[7]

What Altman was referring to, of course, was the growing recognition and public visibility of a large array of human sexual and gendered life patterns that deviated from traditional conjugal norms and dualisms of "man"/"woman" or even "heterosexual"/"homosexual": bi-sexuals, transgender and inter-sexed people, commercial sex workers of many sorts, and a huge diversity of adolescent, inter-generational, and extramarital heterosexual relations. As Gayle Rubin had observed a decade earlier, these diversities and popular anxieties about them are often the subtext of public debates over "morality," masculinity and femininity, and family relations. By the time of the Toronto World AIDS Conference in 2006, however, even UNAIDS had come to attribute the stark gender disparities in infection rates among young women and men — particularly in Africa, South Asia, and low-income communities in the United States — to the power differentials that still govern heterosexual intercourse in many local cultures. Moreover, its 2006 report on the AIDS epidemic[8] clearly recognized "men who have sex with men" (MSM) and sex workers as among the most vulnerable and neglected groups whose human rights and access to "the full panoply of HIV information, commodities, and services" should be given top priority.

Altman was prescient in envisioning that the catastrophe of AIDS would, paradoxically, create openings not only for talking about sexuality in all its diversity, but also for understanding sexuality in a holistic, socially contextualized way. We know from extensive, evidence-based

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[7] Altman, D. (1995) Political sexualities: Meanings and identities in the time of AIDS. In R. Parker & J. Gagnon (Eds.) *Conceiving sexuality: Approaches to sex research in a postmodern world*. New York: Routledge.
[8] UNAIDS. (2006). *Report on the Global AIDS Epidemic*. Geneva: UNAIDS.

social science research in Southern Africa, Nigeria, Thailand, India, Brazil, Peru, Haiti, Australia, the United States, Nicaragua, and other settings across the globe that HIV infection always occurs within a complex matrix of sexual, gender, race-ethnic, class, age, and geographic relations of power. Dozens of studies reveal a complex and layered set of social conditions that combine to result in the biological outcome of seropositivity.[9]

Sex workers, for example, may have achieved official status as a "vulnerable group" for public health purposes, but their actual needs — and effective interventions — are unimaginable without considering the concentric circles of dilemmas that envelope them. Here are just a few:

- How can a person avoid trading sex for money if she/he has no viable alternative sources of livelihood, no education or training, and/or no geographic mobility?
- How can a sex worker avoid becoming infected if punitive criminal laws and abstinence-only policies prevent her/him from getting access to condoms?
- How can she/he use a condom if the police might raid at any time and seize it as evidence, or if the client will refuse to pay, or beat her/him up, if she/he does?
- If she/he becomes infected with HIV, how can she/he access antiretroviral (ARV) treatment if patent laws and market prices make it inaccessible in that country, or inadequate health infrastructure or confinement to an armed conflict zone or refugee camp make delivery of the drugs impossible?
- How do poverty, gender, age, ethnicity, and geographic location compound all these risks beyond measure, making infection almost a certainty?
- Even under the best of circumstances — say international NGOs and liberal donors make the female condom (an "ideal dual protection method") available in her community — won't its "correct and consistent use" still require training, organization, and some degree of empowerment?

These questions raise profound issues of social justice, but they also illuminate the enormous, and indeed tragic, gap between the breadth of our current knowledge base about sexuality, and specifically the socio-sexual conditions and determinants of HIV transmission, and

[9] For a selection of related texts see the bibliography at the end of this article.

the inadequacy of prevailing policy responses. In too many countries and institutions those responses have over the past decade narrowed into two simultaneous trends that threaten to close the space that Altman saw opening up for sexual and gender rights discourse. On the one hand we see in a variety of contexts the predominance of biomedical/technological approaches that tend to sanitize and de-sexualize the debate over the AIDS policy agenda as well as other issues, such as the treatment of inter-sex and transgender people or legal restrictions on abortion. Biomedical discourses and methods may be irresistible not only to government and international agencies but also to advocacy groups, for whom they create an aura of technical expertise rather than political and social resistance.[10]

Even the very important struggle for wider or universal access to ARV drugs has had the un-anticipated consequence of deflecting attention from sexual and social conditions, causes, and preventive strategies. Moreover, the language of "harm reduction," "risk groups," "vul-nerable populations," "MSM," and the like — as both the World Bank and the Peru studies show all too well — create a "silencing" discourse that advances "a standardized view of sexuality" that not only de-politicizes social movements but also denies the complexity, fluid-ity, and variability of sexual relations in real people's lives.[11]

On the other hand, we have witnessed the growing political power of conservative religious forces, within countries and internationally, who insist on strategies of abstinence and moral "purity." In this case, whether through the influence of the U.S. Christian right, the Vatican, or radical Islamists, the effect is not to de-sexualize the debate but rather to *re-sexualize* it, in a sectarian and highly conservative direction. Consider, for instance, the open attack on sex-ual plurality and reproductive self-determination unleashed by Pope Benedict XVI since his nomination. The encyclical *Deus Caritas Est*, launched in December 2005, develops a long and complex argumentation to qualify same sex relations as a "weak love" because they do not lead to procreation. In relation to abortion, the new Pope has maintained the line of his

[10] See Rafael de la Dehesa, *Sexual Modernities: Queering the Public Sphere in Latin America*, forthcoming; and (see below) Cáceres, C., Cueto, M. &, Palomino, N. (2007). Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, p. 129, who observe: ". . . by suppress-ing or marginalizing the 'sexual' in official policies related to sexuality in favor of a low-profile 'public health' discourse, advocacy groups some-times create opportunities for important legal changes" but at the same time may "fail to confront the public agenda and challenge conservative powers" with regard to creating full sexual citizenship for sexual minorities and women.
[11] (See below) de Camargo, K. &, Mattos, R. (2007). Looking for sex in all the wrong places: The silencing of sexuality in the World Bank's public discourse, p. 359.

predecessor, using all possible occasions to condemn women who abort. In his speech to the General Assembly of the Pontifical Academy for Life, held in February 2007, Pope Benedict reiterated his fear of abortion decriminalization across the world, especially in Latin America: "It is necessary to admit that threats against life have expanded and multiplied throughout the world, also assuming new forms. Pressures for the legalization of abortion are increasingly strong in Latin America and developing abortion under the pretext of reproductive health."

Right before the Pope's visit to Brazil, the Cardinal of Rio de Janeiro interrupted the main Easter mass in the city cathedral to condemn abortion. Benedict himself virulently attacked abortion in conversation with the press during his flight from Rome to São Paulo. In between, the Vatican threatened parliamentarians who voted to legalize abortion in the Federal District of Mexico. One main outcome of the meeting of Latin American Bishops in Brazil, which was the formal reason why the Pope visited the country, was a systematic condemnation of pregnancy termination, equating the practice with "terrorism."

Likewise, the U.S. — through its foreign assistance policy regarding reproductive health (the so called Gag Rule) and AIDS prevention and treatment (The President's Emergency Plan For AIDS Relief, known as PEPFAR) — also deploys punitive moral conditions dictated by conservative Christian groups. These policies require that groups receiving funds for family planning sign a clause stating they will not address abortion in any of their programs. Recipients of PEPFAR funds are pressured to emphasize abstinence over condoms in prevention programs and to sign an anti-prostitution pledge (thus excluding and repudiating sex workers and their advocates). Last but not least, HIV/AIDS funds are increasingly channeled through U.S. and local "faith-based" organizations.[12]

This pincer movement of biomedical and fundamentalist religious approaches is eerily familiar to feminists who have worked for the past 25 years for reproductive rights and faced an anti-natalist, neo-Malthusian population establishment on the one hand, and pro-natalist religious forces on the other. On a more theoretical level, they recall Michel Foucault's analysis of modern political power having displaced older forms of sovereignty with two

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[12] Girard, F. (2004). *Global implications of US domestic and international policy on sexuality*. SPW Working Paper No. 1. New York: Columbia University. See also http://www.pepfarwatch.org. The ultimate irony, and exposure of hypocrisy, occurred when Andrew Tobias, the USAID administrator of PEPFAR, was forced to resign in May 2007 for patronizing a Washington, DC based prostitution business.

new forms. On the one hand, according to Foucault, modernity replaces the power over life and death with "discipline," or *biopower* — techniques aimed at training and producing individual bodies in particular ways and administered not only or primarily through the state but also through decentralized institutions such as medicine, psychiatry, religion, and penal law. On the other hand, the methods of *biopolitics* are aimed at regulating whole populations — their size, growth, movements, mortality, and morbidity, and are deployed through state and international agencies as well as medical and religious institutions.[13]

These two forms of power — disciplining bodies and biopolitics — correspond directly to the two trends or approaches to AIDS and sexuality policies described above. In fact, the biomedical and conservative religious approaches may seem to be in opposition, but they share a common reductive view when it comes to both sexuality and HIV/AIDS. Both see sexuality in simplistic biological terms, as something fixed and given, located in the body (genes, genitals, hormones) or the soul, disconnected from social and contextual realities. Both see HIV/AIDS as a mechanical matter of sexual transmission that can be prevented by a single step: either use of a "method" or abstaining from its use (and from sex). In the process they both deny how infection rates and risks are inseparable from social, sexual, and gendered power relations, revealing a shared agenda of containing the emerging vitality of voices for sexual rights that the epidemic has unleashed. So they are two sides of a coin, and the whole coin is counterfeit.

Many of the case studies presented below illustrate how biomedical or biopolitical and religious or disciplinary policy agendas tend to work in tandem rather than in opposition, sometimes coexisting in uneasy alliance, sometimes directly reinforcing one another. A few examples will suffice. In Vietnam, according to Le Minh and Nguyen, the Government's HIV/AIDS prevention and treatment program continues the pattern established with its family planning program, treating human bodies — and especially female bodies — as components in "general biological processes" that can be subjected to collective regulatory mechanisms by the state. Yet side by side with this exercise of biopolitics are the government's punitive policies toward sex workers, who are seen as a "social evil" and, as in U.S. policy under

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[13] Foucault, M. (2003). *Society must be defended (Lectures at the Collège de France, 1975-1976).* New York: Picador; (1978). *The history of sexuality, Volume 1: An introduction.* New York: Pantheon.

PEPFAR, subjected to stigmatizing criminal penalties. Hence a "continuum" of biopolitical control — whether of "unprotected procreative sex" within heterosexual marriage or of "unsafe non-procreative sex" outside marriage — coexists with older patriarchal and moralistic discourses of "goodness" and "badness." Poland, in Nowicka's account, seems to be the mirror image of Vietnam, basing its virtual abolition of abortion after 40 years of legality and a vicious campaign against homosexuality on Catholic religiosity as the instrument of biopower. Yet Polish authorities marshal pro-natalism in the service of "modernization" as vigorously as Vietnamese authorities do anti-natalism; in both cases, the objective is to discipline deviant female and gay male bodies in order to build the globalized post-communist nation.

Peru represents another complicated scenario. There, a strong biopolitical approach to population control under the Fujimori government, including egregious forced sterilization campaigns targeting indigenous women, gave way under Toledo to policies deferring to the Catholic hierarchy with regard not only to contraception and sterilization but also to HIV/AIDS treatment. This has meant, simultaneously, the medicalization of the epidemic and the excising of terms like "gender," "sexual orientation," and "sexual rights" from official documents — thus cloaking a punitive, moral approach under the mantle of a biomedical one. A similar complexity appears in the India case. The infamous Section 377 of the Indian Penal Code, dating from 1865, is a classic example of sexual discipline as part of the colonial project, but now appropriated into a Hindu nationalist agenda. Police targeting of, and brutality against, LGBT and HIV/AIDS outreach groups under this provision reveal its strongly disciplinary nature. At the same time, as in the case of Peru, the recruitment of LGBT groups into government agencies as epidemiological "bridges" to HIV risk populations suggests that biomedical discourse and regulatory strategies are alive and well in the Indian context.

Of all the case studies, that of the United Nations may be the most ambiguous and frustrating and simultaneously the most promising, showing how institutions are never monolithic but always terrains of political contestation. A biomedical, regulatory model with regard to population and sexuality has prevailed in many UN agencies — UNFPA, WHO — in the past (and certainly in the World Bank). Yet this model has had to coexist with conservative religious influences — particularly the Vatican, the U.S. government under Bush, and the Islamic regimes — working within the proceedings of the General Assembly, the Human

Rights Council (formerly Human Rights Commission) and elsewhere, where these forces have fiercely contested any recognition of reproductive rights, sexual rights, sexual orientation, or even the word "gender" (seen by the Vatican as a code word for sexual and gender diversity). Despite powerful biopolitical and religious fundamentalist forces within the UN, as Girard's analysis shows, it has nonetheless been possible to advance an alternative discourse — that of sexual rights as human rights.

As defined by Special Rapporteur on the Right to Health, Paul Hunt, this means "… [S]exuality is a characteristic of all human beings. It is a fundamental aspect of an individual's identity. It helps to define who a person is…. the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference."[14]

The failure thus far to win approval of the resolution on sexual orientation in the Human Rights Council suggests how far this struggle still has to go, even at a discursive level. Yet, as Girard persuasively argues, the language is now circulating in the halls and chambers of the institution and cannot easily be put back in the bottle. Beyond this, a human rights approach to sexuality and sexual policy implies the principle of indivisibility — meaning that sexual rights are inextricable from economic, social, cultural, and political rights. Freedom to express one's sexual or gender orientation or to be who one is as a sexual person, to experience erotic justice, is interdependent with a whole series of other rights, including health care, decent housing, food security, freedom from violence and intimidation, and to be in public space without shame.

Broad coalitions making gains

More than anything else, the case studies in the SPW monitoring project illustrate one unequivocal common finding: a human rights approach to sexuality is only as strong as the civil

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[14] Hunt, P. (2004, February 16). Economic, social and cultural rights: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Report of the Special Rapporteur. UN Commission on Human Rights, 60th Session.

society coalitions pushing it forward. Where these coalitions have been as broad as possible — encompassing feminist, LGBT, youth, sex worker, and other groups seeking bodily integrity rights and erotic justice as inseparable from social and economic justice — they have made some significant, if partial, gains. This has been true of South Africa's inclusion of sexual orientation in its constitution; India's continuing struggle to repeal Section 377 of the penal code; Peru's exposure and defeat of forced sterilization; Turkey's criminal law reform with its elimination of references to chastity, honor, and virginity; Brazil's campaigns for treatment access for all HIV+ people as a human right and for "Brazil without Homophobia;" and the advances of sexual rights language in the UN. Indeed, it seems clear that the momentum, energy, and experience of the country-based movements for sexual and gender rights have been the formative basis for achievements at the international level. Simultaneously, normative principles and coalitions generated in international arenas, such as the UN conferences of the 1990s and the more recent mobilizations at the Human Rights Council and in creating the "Yogyakarta Principles on the Application of International Human Rights Law in relation to Gender Identity and Sexual Orientation,"[15] have undoubtedly been inspired by and will feed back into the local and national movements. In this spirit of local-to-global and global-to-local hybridity, we hope these case studies will be useful to groups everywhere seeking to build a world where pleasure and well-being are no longer exceptional or the prerogative of a few.

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[15] The Principles affirm binding legal standards with which all states must comply. They were adopted by a group of distinguished experts in international law following a meeting in Yogyakarta, Indonesia. Among the group of experts are a former United Nations High Commissioner for Human Rights, UN independent experts, current and former members of human rights treaty bodies, judges, academics, and human rights defenders. The Yogyakarta Principles call for action from the UN human rights system, national human rights institutions, non-governmental organizations, and others. They were launched on March 26, 2007 at the 4th UN Human Rights Council's session in Geneva. In 2006 54 States called for the Council to act against egregious violations of the rights of lesbian, gay, bisexual, and transgender people. See http://www.yogyakartaprinciples.org/.

Butler, J. (1993). *Bodies the matter: On the discursive limits of 'sex.'* New York and London: Routledge.

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Brazil

Sexual Politics and Sexual Rights in Brazil: A Case Study

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Introduction

Few countries have an image as connected with eroticism and sexuality as Brazil. The country abounds with symbols of sexual freedom depicted in pictures of everything from carnival and beaches to inter-racial relationships, transvestites and samba. However, this representation belies the realities of Brazilian society; beneath a feigned liberalism the country is deeply affected by sexism, homophobia and racism, which when taken together with other social markers creates a reality of massive inequality. To examine the construction of sexual rights in Brazil requires analysis of this contradictory view while recognizing its local impacts and avoiding traditional stereotypes.

The analysis of sexual politics and rights in Brazil involves going beyond a mere description of conceptions and practices associated with a single sexual culture. One must focus on the context in which these rights have developed, giving consideration to the legal structure, political process and social actors. The objective of this paper is to examine this context starting with themes that are especially relevant to the very configuration of these rights in Brazil:

reproduction/abortion, STDs/AIDS and sexual diversity. It aims to provide a wide informative view, concentrating on the identification of the main actors, existing legal instruments and those still being discussed, and, finally, the public policies that have been adopted in the last two decades. Notwithstanding the text's informative nature, we will also introduce the issues that can and must contribute to any conceptual discussion on sexual rights.

This discourse holds that the 1988 Brazilian Constitution — widely known as the Citizen's Constitution — must be considered the catalyst that inspired civil society's demands for new rights, while also generating public policies and legal instruments to satisfy those demands. The promulgation of the 1988 Constitution put an end to the long period of authoritarian rule instituted by the 1964 military coup, and its contents reflect the re-democratization process that began in the late 1970s. The process brought about a convergence of left-wing political forces displaced by the military coup and new social actors who organized around issues of gender, race and sexuality. As in other Latin American countries, the struggle to reinstate democratic political rights took place in tandem with demands for the implementation of a larger human rights agenda; social rights were brought forward, along with women's rights and the rights of racial, ethnic and sexual minorities.

In terms of social rights, the fact that health care was acknowledged as a fundamental right in the new constitution had crucial consequences for reproductive rights and for the Brazilian response to HIV/AIDS. According to the constitution the right to health must be "guaranteed through social and economic policies aiming at reducing the risk of any illness and other disorders and providing universal and equalitarian access to actions and services for its promotion, protection and recovery." Moreover, health care was considered both an individual as well as a trans-individual right.[1]

As to specific rights, the 1988 Constitution reflected the configuration of forces in different social movements. In some cases achievements were impressive; the formulation of gender equality as a constitutional right and the legal acknowledgement of various kinds of family clearly reflect the power of women's and feminist groups. Gender equality — understood in the constitution as equal rights for men and women — appears both in general articles

[1] Rios, R. R. (2002). Respostas jurídicas frente à epidemia de HIV/AIDS. In R. Parker, V. Terto, & C. Pimenta, (Eds.) *Aprimorando o Debate: respostas sociais frente à AIDS. Anais do Seminário Solidariedade e Cidadania: princípios possíveis para as respostas ao HIV/AIDS*. Rio de Janeiro: ABIA.

and in others more specific like family planning, which couples are free to choose and the state is required to provide. The constitution also forbids labor-market discrimination on the grounds of "sex, color, age or marital status." Many of these clauses have been expanded into specific federal laws.

But the political climate did not favor Brazil's lesbian, gay, bisexual and transgender communities; sexual orientation is not included in the constitution. In spite of the LGBT movement's call for discrimination based on sexual orientation to be outlawed this issue is still in debate in advocacy efforts for a constitutional amendment. In fact, the constitution's general frame of respect for human rights is a useful tool for advocates seeking to consolidate new rights. For example, the state is obliged to implement international agreements it has signed, allowing activists wider advocacy options.

The contradiction arising is that national legal codes, such as penal laws, were not brought in line with the constitution, although more recently some civil laws have been changed.[2] In the case of penal legislation, for example, one sees terms like "crimes against *family*" or "crimes against *customs*" (our emphasis), which contradict the principles of gender equality laid down in the constitution. Moreover, even in those cases where infra-constitutional legislation was intended to implement the new constitutional principles, public policies to support this were not instituted.

Given all this, the process of affirming sexual rights in Brazil is a complex and heterogeneous space, in which different types of legislation (penal, civil, labor) with different scopes (federal, state and municipal) correspond to equally varied public policies in their formulation and range. Another important element lies in the judiciary system itself; although jurisprudence does not have the power of law in Brazil like in countries ruled by common law, it is noteworthy that countless judges, as they seek to interpret constitutional principles, have granted rights that are not explicitly included in the laws.

The process of building sexual rights in Brazil is marked by ambiguity. There is a very strong commitment to producing and implementing human rights, especially given international

[2] Although Brazilian states have their own constitutions, their independence as regards legislative capacity is very limited. Besides respecting the constitution, they must submit to the civil and penal codes, which are in the scope of federal legislation. The current penal code dates back to 1940 and the civil code, adopted in 1916, was only recently revised in 2002.

obligations, but this commitment is constantly threatened by deep social, racial, ethnic and gender inequalities. Even as social movements have strived to re-democratize the country, conservative lobbies — especially those backed by religion-oriented political parties — have sought to prevent the advance of rights related to sexual diversity or the individual's right to sexuality and reproductive choices.

Reproductive policies and rights

The demands for gender equality in the Brazilian legal structure are a result of the work undertaken by feminist militants and organizations since the 1970s, combined with mobilizing efforts for the country's return to democracy. The 1960s and '70s were as much a landmark in Brazil's feminist movement as in the region and internationally. To the picture of urbanization and modernization begun in the 1950s — marked by the growing participation of women in the labor market and at universities — was added the effervescence of a counter-culture and opposition to military rule established after 1964. Women's participation in the armed struggle represented only the most dramatic aspect of that resistance; the presence of women's groups in popular organizations played a significant role in building what some authors call an "interclass movement."[3]

The 1975 United Nations International Year of Women legitimized and brought visibility to groups like *Brasil Mulher* (Woman Brazil), *Nós Mulheres* (Us Women) and *Movimento Feminino pela Anistia* (Amnesty Feminine Movement), among others.[4] In spite of its own concerns, the feminist movement was constantly in touch with left-wing groups and especially the progressive wing of the Catholic Church, in opposing the military dictatorship. In this broader struggle, opportunities arose to advance women's rights; for example, one of the achievements under military rule was the repeal, in 1962, of the Married Women Statute in the civil code, which required married women to have their husbands' permission for reproductive procedures among other things, and, in 1977, the Divorce Law, which was weighted against women.

[3] Sarti, C. A. (2004). O feminismo brasileiro desde os anos 1970: Revisitando uma trajetória. *Revista Estudos Feministas, UFSC*, v. 12, n. 2, pp. 35-50.
[4] Sarti, C. A. op cit.

The 1980s was a progressive period for gender equality, especially in the areas of violence against women and woman's health. Organizations like SOS-*Mulher* (Woman SOS) in São Paulo were set up to help women in situations of violence perpetrated by husbands, partners and boyfriends. The campaign slogan, Lovers Don't Kill, became popular as a symbol of the struggle against gender violence and the impunity of honor crimes and crimes of passion.[5] As a result of the campaign, in 1985 the first Police Station for Women's Assistance was created in São Paulo, and the *Conselho Nacional de Direitos da Mulher* (Women's Rights National Council) was instituted.

After much criticism from feminist organizations and professional groups advocating a radical reform of the public health system, the main public policy body on reproductive issues, *Programa de Saúde Materno-Infantil* (Health-Care Program for Mothers and Children), was replaced with PAISM – *Programa de Assistência Integral à Saúde da Mulher* (Women's Health Integral Assistance Program). Unlike the previous scheme, which was centered on a mother/child binomial, PAISM had a more integrated health-care approach that emphasized women's need for support at all stages of their lives as well as the importance of access to information and family planning.[6]

This experience was extremely valuable in later efforts to introduce reproductive rights into the constitution, and in subsequent laws broadening the right to maternity leave and criminalizing the stipulation that women produce pregnancy or sterilization certificates to find or to retain employment. It took longer, until 2002, to win the right to maternity leave in cases of adoption or warding, evidence that the biological bias still permeates reproductive rights in the country. Paternity leave has remained at just five days since 1988.

The constitution has also brought about important advances in family planning, defining the issue as follows: "Founded on the principles of the human being's dignity and responsible paternity, family planning is a free decision of the couple, the state being bound to propitiate educational and scientific resources for the exercise of these rights, forbidding any coercive

[5] Costa, A. M. (1999). Desenvolvimento e implantação do PAISM no Brasil. In K. Giffin, S. Costa, & S. Hawker, (Eds.) *Questões da Saúde Reprodutiva*, pp. 319-336. Rio de Janeiro: Fiocruz.
[6] For a better understanding of this context, see: Costa, A. M. (1999). Desenvolvimento e Implantação do PAISM no Brasil. In K. Giffin, S. Costa, & S. Hawker, (Eds.) *Questões da Saúde Reprodutiva,* pp. 319-336. Rio de Janeiro: Fiocruz.

measures by official or private institutions" (Art. 226 § 7). In 1996 a new law defined family planning as a set of actions to regulate fertility that grants equal rights to the woman, the man or the couple to constitute, limit or augment children – presupposing equal access to available information, means, methods and techniques.

The hardest point to define in the law was the regulation of surgical sterilization.[7] Debates on mass sterilization since the 1980s had given rise to a Parliamentary Commission in 1991. According to the Commission's official report, presented two years later, the large number of sterilization procedures could be ascribed to the absence of contraceptive alternatives and to suspicious political practices aimed at demographic control and vote-seeking. Finally, in 1997 the vetoes relating to surgical sterilization were withdrawn and the conditions under which it could be carried out were established. In order to be sterilized women and men must be over 25 years of age (the age of consent) or already have a minimum of two children in the case of those under 25.

Despite the emphasis on information and free choice in the case of contraceptive methods or on family-planning strategies legislated since 1988, many organizations linked to the women's and feminist movements have questioned the conditions under which such choices are made. For instance: What about effective access to other contraceptive means that are low-risk and reversible? General data on maternal death rates indicate, in turn, the need for effective implementation of the integral support proclaimed by PAISM, both in terms of antenatal and childbirth assistance.[8]

Conclusions developed by the Parliamentary Commission on Maternal Mortality (1996-2001) point in this direction. According to the Commission's report, difficult access to contraception, including discontinuity or absence of programs in many municipalities, contributes significantly to the state of affairs. On the other hand measures to address the situation are difficult to implement given low reporting and the absence of maternal deaths committees or an ombudsman to receive complaints. Lastly, the Commission reiterated points

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[7] See also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, p. 319; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 104-105; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

[8] See the data published by *Rede Nacional Feminista de Saúde, Direitos Sexuais e Direitos Reprodutivos* (Feminist National Network of Health, Sexual Rights and Reproductive Rights), especially the dossiers *Aborto Inseguro* (Unsafe Abortion) and *Mortalidade Materna* (Maternal Mortality), available at www.redesaude.org.br.

made many times by feminists about the profile of those affected – primarily low-income and uneducated women – and the role played by clandestine abortions.[9]

Considering the distance between the initial definition in the constitution and the current legislation that effectively regulates family planning, it is important to look at the role played by the main UN international conferences that dealt with the theme.[10] Both the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt, and the 1995 Fourth World Conference on Woman (FWCW) in Beijing, China, were decisive in putting reproductive rights and sexual rights, linked or not to reproductive rights, on the human rights agenda.[11]

Legalization of abortion remains the sticking point in the construction of reproductive and sexual rights in Brazil. Abortion is still a crime except in those cases of pregnancy resulting from rape or to save the life of the pregnant woman. Between the mid-1970s and the beginning of the constitutional process, draft bills aimed at legalizing or expanding abortion rights were systematically rejected by the National Congress. Feminists brought up the issue at the start of the National Constitutional Assembly in the 1986 Brazilian Women's Letter to the Constitutional Assembly, calling for a woman's right to decide what to do with her body whether in terms of antenatal, childbirth and post-childbirth assistance, or to interrupt pregnancy. At the same time, anti-abortion congressional representatives, very much in tune with the strategies of the Vatican, argued that the constitution should include the right to life from the moment of conception, but this clause was not included in the final text.[12] Feminists did gain some ground at state level, however; "legal abortion" was included in eight state constitutions written in 1989.[13]

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[9] For more about the Parliamentary Commission on Maternal Mortality, see also the Brazilian report for CEDAW, 2002.

[10] For a detailed overview, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

[11] Corrêa, S. (2002). From Reproductive Health to Sexual Rights: Achievements and Future Challenges. In M. Ventura, (Ed.) *Direitos reprodutivos no Brasil*. São Paulo; Buglione, S. (2002). Reprodução e sexualidade: Uma questão de justiça. In R. Cook et al., & S. A. Fabris, (Ed.) *Reprodução e Sexualidade: uma questão de justiça*. Porto Alegre: Themis.

[12] For a detailed account of this development, see: Pandjiarjian, V. *Aborto* (Abortion), *Estudo Comparativo da Regulamentação Jurídica do Aborto na América Latina e Caribe*. CLADEM (www.cladem.org.br); de Oliveira, G. C. (2001). *Direito ao Aborto em Debate no Parlamento*. Rede Saúde/Cfemea.

[13] See Pimentel, S. (1993, December). Direitos Reprodutivos e Ordenamento Jurídico Brasileiro: subsídios a uma ação político-jurídica transformadora. *Cadernos CCR*.

In the early 1990s, proposals defending women's right to have an abortion in the first three months of pregnancy and to expand the basis for legal abortion were put forward. Of these, the most relevant is a 1991 draft bill laying down not only the right of women to voluntarily end pregnancy but also the guarantee of access to abortion through the public health system.

Anti-abortion groups supported by religious parliamentary blocs (Catholic and Protestant) put forward counter-proposals to suppress abortion and on the right of the fetus to life,[14] polarizing the discussion within parliament. With no decisive victory on either side, last year's debates were tense, with both sides assuming a defensive attitude and progressives concerned with protecting their gains, especially regarding assistance in the public health system.

Despite the ongoing parliamentary debate there have been some national-level achievements on the right to abortion. In 1989, the city of São Paulo was the first to pass municipal legislation regulating assistance through the public health services in those limited number of abortion cases approved by the penal code. The main national-level change came in 1997 when the Health Care National Council approved a resolution to regulate assistance by the public health system. The following year, a regulation for "prevention and treatment of injuries resulting from sexual violence against women and adolescents" stipulated the conditions by which this assistance must be administered. These include emergency contraception in cases of rape, prevention of sexually transmitted diseases (STDs), and, if the woman wishes, termination of a pregnancy resulting from sexual violence up until 20 weeks of gestation.

In 2005 came an unprecedented initiative; for the first time, a tripartite commission was formed to examine and revise all abortion legislation. The commission included representatives of the executive and legislative branches of government as well as social movements. This initiative resulted in the National Policies Plan for Women. Launched in December 2004 this national plan was based on the agreements reached at the Cairo and Beijing conferences. A report was prepared, with the 1991 draft bill as its basis, which highlighted the importance of decriminalizing abortion and of putting forward legislative proposals in this direction. At the same time feminist organizations organized the Brazilian Journeys for Abortion

[14] For further examples of fetal politics, see also in this publication: Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 136-137; Nowicka, W., The struggle for abortion rights in Poland, pp. 180-181.

Rights Conference, in which they came up with short and medium-term strategies to reach their goal. Also, the debate on abortion rights was increasingly visible in the media, though, as the participants in the Journeys Conference pointed out, the coverage was on abortion as an isolated issue disconnected from the broader sphere of sexual and reproductive rights.

Significant pressure was exerted by the *Conferência Nacional dos Bispos Brasileiros* (Brazilian Bishops National Conference) during the entire process of the Commission's work. In the face of this pressure combined with the serious political crisis of this period, the government decided it would not support what it termed the "anti-life" policies of the Commission's report – a dubious compromise given its decisive role, represented by the Secretary of Policies for Women, in promoting the Commission.

The difficulties faced by feminist and women's organizations, as well as by congressional representatives favorable to decriminalizing abortion throughout this process, reflect the moral and emotional complexities of this issue. The session where the Commission's report was put before the Social and Familial Security Parliamentary Commission, involved vociferous opposition from religious groups. To date the proposal has still not been put to a vote.

The issue of abortion in Brazil necessitates a discussion about the depth of the country's social inequality. Upper and middle-class women have the option of using a well-equipped network of clandestine clinics, consigning abortion to a private-life experience, but the large majority of women don't have access to these privileges, and have to depend on more dangerous means. This situation carries obvious consequences; health professionals have made public several cases of women that ended up in hospitals after clandestine abortions. A dramatic example took place in Rio de Janeiro in 2002 when a doctor denounced a young woman in his care who was kept handcuffed to a bed until the police arrived. Moreover, reports are common about doctors who neglect or delay assistance to women suffering complications after clandestine abortions, even to the point of refusing them drugs for pain relief. It is clear that there is an urgent need for greater political action beyond initiatives at the legislative level.

Another important battle centers on fetal anencephaly, a condition where the fetal neural tube fails to close (usually between the twenty-third and twenty-sixth days of pregnancy)

resulting in babies being born without the part of their brain responsible for high-level cognition. In 2004, the case of a young woman pregnant with an anencephalic fetus came before the Federal Supreme Court. Indications were that the plea for termination would be greeted favorably but the process took so long that the child was born before the judges handed down their ruling. In April 2005, however, six of 11 government ministers stood in support of "therapeutic anticipation of childbirth" whenever required by pregnant women in cases of encephalic fetuses. One month earlier the Health Care National Council had made similar declarations. It is important to note that opting for terminology that doesn't use the word "abortion" has been effective, but it's still too soon to evaluate the value of this strategy.

Another issue worth mentioning is access to assisted reproduction technologies, in relation to which Brazilian legislation is just catching up. In 1992, the Brazilian Medical Association approved a resolution to define ethical norms in the use of assisted reproduction technologies. Among the defined norms are the informed consent of patients and donors, the prohibition of embryonic reduction in cases of multiple-pregnancy, and the prohibition of commerce. In the case of married women or women in stable relationships, the consent of the husband or partner is required, which indicates how the concept of "couple" is central to this process and can limit a woman's right to choose.

Legally speaking, however, what exists today is a set of proposals in process of assessment with no constituted legislation on the theme. And, according to *Centro Feminista de Estudos e Assessoria* (Feminist Center of Studies and Consultancy), all these proposals focus on infertile women (after all other methods are exhausted), and they forbid commercialization like the sale of egg or sperm cells or the hiring of surrogate mothers (popularly known as "rent-a-belly"). The heterosexual bias of these policies is quite clear, as is the emphasis on the biological dimension of reproduction, whereby infertility is the central motive for resorting to such technologies.

Brazilian STDs and AIDS policies

In the first years of the AIDS epidemic in Brazil, the society's tremendous inequality and the intense discrimination surrounding the disease added to the challenges of the characteris-

tic virulence of HIV.[15] Non-governmental organizations working on HIV/AIDS appealed for solidarity in the face of discrimination and prejudice, and the lack of assistance for those infected. The first activist groups to engage in the struggle against AIDS, such as *Grupo de Apoio à Prevenção à AIDS* (AIDS Prevention Support Group) in São Paulo and *Associação Brasileira Interdisciplinar de AIDS* (Brazilian Interdisciplinary AIDS Association) in Rio de Janeiro, sprung up in the second half of the 1980s. (Aside from international organizations, about 700 groups are currently active around HIV/AIDS assistance or prevention in Brazil.) In 1989, the first national meeting of Brazilian AIDS-related NGOs took place. In order to exert pressure on the state, these diverse groups, aside from offering legal assistance to HIV patients, included advocacy in their work. Despite different outlooks they shared a concern for a more significant kind of intervention in the elaboration of public policies, especially in relation to discrimination against HIV-positive people. Since the beginning, the struggle against discrimination was linked to the social prejudices against sexual minorities affected by HIV/AIDS — especially homosexual men, transvestites and sex workers. In this sense, AIDS activism played a crucial role in building a platform for advocating sexual rights in the early 2000s.

HIV/AIDS organizations participated in the general movement for Brazilian state reform, especially for a new public health-care policy, and in doing so they established a strong link with left-wing political forces working on constitutional reform. One of the most important achievements of Brazilian health reform was in winning the constitutional text that deems health care "the right of everyone and a state duty…" Besides introducing universal health care, the 1988 Constitution endeavored to promote social equality and justice as it introduced many legal devices to combat different kinds of discrimination, with crucial consequences for AIDS policy. One of the most important HIV/AIDS policy developments stemming from the 1988 Constitution came in 1996 when it became mandatory for the state to make available free supplies of all necessary medicines to HIV/AIDS patients through the public health system. Two years later, in 1998, AIDS was included in the list of diseases health plans offered by insurance companies are obliged to cover.[16]

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[15] For a more thorough reflection on the theme, see: Parker, R. & Aggleton, P. (2001). *Estigma, Discriminação e AIDS*. Rio de Janeiro: ABIA.

[16] The judiciary also played an important role in this field. Even before these laws were passed, legal actions had already been taken (and won) by individuals, leading local law courts, as in the case of São Paulo, to declare the clause that had excluded AIDS treatment from private health-care plans since 1994 an abuse. For a broader picture of legal actions, see: Rede Nacional de Direitos Humanos em HIV/AIDS (1997). *HIV nos Tribunais*. Brasília: Ministério da Saúde, (access) at www.aids.gov.br.

While steps were being taken to formulate a legal framework to deal with the epidemic, the federal government was moving to implement new measures and respond to new demands. Following a period of institutional crisis, between 1990 and 1991, in 1992 the STD/AIDS National Program was reorganized and a department to deal with civil society organizations was set up. This department has been a critical channel for transferring government resources to civil society organizations to fund and support prevention and assistance projects.[17] This institutional format marked a significant change from the usual administrative model and resulted in closer collaboration between the state and the Brazilian AIDS social movement.[18]

The Brazilian government not only sponsors projects executed by these organizations but also supports the creation and strengthening of groups nationwide. Project *Somos* (We Are) is an example of this cooperative approach. Managed by the Brazilian Association of Gays, Lesbians, Transvestites, and Transsexuals (ABGLT), Project Somos supports 24 new groups that promote the human rights of homosexual men and work on the prevention of STDs/AIDS nationwide. There are also remarkably large numbers of professionals working within NGOs and state organs to incorporate civil society methodologies into public policies.

Progressive change in the fight against HIV/AIDS is also discernible in the advertising campaigns launched by the Ministry of Health. Early advertisements were widely criticized for engendering fear of the virus (and of the patients). Over time the ads began to incorporate prevention models developed by organizations like ABIA, and to target specific groups like women, teenagers, lorry drivers, drug addicts, sex professionals, and gay men. Besides being committed to defending the human rights of HIV-positive people, these new campaigns have excelled in using plain language about sexuality, and in promoting the use of condoms. The messages, shown on TV and posters, have a light and playful tone.

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[17] At the same time, in 1992, negotiations began with the World Bank for the first loan agreement for Projeto Controle da AIDS e DST (AIDS and STDs Control Project), known as AIDS I. This agreement was decisive in the reformulation of HIV/AIDS policies in the country. The resources obtained through AIDS I were, in turn, renewed by means of two new agreements, AIDS II, for the 1998-2002 period, and AIDS III, begun in 2003. For a detailed analysis and chronology of this and other initiatives, see: Parker, R., Galvão, J., & Bessa, M.S. (1999). Introdução: Políticas sociais, desenvolvimento econômico e saúde coletiva: o caso da AIDS. In R. Parker, J. Galvão, & M. S. Bessa, (Eds.) *Saúde, Desenvolvimento e Política: respostas frente à AIDS no Brasil* (p. 34). Rio de Janeiro: ABIA, São Paulo; Galvão, J., (Ed.) (2000). *Aids no Brasil: A agenda de construção de uma epidemia* (p. 34). Rio de Janeiro: Abia, São Paulo; Galvão, J. (2002). 1980-2001: *Uma cronologia da epidemia de HIV/AIDS no Brasil e no Mundo*. Rio de Janeiro: ABIA.

[18] See, among others, the debates in the seminar, Solidarity and Citizenship, promoted by ABIA in 2002. Parker, R., Terto, V., e Pimenta, C. (2002). Aprimorando o Debate: Respostas sociais frente à AIDS. Anais do Seminário Solidariedade e Cidadania: princípios possíveis para as respostas ao HIV/AIDS. Rio de Janeiro: ABIA.

One extremely popular short film shown before and during the 1995 carnival, and aimed at poor and working-class men, used the slogan, Live With Pleasure, Live With Safe Sex. The film, broadcast nationwide by TV networks, showed a man talking to his penis and trying to convince it to wear a condom. Another, directed at teenagers during the 2003 carnival, showed a female singer, very popular among young Brazilian girls, buying condoms; her message: "Show people that you've grown up and you know what you want; during this carnival, wear condoms." It is not surprising that these ad campaigns have attracted strong criticism from the most conservative sectors of Brazilian society, especially the Catholic Church. The campaigns are sometimes criticized by the AIDS movement for being inconsistent since they are shown only at certain times of the year, such as carnival. But on the positive side they have avoided taking a moralistic or judgmental stance; they don't condemn any kind of sexual practice but simply emphasize the importance of sexuality and the use of condoms.

This tendency could be noticed in another public information campaign, developed by the STD/AIDS National Program with the aim of fighting discrimination against HIV-positive people and different sexual minorities, especially those most affected by HIV/AIDS (gay men, transvestites, and sex workers). A typical message reads, "Transvestites and respect: it is high time the two were seen together. At home. At night-clubs. At school. At work. In life." Some of the information packages developed for this campaign are directed towards health-care and education professionals.

As regards women, government initiatives have lagged behind the work of the women's movement and prevention campaigns begun in the 1990s, becoming visible only in the last few years. Among these initiatives was the inclusion, in 2002, of the female condom in prevention programs, and a 2003 regulation establishing free access through the public health system to treatments to reduce HIV transmission from mother to child. In spite of the growing pressure exerted by social movements, the sexual health of lesbians has not yet been fully incorporated into government programs and policies.[19]

[19] Another demographic group recognized only recently is that of people over 60, who were included in prevention programs only in 2001 after it was detected that the epidemic was growing among them.

The attitude that has been guiding governmental campaigns regarding sexuality involves a general strategy to "reduce any harm." People are not expected to radically change their sexual practices or to abstain from pre-marital sex or sex outside marriage; homosexuality or prostitution among free and responsible adults is not morally condemned. The emphasis is on persuading people to wear condoms when having sexual intercourse as an essential measure to avoid contagion. In this sense, campaigns have shown a commitment to the rights of gays, lesbians, transgendered people, and sex workers.

This policy has been clashing head-on with those of the United States; since the American government seeks to impose its viewpoint beyond its territory through its development agencies, tension has been inevitable in this field. It became most evident in 2005 in relation to prevention programs for sex workers. In May 2005, the Brazilian press reported on the Brazilian government's refusal to change its policy despite American demands and its subsequent decision to forego grants promised by USAID. This was above all a symbolic act but it received immediate international attention. A news item published in *The Lancet* stated that the action by Brazil was important because "it spreads the message that grants discriminating against people because of their race, religion, sexuality or even profession, are unhelpful and unwanted." In July 2005, the STD/AIDS National Program Coordinator told the *New York Times* that the way the USAID grants were being employed harmed the Brazilian program "from the viewpoint of its scientific credibility, ethical values and social commitment."[20]

The success of the Brazilian policy to combat and prevent AIDS is undeniable, even though other epidemic diseases get less attention and it sometimes seems that the policies and programs are an international showcase for displaying Brazil's "modernity." At any rate, the Brazilian AIDS-related program has had an international impact (similar to the impact of its syphilis program in the past)[21] becoming a reference point for other countries, whether from the viewpoint of assistance or prevention.

[20] For more on the local influence of international donor policies, see also in this publication: Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 102, 114. Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 140-141; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 238; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 281-283.

[21] See: Carrara, S. (1996). *Tributo a Vênus: A luta contra a sífilis no Brasil*. Rio de Janeiro: Fiocruz.

The Ministry of Health, through the STD/AIDS National Program, has played a crucial role in legitimizing sexuality beyond its reproductive aspect and in fighting discrimination against gays, lesbians and transgendered people. The program has impacted Brazilian LGBT activism in three fundamental ways: it has increased LGBT visibility thereby diffusing prejudice within the wider society; LGBT activism following promulgation of the 1988 Constitution achieved the first acknowledgement of the human rights of HIV-positive people; and, since the early 1990s, the AIDS struggle has been an important base for the organization of new activist groups.[22]

From homosexual rights to LGBT rights

In Brazil, public criticism of the view that homosexuality is a mix of immorality, dishonor, sin and disease began in the late 1970s as the re-democratization process in the country progressed.[23] Homosexuality began to emerge as a political issue and gays, lesbians and transgendered people started to become citizens with rights. In the beginning, besides promoting political awareness among its members, the movement struggled against prejudice, endeavoring to change stigmatizing stereotypes.

In its first stages the Brazilian homosexual movement was dominated by men. Lesbians generally participated through mixed groups, and this still happens in many activist groups. It was only in the latter half of the 1990s that the lesbian movement became stronger and achieved autonomy in relation to mixed groups and the feminist movement. The First Lesbian National Seminar took place in 1996, and in 2003 a Brazilian Lesbian League was founded and had its first meeting the following year.[24] Today, the Brazilian lesbian movement even has its own calendar, celebrating the National Day of Lesbian Pride (August 19) and the National Day of Lesbian Visibility (August 29).

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[22] Observing the groups present at the different national meetings between 1980 and 1997, one notices that there were at least eight active groups in 1980 and only four in 1984. After 1992, this number starts increasing tremendously, and by 1998 there were 68 groups affiliated to ABGLT.

[23] This criticism sprung up initially in the universities, in the counter-culture sphere, and, above all, among the first groups of homosexual activists. This period was marked by the rise of a politically engaged homosexual press beginning with the launch of a newspaper, *O Lampião da Esquina*, in 1978 by intellectuals from Rio de Janeiro and São Paulo, and by the 1979 founding of the group, *Somos*, which became the nucleus of homosexual activism in the country. See: Fry, P. H. & MacRae, E. (1983). *O que é homossexualidade*. São Paulo: Brasiliense; and, MacRae, E. (1990). *A construção da igualdade: Identidade sexual e política no Brasil*. Campinas: Editora da Unicamp.

[24] See: Almeida, G. (2005). *Da invisibilidade à vulnerabilidade: Percurso do corpo lésbico na cena brasileira face à possibilidade de infecção por DST e Aids*. Tese de Doutorado em Saúde Coletiva/Universidade do Estado do Rio de Janeiro.

Transvestites were not always welcomed by the first activist groups,[25] and only began organizing independently in the early 1990s. Their first national meeting, called National Meeting of Transvestites and Liberated People, took place in 1993, and in 1995, transvestite militant groups began to participate in national gay and lesbian meetings. By 1996, transvestites had mobilized sufficiently within the arena of HIV/AIDS to organize a National Meeting of Transvestites and Liberated People Fighting against AIDS. Transvestite activists were now a visible force to be reckoned with.

The language used for national meetings reflected the political emergence of new sexual identities and inclusion of new groups in the movement: while the first six meetings (1980-1992) were called Brazilian Meeting of *Homosexuals* (our emphasis), the seventh (1993) was called the Brazilian Meeting of *Lesbians and Homosexuals*; the eighth, the Brazilian Meeting of *Lesbians and Gays*; and the ninth (1997), Brazilian Meeting of *Lesbians, Gays, and Transvestites*. After this, until the twelfth meeting in 2005, they were called Brazilian meetings of *Lesbians, Gays, and Transgenders*. The category "transgender," an umbrella term assigned to transvestites and transsexuals, is controversial, finding great resistance among transvestites.[26] Perhaps for this reason, the twelfth national meeting was designated *Lesbian, Gays, Bisexuals, and Transgenders*; besides including *bisexuals*, the 'T' in LGBT was seen as covering both *transvestites* and *transsexuals* instead of just *transgendered* people.

The year 1995 must be considered a landmark in the LGBT movement's history both on the national and international level. First, the Brazilian Association of Lesbians, Gays and Transvestites was founded during the Eighth National Meeting of Lesbian and Gays.[27] And second, the state and the movement began building closer ties, as federal grants were made available to activist groups for meetings and projects.[28] The government grants (initially made through the STDs/AIDS National Program) and those provided by state and munici-

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[25] The conflict between transvestites and gay/lesbian activists is evident in the rhetoric that one of the most important leaders of the movement used to argue for including non-discriminatory sexual orientation in the new constitution during the National Constitutional Assembly. In his opinion, it was fundamental to combat the tendency of the media to equate "homosexual" and "prostitute/transvestite" because this was a manifestation of prejudice and a way of "sullying" homosexuality (Câmara, 2002, p. 116).

[26] Facchini, R. (2005). *Sopa de letrinhas? Movimento Homossexual e produção de identidades coletivas nos anos 90*. Rio de Janeiro: Garamond.

[27] Nowadays called *Associação Brasileira de Gays Lésbicas e Transgêneros* – ABGLT has 144 affiliated groups in Brazil. For more information see: www.abglt.org.br.

[28] For an excellent analysis of these relations, see Facchini, 2005.

pal governments (initially through their health-care bureaus) were directed at first to groups dealing with HIV-prevention activities or assistance to AIDS patients, and later extended to the national meetings, which began to take place simultaneously with AIDS-related national lesbian, gay and transvestite meetings.

At the international level, it was also in 1995 that the International Lesbian and Gay Association (ILGA) meeting took place in Rio de Janeiro, with financial support from the federal government through the STDs/AIDS National Program. It was the first time that the ILGA organized its annual meeting in a South American country. During the meeting the first LGBT pride parade in Brazil took place. Since then LGBT pride parades have been organized in different Brazilian cities with an increasing number of participants, becoming the most eloquent symbol of the enormous visibility the movement has achieved in the second half of the 1990s. The last one, held in São Paulo in 2006, drew more than two million people and is now considered the most important tourist event of the city's annual calendar.[29] In addition to the massive visibility of the parades, the LGBT community has attracted more and more coverage in the Brazilian media, whether in national newspapers and magazines or on TV shows with huge audiences (especially soap operas and reality shows).

Even though homosexuality is not a crime in Brazil, discrimination against gays, lesbians, transvestites and transsexuals remains rife and has thus been the movement's active focus since the beginning. The achievement of rights by sexual minorities has been reached by taking action against discrimination, whether through legal channels or by seeking to extend the civil and social rights enjoyed by heterosexuals to these minorities. One of the fundamental roadblocks to progress was the fact that the 1988 Constitution did not directly address discrimination on the basis of sexual orientation. When the National Constitutional Assembly first began meeting it was a period of political reorganization within the Brazilian homosexual movement.[30] Although the now defunct group, *Triângulo Rosa*, from Rio de Janeiro, led a campaign for its inclusion, the term "sexual orientation" was withdrawn from the final text.

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[29] Data collected in Brazilian parades (Rio de Janeiro, Porto Alegre and São Paulo) indicated that, besides an important heterosexual attendance, these social gatherings now include the participation of various groups that comprise the movement today and even of politicians aligned with the cause, as well as segments of the thriving Brazilian pink market. See: Carrara, S., Ramos, S., & Caetano, M. (2003). *Políticas, Direitos, Violência e Homossexualidade: 8ª Parada do Orgulho LGBT – Rio de Janeiro – 2003*. Rio de Janeiro: Pallas.

[30] Facchini, R. (2005). *Sopa de letrinhas? Movimento Homossexual e produção de identidades coletivas nos anos 90*. Rio de Janeiro: Garamond; Câmara, C. (2002). *Cidadania e orientação sexual: a trajetória do Grupo Triângulo Rosa*. Rio de Janeiro: Academia Avançada.

Since 2001, in the ambit of the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Brazil has played an important role in efforts to include the expression "sexual orientation" in the idiom of human rights at the United Nations. In 2003, the Brazil delegation put before the UN Human Rights Commission a resolution on sexual orientation discrimination as a human rights violation. Militant groups from all over the world as well as many governments expressed their support for this Resolution. Besides lobbying the UN's Human Rights Commission, ILGA organized an international campaign in support of the resolution, creating a website and collecting 45,000 signatures in a petition. But under strong pressure from Muslim countries and the Vatican, a vote on the resolution was postponed until 2004. When it came up again Brazil, realizing that the resolution did not yet have enough support, requested that the discussion be postponed once more. However, Brazil did not present the resolution in 2005, due to pressure from Muslim countries related to trading concerns. Although the resolution is no longer on the Commission's agenda, the debate and the international coalition created to support it have helped to consolidate the place of the LGBT movement in the human rights international agenda.[31]

In terms of state and municipal legislation, several important measures have been put in place. According to ABGLT, more than 70 municipalities have enacted laws to protect LGBT communities. Three states have prohibited sexual discrimination in their constitutions and another five, as well as the Federal District, have sanctioned important measures. However, sanctions and legislative guidelines are inconsistent. In some cases, the focus is on discrimination at the workplace and on contractual agreements like renting property, in others, on the repression of public displays of affection between people of the same sex.[32] Some of these laws are explicit about who is being protected, whether homosexuals, bisexuals and/or transgendered people. Others are based on more general principles, such as a law recently passed in Rio Grande do Sul, that "deals with the promotion and acknowledgement of the freedom of orientation, practice, manifestation, identity and preferences as regards sex," and emphasizes the relationship between such freedoms and the "uniform dignity of the human person."

[31] For a detailed account and analysis, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, pp. 339-351.
[32] Since homoerotic manifestations of affection are not a crime — in the penal code, there is only one article dealing with "obscene acts" — the legal battle that is needed is one to criminalize repressive and violent behaviors towards such manifestations. In this sense, there is a bill now before the federal legislative aimed at modifying the penal code and law 7.716, which criminalize color or race prejudice, including punishment for gender and sexual orientation discrimination and prejudice.

The visibility of LGBT rights has also been increased due to activism for legal recognition of homosexual partnerships. A 1995 federal bill to regulate "the civil union between people of the same sex," reinforced this issue since it was the first attempt at such legislation and there was predictably strong public and political reaction to it. The rights to property and inheritance are central to this bill, since it intends to redress judicial injustices. After being scrutinized by a Special Commission in 1996, the bill was modified, including replacement of the term "union" with "partnership," and watering down the reference to "affectionate bonds" between the partners. The amendment details the property issues at stake, including those related to inheritance.

More significant than these changes, however, is the inclusion of a paragraph vetoing "any agreement on adoption, tutelage or warding of children and adolescents, even if they are the children of one of the partners…" The inclusion of this paragraph in the amendment illustrates the tension around the full recognition of civil partnerships as family. Although the Partnership Bill, as it is called, emphasizes that civil partnerships are not equivalent to marriage or to stable unions, the presence of articles dealing with the marital status of partners, or laying down its exclusivity, sounds very similar to commitments in marriage.[33] The bill goes halfway towards effectively accepting homosexual unions — on the legal level at least — while at the same time consigning such relationships to a subordinate status.[34]

Congressional representatives who disagree with the bill depict it as the sanctioning of gay marriage, which they deem an aberration. The bill has never been brought to a vote because Congressional representatives favorable to its passing have calculated it does not have the necessary support.[35] This strong parliamentary resistance is in keeping with other initiatives taken by religious groups and institutions to block any bills they view as a threat to the family, as for example those seeking to legalize abortion.[36] In spite of its limitations, the Partnership

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[33] See Uziel, A. P. (2002). *Família e homossexualidade: velhas questões, novos problemas*, Phd Thesis, IFCH/Unicamp.

[34] Arguing from the constitutional definition of family, which includes single parent families, Rios points out that "family" and "marriage" are not necessarily related. See: Golin, C., Pocahy, F.A., & Rios, R.R. (2003). *A justiça e os direitos de gays e lésbicas: Jurisprudência comentada*, p. 180. Porto Alegre: Nuances/Sulina.

[35] For a more multi-layered analysis of the discussions on civil partnerships taking place in the House of Deputies, see: Mello, L. (2005). *Novas famílias. Conjugalidade homossexual no Brasil contemporâneo*. Rio de Janeiro: Garamond.

[36] According to press reports in 2001, when the Partnership Bill was ready to be voted on, the Brazilian Bishops National Conference sent a letter to all 513 deputies on the "dangers" of "anti-natural" unions. This attitude, in turn, is perfectly in agreement with that of the Vatican in its document, Family, Matrimony and *de facto* Unions, (2000, July 26, Vatican City: Pontifical Council for the Family).

Bill has given more visibility to the rights of gays, lesbians and transgendered people in the national media. Although there is some opposition, the mainstream current of the movement, headed by ABGLT, supports the Bill.[37]

In an effort to challenge the forces of social conservatism in the Brazilian Legislature and to support bills related to LGBT rights, the House of Deputies created the Mixed Parliamentary Front for Free Sexual Expression in October 2003. It came as a result of collaboration between activists and 75 deputies and nine senators from different political parties.

The judiciary has been another important arena for building up the rights of sexual minorities. In many cases, especially those involving social welfare and the rights of HIV-positive people, some actions by the judiciary have paved the way for legislative changes. For example, the public prosecutors in Rio Grande do Sul, acknowledging criticisms voiced by the activist organization, Nuances (from Porto Alegre), successfully brought a civil action against the Brazilian Social Welfare Institution (INSS) to extend the benefits of death pensions and other rights to homosexual couples. The favorable judgment eventually forced national acknowledgement of such rights.[38]

In other areas the situation has not been as clear-cut. For example, with regard to the custody and adoption of children by same-sex couples, since the judiciary cannot acknowledge the existence of homosexual couples, judges have sometimes used the Child and Adolescent Statute and the new civil code to concede these rights to individual partners. Such rulings, however, depend very much on the views of individual judges and can be affected by the sex of the child involved.[39] Highly visible cases, such as that granting custody of the child of a famous Brazilian female singer to her female partner after her death, are important for mobilizing public opinion but not enough to establish a clear policy.

[37] For some, it represents a step forward to a more comprehensive law. The defense of same-sex unions or civil partnerships has been a recurrent theme of the main gay pride parades. In 2004, in Curitiba, the slogan was, Family, Pride and Respect; in Rio, Civil Union Now; in Blumenau, Homosexuality, A Family Subject; and lastly, in São Paulo, We Have Pride and Family (Carrara & Ramos, 2005). In 2005, the São Paulo parade, one of the largest in the world, had as its theme, Civil Partnerships Now! Same Rights! Neither More nor Less. See more at http://www.comunidadeLGBT.com.br/.

[38] For comments by the federal attorney in charge of the action, on the free expression of sexuality and the many stages in the process, see: Golin, C., Pocahy, F. A., & Rios, R. R. *A justiça e os direitos de gays e lésbicas: Jurisprudência comentada*. Porto Alegre: Nuances/Sulina.

[39] Uziel, A. *Op cit*.

In the criminal field, a recent case with great impact involved the murder of Edson Néris in February 2000 in the city of São Paulo. Néris was lynched by a skinhead group, for the "crime" of walking hand in hand with another man. The case was characterized as a "hate crime" by the prosecutor in charge, a term previously unused by the Brazilian judiciary. But besides this, the severe sentence handed down by the jury — about 20 years — and the emphasis placed on Néris' right to equality regardless of his sexual orientation, turned the case into a landmark one in the debate around violence against homosexuals. Before this, even though some cases of homosexual murders resulted in rigorous sentences, an examination of legal actions reveals a very stereotyped view of homosexuality, which is often portrayed as a dangerous lifestyle or even as a kind of pathology.[40]

As the LGBT movement has been saying for decades,[41] homosexuals and transgendered people are subject to many forms of violence aside from murder. Recent data on victimization,[42] compiled from surveys conducted at LGBT gay pride parades in Rio de Janeiro, Porto Alegre and São Paulo, have noted that 60 percent of those interviewed report having been victims of some discrimination or violence. Verbal violence (abuse, jokes, aggressive threats) is the main complaint. Situations of violence and discrimination involve strangers as well as family members, colleagues and even sexual partners. The data, produced in 2004, in Rio, revealed that most discrimination takes place among friends and neighbors (33.5%), followed by family members (27%).[43]

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[40] For more about the way the Brazilian judiciary treated homosexuality in murder cases in former periods, see: Carrara, S., & Vianna, A. (2004). As vítimas do desejo: os tribunais cariocas e a homossexualidade nos anos 1980. In A. Piscitelli, M. F. Gregori, & S. Carrara, *Sexualidades e saberes: Convenções e fronteiras*. Rio de Janeiro: Garamond.

[41] Mott, L. (2000). *Violação dos direitos humanos e assassinato de homossexuais no Brasil*. Salvador, Editora Grupo Gay da Bahia; Mott, L. & Cerqueira, M. (2001). *Causa mortis: Homofobia*. Salvador: Editora Grupo Gay da Bahia.

[42] Carrara, S. & Ramos, S. (2005). *Política, direitos violência e homossexualidade: Pesquisa da 9ª Parada do Orgulho LGBT – Rio, 2004*. Rio de Janeiro: CEPESC.

[43] An important initiative towards identifying and ending such forms of violence, rarely supported in an effective way by local governments, is the creation of support services. The first one, called DDH (Dial Homosexual Defense), was created in Rio de Janeiro in 1999, and others were set up later in other cities, such as *Campinas* (Homosexual Defense Center) in Brasília, and Dial Homosexual Citizenship in Salvador. The merit of such initiatives lies in forging closer relations between LGBT groups and the security organs; in offering the possibility of counseling to victims; and, lastly, by establishing a quantitative information databank — though partial — on the kind of violence to which these groups and individuals are subjected.

In relation to media bias, the Citizen Rights Regional Attorney in São Paulo, together with LGBT and human rights organizations brought a successful civil suit against the TV network *Ômega Ltda* (also known as *Rede TV*) and the presenter of a show called Hot Afternoons, for broadcasting jokes that ridiculed and humiliated people on the basis of their sexual orientation. The action also extended to the Federal Union, which is responsible for the concession of sound and vision broadcasting services. In a preliminary order the network's TV signal was suspended for 48 hours when it refused to acknowledge the guilty verdict. Under pressure the network signed an agreement in November 2005, pledging to broadcast, in the Hot Afternoons slot, 30 human rights programs presented by the organizations that brought the action. It also had to pay the Diffuse Rights Defense Fund some US$200,000 and withdraw all "insults to homosexuals, afro-descendants, women, elders, disabled persons, Indians, children and adolescents." The overall cost of the action was around US$10 million and the presenter was dismissed. For the first time in the country, a commercial network was obliged to change its programming for disrespecting human rights.

This case and its underlying acknowledgement of the diverse forms of violence against homosexuals led to a new initiative, the creation of Brazil without Homophobia: A Program to Combat Violence and Discrimination against LGBTs and to Promote Homosexual Citizenship, which was launched by the federal government in May 2004.[44] A Commission, comprising representatives from *Conselho Nacional de Combate à Discriminação* (Discrimination Combat National Council) and the Ministry of Health devised the program with the participation of many activists and militant organizations, such as ABGLT. Its wide-ranging recommendations include the stipulation that state institutions, especially those concerned with education, security, law, health care and supervision, must take steps to ensure their policies and practices are non-discriminatory and inhibit violence. The Commission also calls for incentives to encourage LGBT movement leaders to participate in the different social-control councils and mechanisms created by the federal government; dissemination of information about homophobic violence and discrimination and about the health condition of gays, lesbians and transgendered people; and support for Brazilian initiatives acknowledg-

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[44] Brasil Sem Homofobia: Programa de Combate à Violência e à Discriminação contra LGBT e Promoção da Cidadania Homossexual. Brasília: Ministério da Saúde, 2004, at www.mj.gov.br/sedh/ct/004_1_3.pdf.

ing and protecting LGBT rights at the international level, especially with regard to the creation of the Sexual and Reproductive Rights International Convention.

Some of the program's guidelines have been executed, further strengthening the partnership between the state and civil society. In 2005, the Republican Presidency General Bureau launched a competition among public institutions and NGOs to design projects aimed at combating and preventing homophobia, to include the provision of legal and psychosocial advice for victims, guidelines on taking legal action, and conflict management and mediation. Also in 2005, the Ministry of Education launched a competition for projects to qualify education professionals to advise people on sexual orientation and gender identity.

In the absence of an explicit penal sanction against homosexuality in Brazil since the beginning of the nineteenth-century, the critique of psychological/medical discourses and pathology-oriented processes became paramount. One of the movement's greatest achievements in this regard was its success, in 1985, in getting homosexuality withdrawn from the roll of diseases acknowledged by the Brazilian Medical Association (which even the World Health Organization did not do until 1993). In 1999 the Psychology Federal Council followed with a ruling that no professional could "favor pathological diagnoses of any homoerotic behavior or practice," and that psychologists "shall not adopt coercive action to direct patients to non-required treatments." The ruling expressly stated that professionals "shall not collaborate with events and services that propose treatment for and cure of homosexuality."

Still, the process of ending medical prejudice to homosexuality is complex and the struggle is not over. The Psychology Federal Council's resolution has become the target of attacks from psychologists affiliated with evangelical religious groups. Arguing that homosexuality is not an innate characteristic and that those who "suffer" because of their sexual orientation have a "right to be taken care of," these groups have organized with the aim of getting the resolution annulled.[45]

The LGBT movement is considering its response but some of its leaders have tended to adopt a dangerous naturalizing and innate conception of homosexuality (that is, what is innate cannot be cured) as a way to oppose it.

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[45] A psychologist from the so-called Rede Cristã de Profissionais de Saúde (Health-Care Professionals Christian Network) is founding a movement to revoke the resolution.

There is one area in which the traditional medical/psychological discourse still dominates: the right of transgendered people to undergo sex-change surgeries and change their legal identity. Until 1997 the Brazilian Medical Association considered this kind of surgery as non-ethical, and it could be criminally interpreted as "bodily harm." A 1997 resolution established the conditions for legal surgery but it stipulated that "the patient must be a trans-sexual with permanent psychological deviation of his/her sexual identity, phenotype rejection and tendencies to self-mutilation, and/or self-extermination," thereby depicting trans-sexuality as an extreme pathology. In addition, changes to the civil register are only allowed after surgery is completed and legal permission obtained. This mechanism not only shows the distance between the different disciplines involved (medicine, psychology and legal), and the concrete experiences of social individuals, but also suggests, under the pretext of "healing," an inherent unsuitability between sex and gender; in other words, the reinstitution of a perverse duality.[46]

Conclusion

As we can see from the history presented above, sexual rights in Brazil have advanced significantly over the last three decades. Anchored in the legal structure allowed by the constitution and in important international landmarks, like the Cairo and Beijing conferences, a plethora of organizations have won a variety of legislative and judicial rights, and new and revised public policies. The strong resistance put up by conservative groups, especially towards LGBT and abortion rights, however, should not be forgotten; as we have seen, the circumstances of extreme social inequality in Brazil brings into question the true extent of those victories, especially when there are no all-inclusive and effective public policies to fight the disparities.

The trajectory of social movements has resulted in real progress, especially on HIV/AIDS policies, but there are risks that must be noted. If, on the one hand, closer ties between civil society organizations and the state can empower these organizations, it can also curb their critical potential, creating situations of patronage and cooptation. On the other hand, as it takes steps forward gathering social and political support, the movement for sexual rights tends to frag-

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[46] For recent works dealing with the theme in Brazil, see: Bento, B. (2004). A (re)invenção do corpo: gênero e sexualidade na experiência transsexual. In A. Piscitelli, M. F. Gregori, & S. Carrara, *Sexualidades e saberes: Convenções e fronteiras*. Rio de Janeiro: Garamond; Zambrano, E. (2003). *Trocando os documentos: um estudo antropológico sobre a cirurgia de troca de sexo*. Dissertação de Mestrado, PPGAS/UFRGS.

ment into different identity groups with their own specific demands and agendas. The competition for public resources tends to exacerbate such fragmentation along sexual orientation and gender lines. It is significant that the sex orientation anti-discriminatory law passed in São Paulo was used for the first time by a transvestite group against gay nightclubs that forbid their entry or membership.[47]

Despite its potential for weakening the struggle, such fragmentation and in fighting can create original ideas and unexpected opportunities for progress. Recently, for example, transgender organizations, especially those of transvestites, have approached feminist organizations, participated in some of their discussion forums, raised an important and delicate debate on the state of feminine identity and criticized the naturalization of the category "woman." In the process of becoming progressively autonomous and, in certain contexts, presenting itself as a dissident voice more concerned with gender than sexuality, the transgender movement seems to oscillate between belonging to the homosexual and feminine fields.

In this sense, beyond specific demands, the greatest development in the struggle for sexual rights in Brazil has been the reshaping of alliances among different groups of activists. Throughout 2005 LGBT and feminist groups, committed to building a common agenda, held a series of strategic dialogues. Though these meetings were sometimes marked by tension between transgender and feminist militants, they presented an opportunity to strengthen the commitment of gay militants to the abortion cause, and to bring sex workers and feminists together. The alliance was best summarized in two of the banners at the last LGBT gay pride parade in São Paulo; behind the main banner that read, Homophobia is a Crime, there was another flying high and it read, Sexual Rights Are Human Rights.

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[47] França, I. L. (2006). *Cercas e pontes: o movimento LGBT e o Mercado GLS na cidade de São Paulo*. Dissertação de Mestrado em Antropologia/ FFLCH/USP.

Egypt

Sexuality Politics in Egypt

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Introduction

When Hind el-Hinnawy decided in 2004 to file a paternity lawsuit against Ahmed el-Fishawy, a famous 25-year-old actor who descends from a family of Egyptian movie stars, she knew she was striking a blow at one of Egypt's most solid pillars of patriarchy. The 28-year-old television stylist and costume designer sent shockwaves across Egyptian society when she publicly acknowledged that her newborn, Lina, was the fruit of an *'urfi* marriage between el-Fishawy and herself.

An *'urfi* (Arabic for "customary") marriage is a contemporary practice with roots in Sunni Islam. Such marriages are usually clandestine and involve a man and a woman drafting their own marriage contract and opting not to register it with public authorities. While far from illegal *'urfi* marriages grant no rights to the wife except to file for divorce — if she is able to prove that there was a marriage in the first place.

*Photo from the free concert of Shakira in Cairo, on March 2007, which gathered thousands of young people at the Pyramids.

Egypt's mesmerized audiences were well aware of the existence and prevalence of *'urfi* marriages, especially among younger generations, but were accustomed to the negative portrayal of this type of relationship in soap operas, talk shows and newspaper articles aimed at discouraging youth from resorting to the practice. The el-Hinnawy paternity lawsuit was the first time that this audience saw a young woman boldly appearing on their television screens, together with her supportive parents, to admit to an *'urfi* marriage and to fight in order to prove her daughter's paternity; the usual course of action would be to have an abortion followed by a hymen replacement while doing everything possible to keep the story from becoming public.

El-Hinnawy told the press that she was "trying to say to other people, not only girls, to try to have the courage to be responsible for what you do… I did the right thing: I didn't hide, and eventually he will have to give the baby his name. People prefer that a woman live a psychologically troubled life; that doesn't matter as long as it doesn't become a scandal," (MacFarquhar, 2005).

Beyond the particular details of the story, el-Hinnawy's stance brought to the spotlight as never before the issue of *'urfi* marriages and the thousands of similar on-going paternity lawsuits in Egypt. Ordinary Egyptians were suddenly confronted with statistics that pointed to some 14,000 to 21,000 cases before the Egyptian courts (Lutfi, 2005), with legal analysts estimating that between 70 and 90 percent of them were a direct consequence of *'urfi* marriages (Shahine, 1999).

For many intellectuals and women's and human rights activists, el-Hinnawy and her parents became heroes for their courage in challenging societal taboos. However, many of those who were supportive chose to overlook the fact that the el-Hinnawys, for understandable reasons, could only go so far. After all, the case remained one of an innocent married woman who was unable to prove her marriage — since she accused el-Fishawy of deceiving her out of her copy of the marriage contract — and who was fighting solely for her child's right to be a legitimate daughter of an identifiable father. And while many of el-Hinnawy's supporters would admit in private conversations that there may have never been a marriage, *'urfi* or otherwise, they all understood that el-Hinnawy would lose whatever little support she enjoyed

outside the circles of progressive elites if she challenged society and the law to recognize a daughter born out of wedlock.[1]

Outside this small circle of sympathizers most commentators and ordinary Egyptians condemned both el-Hinnawy and el-Fishawy for creating this scandal, and went on to assign significantly more blame to el-Hinnawy; being the woman, they argued, she should have been more careful to preserve her honor and that of her family, or at the very least to shroud the entire affair in secrecy. On the other hand, the majority of progressive supporters of el-Hinnawy chose to campaign solely for a legal amendment that would force alleged fathers to submit to a DNA test in paternity suits,[2] ignoring the obvious fact that establishing lineage by a court order, a DNA test, or even the biological father's confession, would not solve the problem if the woman failed to prove there was a marriage, or in cases where there was no marriage in the first place.

The case of Hind el-Hinnawy is significant for understanding the larger picture of the status of public debates around sexuality, especially female sexuality, in Egypt. This paper details and analyzes the strategies of, and coordination among, conservative forces in their attacks on sexual rights[3] in general and those of women in particular. These conservative actors dominate the limited space available for public debate around sexuality related policies. This semi-monopoly allows conservative forces more room to influence the formulation of the state's sexuality policies both domestically and in international fora. While some might argue that this is simply a reflection of the increasing power and popularity enjoyed by Muslim conservative forces in the political and social spheres in Egypt and throughout the Arab

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[1] Egypt's Civil Status Law, Child Law and family courts apply a certain interpretation of shari'a (Islamic law) that does not recognize the paternity or any ensuing rights of "illegitimate" children. These children often carry the name of their maternal grandfathers, or any other fictitious name chosen by the mother or by public authorities.

[2] See for example the statement issued by a number of intellectuals and women's and human rights groups after the Family Court ruled against el-Hinnawy in January 2006 on the grounds that she failed to convince the court of the existence of a *'urfi* marriage with el-Fishawy, available at http://www.hrinfo.net/egypt/nwf/2006/pr0129.shtml.

[3] We use the term "sexual rights" in accordance with the working definition developed by the World Health Organization, which includes the right of all persons to: sexual health, free of coercion, discrimination and violence, including access to sexual and reproductive health care services; seek, receive and impart information related to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe and pleasurable sexual life. See: http://www.who.int/reproductive-health/gender/sexual_health.html.

world,[4] the paper will show that most empirical evidence reveals that the daily life practices of many individuals in Egypt do not strictly conform to the agenda of these forces. At a minimum, this evidence reveals a significant constituency, mainly of young people, resorting to mechanisms of silent resistance and/or accommodation despite the predominantly conservative discourses and public policies. The long list of these mechanisms includes inventing new fashionable styles of veiling, engaging in premarital sexual encounters and/or unorthodox types of marriage, and having illegal abortions.

The last part of the paper will argue that this constituency is largely removed from discourses and public policymaking around sexuality. Empirical evidence also shows that perceptions, and not only discourses, are also lagging behind current practices. The absence of a progressive counter discourse on sexuality leaves this young population without the necessary tools to defend their individual choices and coping mechanisms. Instead, they are left alone to fight societal stigmas as well as their own feelings of shame and negativity towards their own practices. Confrontation of society's realities is therefore further postponed and moral hypocrisies sustained. The paper concludes that the current challenge for women's and human rights organizations is to mobilize and empower this constituency in order to enable those within it to defend their autonomy in the face of conservative attacks.

The attacks

Religious forces and institutions, and forces that use religious discourse to achieve their goals, are responsible for most of the attacks on sexual rights in Egypt.[5] In a society where religion has always been a strong element and played a significant role in the daily life of Egyptians, the task of separating religion from everyday customs and socio-cultural beliefs is neither practically possible nor necessarily useful. This section shows how political Islamic groups, as well as official Islamic institutions, the two main forces working

[4] In the 2005 parliamentary elections in Egypt, the Muslim Brotherhood won a surprising 20 percent of the 454-seat People's Assembly, making it the largest opposition parliamentary block.

[5] For more on the impacts of religious forces, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN; Cáceres, C., Cueto, M., Palomino, N. Sexual and reproductive rights policies in Peru: Unveiling false paradoxes, pp. 135-137; Nowicka, W., The struggle for abortion rights in Poland.

against sexual rights in Egypt, capitalize on the central role played by religion in society, and how they employ it in their wars on sexuality.[6]

The history of Islamist politics in Egypt over the past 25 years or so is a complex one that falls beyond the scope of this paper. Suffice it to say there is an agreement among most observers that a key turning point occurred in the early 1970s when former president Anwar Al-Sadat released from jail many Islamist activists that his predecessor, Gamal Abdel-Nasser, had imprisoned in the 1960s. Sadat's aim was to manipulate these Islamists in such a way as to counter influential leftist and Nasserist opposition to his regime. The Islamists welcomed this move, but they had plans of their own. Working strategically to seize power, they have employed a two-track tactic. On the one hand, they oppose and challenge the regime in the political sphere (sometimes through contesting parliamentary, local and syndicates' elections, other times through acts of violence) with the declared aim of establishing an Islamic state. At the same time they work to "Islamize" society (through encouraging veiling among women, establishing religious schools, and generally preaching piety and a "return to Islam" in daily practices) to enlarge their constituency and prepare society for the upcoming political transformation.[7]

At the risk of simplification, these two tactics can be called "Islamization from above" and "Islamization from below," respectively. The first of these tactics suffered some setbacks for the Islamists in the 1980s and 1990s — for example, the dissolution of parliament in 1984 and 1987, where the banned Muslim Brotherhood had a significant presence, and the violent confrontation between the state and militant Islamic groups in the 1990s, which ended in a unilateral declaration of cessation of hostilities being announced by Islamist leaders from behind bars. But the second tactic has been more successful resulting in Islam occupying an enormous space in the public sphere of today's Egypt.[8]

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[6] Because this section focuses on the influence of religion on public policies and societal attitudes, the focus here is on the role of Islamic institutions. The sexual rights of Christian Egyptians (approximately 10% of the population) are equally under attack because of the ultraconservative stands of the Coptic Orthodox Church on sexuality related issues such as access to divorce, the right to remarry after divorce and homosexuality. However, the primary targets of these positions are Christian citizens and, as such, they do not directly influence public policies or discourses.

[7] The term "Islamist" is used here to refer to the wide variety of actors who describe themselves as such, and to positions and tendencies that are perceived to be Islamic.

[8] Among the large body of literature on Islamists and Islamist politics in Egypt, the following are some of the most insightful studies: Baker, R. (2003). *Islam without fear: Egypt and the new Islamists*. Cambridge, Massachusetts: Harvard University Press; Hirschkind, C. (2005). The ethics of listening: Cassette-sermon audition in contemporary Egypt. *American Ethnologist*, 28 (3), pp. 623-49; Mahmood, S. (2005). *Politics of piety: The Islamic revival and the feminist subject*. Princeton: Princeton University Press; Gaffeny, P. D. (1991)."The changing voices of Islam: The emergence of professional preachers in contemporary Egypt," *Muslim World*, LXXXI (1): 2747; Starrett, G. (1998). *Putting Islam to work: Education, politics and religious transformation in Egypt*. Berkeley and Los Angeles: University of California Press.

Faced with the growth in popularity and strength of the Islamist movement, the governing regime decided to employ its control over the official religious institution, represented by the thousand-year-old mosque seminary of Al-Azhar, in order to counter the influence of the Islamists. The process of tying Al-Azhar, Sunni Islam's highest authority, to the state, started under president Nasser with the 1961 promulgation of Law 103 on the reorganization of Al-Azhar. This process was accelerated in the decades following Nasser's death in 1970 until that venerable religious institution nearly became a branch of the Egyptian state, opening it to attack by political Islamists and their supporters for its lack of autonomy. At the same time, in an attempt to boost its Islamic credentials and to challenge the Islamists as sole spokesmen for Islam, the state was increasingly placing Al-Azhar at the heart of the policy-making process and granting it leverage over key policies on religious matters. All of this had a direct impact on women's rights and sexuality related issues.

It is important to note that Al-Azhar and the political Islamist opposition disagree on fundamental issues such as the Islamic nature of the state, the role of Islam in the legislative process, bank interests, and relations with Israel.[9] It is quite remarkable, however, that when it comes to issues of morality, women and the family, the two are in total harmony most of the time. These otherwise competing religious camps also see eye-to-eye on the role of religion in the private sphere, the maintenance of the patriarchal family system, the censorship of books and films with content deemed contrary to morality or religion, and many other such issues, and strive to coordinate their efforts in order to serve what they consider to be the "common good." The state rarely opposes them because these efforts are not seen as constituting any threat to its authority.

It is true that since its establishment Al-Azhar has never been on the frontline of defending women's rights, and the first half of the twentieth-century saw staunch opposition by virtually all Azharite officials to the demands put forth by the then nascent feminist movement. When it came to sexuality, the religious institution has almost always opted for the more orthodox and restrictive interpretations of Islamic texts.[10]

[9] On the significance of the difference between "official" and "fundamentalist," "jihadi", revivalist, or salafi Islam, see al-Sayyid, R. (2004). *al-Sira'a 'ala al-Islam: al-usuliyah wa-al-islah wa-al-siyasat al-dawliyah (The struggle for Islam: Fundamentalism, reform and international politics)* . Beirut: Dar al-Kitab al-Arabi.
[10] This paper will not expand on the various positions of Islam and Islamic scholars on the different aspects of sexuality since that falls outside its scope. There are numerous references, in Arabic and English, on Islam and sexuality such as: Musallam, B. (1983). *Sex and society in Islam: Birth control before the nineteenth-century*. Cambridge: Cambridge University press; Omran, R. A. (1992). *Family planning in the legacy of Islam*. London: Routledge; Mazrui, A. (1994). Islamic doctrine and the politics of induced fertility change: An African perspective." *Population and Development Review*, Vol. 20, Supplement. The new politics of population: Conflict and consensus in family planning, pp. 121-134.

Yet it was not until the mid-1990s that Al-Azhar was transformed from a minor player to a major one in the wars on sexuality, and since then it has firmly maintained this position. Al-Azhar was thrown into the midst of sexuality debates in 1994 when Cairo hosted the United Nations International Conference on Population and Development (ICPD), seen by sexual rights advocates as a milestone in the struggle for sexual and reproductive rights of women and men.[11] Although religious forces, including Al-Azhar, were caught unawares by this conference, Al-Azhar gradually began to challenge and undermine it. Al-Azhar called for a boycott by Muslim states and, together with other religious forces and conservative media, issued statements attacking the conference and its Programme of Action for contradicting what it considered Islamic values on women and the family (Abdel-Hadi, 1996. pp. 47-54).

These attacks probably played a role in pushing Egypt and other like-minded states to introduce reservations and explanations of positions in the Programme of Action, a policy document that is not legally binding on states. Abdel-Hadi argues that the Islamists nonetheless felt defeated when the document, with its groundbreaking language on sexuality, particularly on the right to have a "satisfying and safe sex life," was adopted by consensus. This sense of defeat, Abdel-Hadi explains, led to the adoption by Al-Azhar and its allies of a new strategy in the months that separated the ICPD from the September 1995 Fourth World Conference on Women in Beijing.

The new strategy involved increased engagement in analyzing the draft documents of the Beijing conference — identifying contentious issues and producing lobbying materials that responded to them from a conservative "Islamic" point of view — and actively participating in the preparatory meetings and proceedings of the conference itself. Rather than calling for a boycott and issuing general condemnatory statements against the conference, the Islamic Research Council, Al-Azhar's governing body chaired by the Grand Imam, issued a detailed statement one month before the conference was held. This statement analyzed the "dangers" contained in the draft document and called on "Islamic countries, and all the peoples seeking a pure and virtual life... [to] stand up to the destruction and devastation that those who drafted the [Beijing] Platform for Action are aiming for," (quoted in Abdel-Hadi, 1996).

[11] See also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN, pp. 320, 323, 328-329, 333-334; Ramasubban, R. (2005). Culture, politics and discourses on sexuality: a history of resistance to the anti-sodomy law in India, pp. 104-107; Le Minh, G., & Nguyen, T. M. H. From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 287-288.

Another significant development that followed the ICPD was the decision by Islamic actors to form the first specialized non-governmental organization for Islamist women to counter the influence of progressive feminist and pro-women NGOs at the international level. The International Islamic Committee for Women and Children (IICWC) was established in 1994 as an affiliate body — a coalition of 85 Islamic organizations around the world — chaired by the Grand Imam of Al-Azhar. In fact the IICWC's website admits: "The idea to establish an international Islamic committee for women, to act as an international council for Muslim women, emerged during the preparations for the 1994 [sic] Beijing conference." As illustrated below, in the years following its establishment, the Committee has become the Islamists' most powerful tool in the struggle over gender issues and sexual and reproductive rights.

Emerging from these two years of intense fighting over women and sexuality, Al-Azhar's interest in these issues was revealed like never before. It became the norm in Azharite discourse and literature — whether by its leadership or any of its thousands of scholars and imams — to speak of an "international war" on the family led by the UN, and to refer to the Cairo and Beijing conferences as landmarks in this war. Furthermore, these two conferences were considered to be aberrations that merited the mobilization of all Muslims to ensure they were not repeated.

While Al-Azhar largely left the battles at the UN to the new IICWC, it continued its domestic efforts to increase its influence on the Egyptian government's policies regarding morality and family issues. In this context, 1994 was another significant year in Al-Azhar's long journey of striving for greater influence. In February the State's Council, in response to an inquiry by the Grand Imam of Al-Azhar, handed down a legal opinion that gave Al-Azhar the power to issue binding recommendations to the Ministry of Culture and other relevant public authorities regarding the approval or confiscation of books and other artistic products with content it deemed contrary to Islam.[12] Although several ensuing court rulings have attempted to limit the scope of this broad mandate, it was considered a major victory for the religious institution in its attempt to monopolize public policy on morality-related issues.

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[12] For a recent legal analysis of this mandate extension see: The Egyptian Organization for Human Rights June 2004 report. In defense of freedom of thought and artistic expressions. Retrieved February 2006, from http://www.eohr.org/ar/report/2004/re1021-1.htm.

An executive decision issued by President Mubarak in 1996 to appoint Mohamed Sayed Tantawi as the forty-third Grand Imam of Al-Azhar heralded a more intimate relationship between the regime and the religious institution. Prior to this appointment Tantawi had spent 10 years as the state's Mufti (advisor on religious matters)[13] during which he had shown less interest in opposing the government's positions on virtually any matter, compared to the late ultra-orthodox and more independent Gad El-Haq, who was Grand Imam of Al-Azhar from 1982 to 1996.

Since his appointment as Grand Imam, Tantawi has often drawn harsh criticism from the political Islamist movement, among other forces, for taking controversial pro-government positions and for occasionally acting as an agent for the regime. Such positions included his 1998 meeting with the Chief Rabbi of Israel in violation of the religious institution's long legacy of boycotting that state, and a joint press conference in late 2003 with the French Interior Minister where he expressed support for France's controversial law banning the wearing of the headscarf by Muslim girls in French public schools.

Portraying Tantawi as a lackey of the regime in political matters should not be overstated, however, as it is important to highlight the power that the religious institution has come to enjoy over the state in social policies. Two recent examples crystallize this new influential role. The first incident occurred in 2004 when the National Council for Women (NCW), an official advisory body chaired by Egypt's First Lady, Suzanne Mubarak, attempted to revisit Egypt's numerous reservations on the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The NCW's intention was to withdraw most of the earlier reservations except for a general declaration in which the government would commit to the implementation of the treaty without violating the principles of Islamic shari'a. The Ministry of Foreign Affairs was, in principle, in favor of this effort by the NCW since the government had been criticized for many years over the sweeping language of the reservations, some of which were said to be contrary to the very objectives and purpose of the treaty. However, rather than putting the issue before parliament, which is the legally mandated authority to ratify treaties, the Ministry decided to obtain the opinion of Al-Azhar first.[14]

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[13] For the history and nature of the institution of the Mufti in Egypt, see: Skovgaard-Petersen, J. (1997). *Defining Islam for the Egyptian State: Muftis and fatwas of the Dar al-Ifta*. Leiden: Brill.

[14] http://www.islamonline.net/Arabic/news/2004-06/07/article19.shtml.

Al-Azhar's Islamic Research Council not only rejected the attempt to withdraw the reservations but also proposed new reservations the government had not entered when it ratified CEDAW in 1981. The Ministry of Foreign Affairs then decided to quietly close the file on the reservations fearing a public scandal as the government could be accused of defending anti-Islamic provisions as a result of Western pressure.

The second incident took place in 2005, when the NCW itself decided to seek Al-Azhar's opinion on a new bill to criminalize female circumcision/genital mutilation (FGM) nearly 10 years after the Minister of Health had issued a decree banning the practice in hospitals and medical facilities. Here again, Al-Azhar's Islamic Research Council rejected the idea in a meeting it held in November 2005, reiterating its old position that while there was no consensus on the obligatory nature of FGM, it was considered a desirable act with desirable results and, consequently, must not be criminalized in a Muslim country.[15] Since then there have been no public attempts by the government or the NCW to raise the subject.

In neither of these two incidents was the state legally required to obtain the views of the religious institution. Yet the fact that the state could not go forward with these efforts without the religious authority's support, and was willing to shelve the initiatives altogether when it could not secure this support, is an indication of the power that Al-Azhar has come to enjoy, beyond its mandate, over the state's policy-making processes on women's issues.

The conservative agenda on morality and the family received another push forward with the parliamentary elections in the fall of 2005, when the Muslim Brotherhood emerged as the biggest political opposition force and secured an unprecedented 20 percent of the 454-seat People's Assembly. This electoral victory sparked concern among secular circles in Egypt and triggered speculations regarding the positions the MB deputies were going to take in parliament, particularly with regards to women's rights and cultural issues. These concerns were a result of the several attempts by the 17 MB deputies in the previous parliament to increase the government's censorship on artistic works they saw as violating public morality. In fact, the MB put these efforts in the forefront of its own report on its performance in the 2000 parliament issued in the lead up to the 2005 elections. The efforts listed in the report

[15] http://www.misralarabia.com/article.asp?article=8834.

included parliamentary procedures against music videos, beauty pageants, magazines with revealing photographs on their covers; banning veiled female presenters from appearing on state television, and enlarging the portion of religious education in public-school curricula.

The electoral platform of the MB during the 2005 elections devoted only a small section to women. It included general statements about women's role in raising future generations and actions like enhancing the political participation of women, increasing efforts to combat illiteracy among them, and establishing financial and credit schemes to assist female-headed households.[16] As soon as the MB launched its electoral campaign its positions on women's issues became prominent in the media coverage of the elections, particularly in the northern Cairo district of Nassr City where the only woman candidate of the MB was running for one of the district's two seats.

The candidate, Makarem El-Diri, was profiled and interviewed in nearly every media outlet in the country, where she elaborated on the Islamist organization's position on women and their role in politics and society. In most of these interviews, El-Diri introduced herself as an active member of the IICWC, and the policy messages of that Committee were reflected in her campaign speeches and media interviews. El-Diri identified "protection of the family" amongst her policy priorities, and reiterated that a woman's primary role was to be a good mother. She also opposed the calls for "absolute equality" between women and men since, she argued, such equality was "against the order of nature."[17] Interestingly, she was the only woman candidate to refer to the Beijing conference and documents throughout the two months of campaigning. In an interview with the website www.Islamonline.net, El-Diri declared that one of her top priorities was "to fight some of the outcomes of the Beijing conference and its follow-up meetings, which violate Islamic shari'a."[18]

The electoral campaign of Makarem El-Diri was evidence of the common positions taken by the official state Islamic institution (Al-Azhar) and a chief opponent of the government (the MB) when it comes to issues pertaining to women and sexuality. El-Diri, an Arabic literature professor at Al-Azhar University, was a member and a candidate of the MB, a political

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[16] http://www.cihrs.org/Release/PDF/24_123200664331.pdf.

[17] *Al-Masry Al-Youm*, 20 October 2005, p 16.

[18] http://www.islamonline.net/arabic/adam/2005/10/article05.shtml.

Islamist organization that has always been critical of the official religious institution's lack of autonomy from the regime and the pro-government positions taken by the current Grand Imam of Al-Azhar. At the same time, she was also an active member of the IICWC, an affiliate body of the umbrella organization chaired by the same Grand Imam. The IICWC's website even identifies El-Diri as the head of its research unit. Most of the members of the IICWC are women who are active in the MB and who, like El-Diri, do not appear to see any conflict of interest between the two bodies precisely because their positions and activities on women and sexuality are virtually identical.

Makarem El-Diri did not get elected, perhaps to the relief of feminist and women's rights activists. Her loss, according to MB sources and reports from independent election monitors, was due to heavy government interference in her district including intimidation of voters and the alteration of results in favor of the competing candidate fielded by the ruling National Democratic Party. While parliamentary elections in Cairo were held amidst relative calm and witnessed minimal government interference compared to other cities, the selective heavy-handedness employed in this particular district shows that the regime was well aware that having an MB woman in parliament would boost the MB's profile, especially in Western circles. It also indicates the regime's awareness that the election of a woman MB deputy meant that women's issues would occupy a more prominent place on the Islamic group's legislative agenda, a prospect that the government was not prepared to accept.[19]

But while the government mercilessly fought El-Diri in northern Cairo during the elections, the same government's agenda at the UN was coming ever closer to that of El-Diri's IICWC.[20] Through creative outreach strategies and savvy media tactics, the IICWC has gained greater visibility in the domestic media in the years following its establishment. This visibility and media coverage, as well as the organization's successful use of its ties with Al-Azhar, gained it increased leverage over the positions taken by government representatives at UN and other international events dealing with women and sexuality. Since 2000 the IICWC has become a regular participant in the annual meeting of the UN Commission on the Status of Women (CSW) as well as other major UN events.

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[19] In late June 2006 the Court of Cassation nullified the results in this electoral district citing process irregularities. It is not clear at the time of writing if the government intends to abide by this final court ruling and hold new elections in the district.

[20] For an overview and analysis of these global debates, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN.

Media campaigning and direct government lobbying at the UN started to bear fruit for the IICWC in 2001. The Egypt delegation to the first-ever UN General Assembly Special Session on HIV/AIDS (UNGASS) led the successful campaign to exclude from the meeting's Declaration of Commitment the only reference to groups that are vulnerable to contracting HIV, namely injecting drug users, commercial sex workers, and men who have sex with men.[21] Moreover, Egypt proposed a motion to ban the representative of an organization working on sexual orientation and gender identity from addressing the meeting's session on HIV/AIDS and human rights. (The motion was put to the vote and defeated.)[22] The Egyptian state-owned newspapers hailed these positions as heroic acts aimed at defending Islamic values. Defense of these so-called "Islamic values" has since become an integral part of Egypt's positions at every UN event dealing even remotely, with gender and sexuality.

The following year Egypt took similar "pro-family" positions at another UN General Assembly Special Session, this one dedicated to children, where the IICWC was more active and visible than ever before. Furthermore, when Brazil presented to the UN Commission on Human Rights in 2003 a draft resolution that would have been the first UN official document to recognize human rights abuses based on sexual orientation, Egypt was at the forefront of the opposition block that used procedural tactics to postpone consideration of the resolution until the following year.[23] In 2004 a large Egyptian delegation fought successfully for the resolution to be taken off the agenda. Reports suggested that Egypt and other Arab states went as far as to threaten Brazil with a boycott of an Arab-South American trade summit meeting scheduled to take place in the fall of the same year.

Egypt was successful in fighting and ultimately defeating the Brazilian resolution on sexual orientation despite the absence of the IICWC or any Islamist organizations, which have limited their sphere of activism to UN meetings held at the New York headquarters, side-

[21] For more on policy effects on MSM and other marginalized groups, including PLWHA and sex workers, see also in this publication: Ramasubban, R. Culture, politics, and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 97-99; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, pp. 151, 154-155; de Camargo, K. & Mattos, R. Looking for sex in all the wrong places: the silencing of sexuality in the World Bank's public discourse, pp. 368-369; Le Minh, G. & Nguyen, T. M.H. From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 299-300.

[22] http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=157.

[23] For a detailed overview and analysis, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN, pp. 339-350.

lining the Geneva offices where the CHR held its annual sessions. By 2003 the Egyptian government had already become an active member in a "pro-family club" that also included the United States, the Holy See, Pakistan, Iran, Sudan, and Malaysia among others. But in this collective of states, the Egyptian government had particular interests in blocking any recognition of human rights violations against homosexuals.

At the same time that Egyptian diplomats were engaged in the heated debate over the issue of sexual orientation at the 2001 UNGASS and the two subsequent CHR sessions, their colleagues at the Interior Ministry were staging an equally active campaign that saw close to 200 men arrested for suspected homosexual conduct from 2001 to 2004.[24] This campaign of arrests, torture and other violations of due process and human rights was already being scrutinized and condemned by UN rights bodies such as the Human Rights Committee, the Committee against Torture, and the Working Group on Arbitrary Detention. It was, therefore, especially important for the Egyptian government to block any further recognition in Geneva of the human rights of the "perverts" it was incarcerating and beating up back in Cairo.

At all the UN events it attends the IICWC works closely with Christian and "pro-family" organizations. The literature published by the committee is remarkably similar to that of its conservative western counterparts, like the focus on the value of chastity (the name of the committee's magazine is *Al-'Afaf*, which means chastity) and the criticisms they direct at women's rights organizations for being "reality-based" while making no attempt to change that reality for a better future.

While the coordination between these two conservative factions can be traced back to the 1996 UN Habitat II meeting in Istanbul,[25] it culminated in the Doha Conference organized in November 2004 to mark the tenth anniversary of the UN Year of the Family. The Doha meeting is a fascinating example of the smooth cooperation between very different conservative states and non-governmental actors. It was hosted by the Qatari government and was

[24] Human Rights Watch Report. (March, 2004). In a time of torture: The assault on justice in Egypt's crackdown on homosexual conduct.

[25] Brian Whitaker, The Guardian, Fundamental Union, http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,1398055,00.html; Cynthia Rothschild, Written Out, IGLHRC & CWGL.

opened by Sheikha Mousa bint Nasser al-Misnad, the wife of Qatar's ruler, who also happens to be the chairperson of the Supreme Council for Family Affairs in Qatar. The government of Qatar had commissioned the U.S.-based World Family Policy Center (WFPC) to prepare the conference's content and to hold preparatory meetings in Mexico City, Sweden, Geneva, Kuala Lumpur, Manila and Strasbourg. The WFPC is affiliated to Brigham Young University, run by the Church of Jesus Christ of Latter Day Saints (Mormons).

While the WFPC was busy convening global preparatory meetings in the months preceding the conference, the IICWC took the responsibility of holding similar meetings in Arab countries, namely Jordan, Yemen, and Lebanon. As at other international events, the IICWC went to the Doha conference with the Coalition of Islamic Organizations (OIC), a transnational network of Islamist organizations for which the IICWC acts as a convener. Among the leaders of the delegation was Makarem El-Diri who, as we have seen, would one year later become the Muslim Brother's sole female candidate in the parliamentary elections.[26]

The conference culminated in the adoption of The Doha Declaration, which ostensibly reaffirms Article 16(3) of Universal Declaration of Human Rights: "The family is the natural and fundamental unit of society, and is entitled to protection by society and the state." The Doha Declaration, however, subtly sets forth the IICWC's opposition to family planning and abortion as well as its support for traditional marriage between a man and a woman. It states, "We recognize the inherent dignity of the human person and note that the child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth … everyone has the right to life, liberty and security of person." It also identifies the need to "evaluate and reassess government population policies, particularly in countries with below replacement birthrates," and to "reaffirm the importance of faith and religious and ethical beliefs in maintaining family stability and social progress."

For its part the UN General Assembly issued a resolution in December 2004, which welcomed the hosting of the Doha Conference by the Qatari government but only took note of its outcome. It did not take long, however, for the IICWC to start using the Doha Dec-

[26] http://www.iicwc.org/conferences/doha/doha01.htm

laration for advocacy at the UN. At the 2006 meeting of the Commission on the Status of Women (CSW), the OIC lobbied Islamic states to introduce language from Doha into the meeting's agreed conclusions on women's equal participation in development. The proposed paragraph recommended that states "evaluate and assess economic, social and other policies to support mothers and fathers in performing their essential roles."[27]

The Doha Declaration resurfaced again two months later at the UNGASS review meeting on HIV/AIDS, held in New York in May 2006. During the difficult negotiations around the meeting's Political Declaration, OIC member states decided to use language from Doha to counter several Canadian proposals in favor of sexual and reproductive health and rights. The OIC proposed that states "reaffirm the importance of faith and religious and ethical beliefs in maintaining family stability and social progress." The OIC proposal was subsequently dropped in exchange for Canada forfeiting its proposals, but the incident was another example of the influence exerted by the IICWC and other religious organizations on Egypt and other like-minded governments at the UN.

In the same vein, the IICWC has been working to produce alternative documents to family-related international human rights treaties. The most successful in these efforts has been the adoption in 2003 of the Charter on the Child in Islam as a response to the Convention on the Rights of the Child, the most widely ratified international human rights convention.[28] The Committee has also been working for many years on a similar charter on the family.[29] Interestingly, among the resolutions of the Mecca Summit of the OIC in December 2004 was the convening of a committee to draft a declaration on women's rights in Islam. Activists familiar with the OIC's 1990 Cairo Declaration on Human Rights in Islam expect that the new women's declaration will backtrack on the rights won by women in international human rights law.

From the above one can see how a marriage of convenience was forged between the Egyptian state, together with the official religious institution, and its chief political opponent, the

[27] "Amendments suggested to the February 21 draft by the Coalition of Islamic Organizations." On file with the authors.
[28] http://www.iicwc.org/methak/index.shtml.
[29] http://www.iicwc.org/methak/osra/mithakosra00.htm.

Muslim Brotherhood, in matters related to women and sexuality. The ensuing conservative collective has been gaining ground steadily in the past few years both domestically and in international fora. However, the work of this conservative collective of religious forces received a significant setback due to the unprecedented public interest and debate sparked by the Hind el-Hinnawy case and the court ruling to recognize the paternity of her child. The ruling was generally welcomed by the media and the public amid many strong calls for a bold and overdue recognition of the prevalence of 'urfi marriages and sexual relations among youth. Predictably, the conservative collective moved swiftly to revive calls for the criminalization of zina (sexual relations among unmarried couples) — the 1937 Penal Code punishes adultery with imprisonment but does not criminalize consensual sexual relations among single men and women. Not long after the el-Hinnawy ruling, Al-Azhar's Islamic Research Council met in June 2006 to discuss the implications. The Council issued a call to parliament to expand the scope of the criminalization of zina, "in order to bring the law in line with Islamic shari'a."[30]

The main argument provided for the call to criminalize consensual heterosexual relations among adults was, once again, very telling of the different perspectives of conservative and progressive forces in society: Al-Azhar maintained that the current law on zina "sustains corrupt social realities."[31] The following section aims to look at these "social realities" that so alarm conservative forces into investing such considerable efforts to change them.

The realities

Following the airing by an Egyptian satellite station of a talk-show on sexual dysfunction among youth and rising divorce rates among newlyweds on account of sexual problems, Egyptian newspapers were inundated with letters and articles expressing outrage at this "affront" to Egyptian values and morals. Soon thereafter the program was infamously labeled, "the masturbation episode." The overwhelmingly negative response to the program highlighted the society's deeply embedded aversion to bringing matters relating to sex and sexuality into the public arena, particularly when such messages are directed towards young

[30] (2006, July 1). Al Ahram, p. 9.
[31] (2006, July 2). Al Ahram, p. 30.

people. The impassioned response also highlighted just how limited the space is for any kind of public debate around sexuality, even for TV programs ostensibly created for educational purposes.

As shown below, the event illustrates the degree to which Egyptian youth are left to contend with the contradictory influences from a conservative religious sphere, on the one hand, and from their own practices and values, which do not always conform to strict socio-religious norms, on the other. The dissonance between these two sides produces a complex canvas where Egyptian youth neither completely accommodate nor resist either sphere; rather, they resort to their own mechanisms to navigate their way through the contradictions.

Coming of age in contemporary Cairo

A recent study on coming of age in contemporary Cairo describes how youths are constantly criticized by the older generation, and confronted with the "diatribe against youth presented in…official discourse," (Arvizu, 2004, p. 27). In this discourse youths are sometimes accused of being radical Islamists and religious fanatics — paradoxically, the same youth are at other times deemed to be easily susceptible to the corrupting influences of Western culture via the Internet, music videos, TV shows, films and video games that are seen to promote violence and sexual promiscuity. The juxtaposition of extreme religiosity and sexual promiscuity may seem unusual, but it reflects the rise of two phenomena in popular youth culture in Egypt, that of Amr Khaled the lay-preacher and that of the sexualized Arabic music video clip.

Despite the fact that he is not a religiously trained scholar, Amr Khaled has arguably become the most widely recognized preacher in Egypt and in much of the Arab world as well. His use of colloquial Egyptian, his messages and stories told in a simple and straightforward style and his haute-couture fashion place him in an entirely different universe from the stiff, bearded, *gallabiyah*-wearing Azharite scholars. Asef Bayat (2003) describes Khaled's style as a "marriage of faith and fun" that is "marked and framed by the taste and style of the rich, in particular, affluent youth and women." Khaled's audience is, by and large, young and relatively affluent. What makes his message so attractive to this particular audience are his assurances that religious worship and piety can fit with modern lifestyles, which allows "the Egyptian rich [to] feel good about their fortunes," (Bayat, 2003). Khaled's message emphasizes per-

sonal piety and bodily modesty, hence his strong encouragement to women to wear the veil. During his lectures he discusses ethical and moral issues in everyday life — from dating, to drinking, to summer vacations — and focuses on values such as "humility, generosity, trust, loyalty, and repentance," assuring youth that by leading normal and fun lives they can also follow religious principles (Bayat, 2003).

Like no other preacher before him, Khaled's message has sparked a new search for spirituality and religious devotion among Egyptian Muslims and particularly among upper class and upper middle-class youth. This new spirituality has also influenced other aspects of popular culture, such as Egyptian cinema, as can be seen in the rise of the concept of "clean cinema." Karim Tartoussieh (2006) explains that the term "clean cinema" was "coined around the mid 1990s to describe a new genre of films in Egypt inspired by a new kind of locally fueled wave of religiosity…[that] eschews…any overt representation of sexuality or nudity."

Within this new genre, Tartoussieh highlights the importance of female stars because "clean cinema" relies heavily on a "new mode of embodiment" in which the body is experienced and represented in a radically different way both on screen and in society. Prostitutes, seductresses, and adulteresses have become roles that are taboo and shunned by female artists who see the roles they accept as a reflection of their own real-life characters. Tartoussieh (2006) gives the example of one young female actress, May Ezz El-Din, who dismissed emphatically any possibility of playing a role which entails either kissing or nudity because her "essential being" does not agree with such roles. It would seem that Ezz El-Din is heeding Khaled's calls for actors not to retire, which used to be the standard response of *al-fannanat al-ta'ibat* (the repented female artists), but to continue working in their field on condition that they carefully choose the roles they accept.

However, this wave of religiosity in film is not entirely consistent with other cultural forms. Khaled's growing popularity is matched by the increasing popularity of the Arabic music video clip, where young female artists can project a seductive and sensual image that is often risqué by Egyptian standards.[32] The video clip has become an essential marketing tool for

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[32] It is important to qualify this statement, as there is a huge diversity in video clips. Armbrust (2005) has noted that the most common fixation of most commentators is with the sexual aspect of certain video clips, but argues that there is far more to Arabic video clips than just women and sex. Many clips project patriarchal and religious values; a mother and her child, raising a family, and deference to one's parents, are just some of the topics in video clips. See www.tbsjournal.com/Archives/Spring05/armbrust.html; www.tbsjournal.com/Archives/Spring05/kubala.html.

bringing an artist's music to an audience that spans the entire Arab world, and it is no longer unusual for them to show barely-clad female singers dancing provocatively in a variety of sexual innuendos. These video clips, broadcast 24/7 on *Melody* and *Mazzika*, two satellite television channels, epitomize "the other modes of cultural production" that do not exhibit the same moralizing tendencies and religious script that guide "clean cinema" (Tartoussieh, 2006). As Khaled delivers his sermons, video clips, specifically made for and targeted towards youth, are being churned out every hour of every day.

Besides music video clips, other television programs of the reality-based kind have continued to grow attracting much condemnation from conservatives. One of these popular reality-based programs with a large following in Egypt is Star Academy, where contestants from all over the Arab world battle in song and dance for a record contract. Significantly, contestants are housed together as in reality-TV shows like Big Brother;[33] while the men and women sleep in separate quarters they share the same living space and television viewers can watch their daily activities (eating, cleaning, and just hanging out) and training sessions. In the last two competitions, an Egyptian (a woman in 2005 and a man in 2006) made it into the final top three, generating huge interest in Egypt.

Music video clips and reality-based television programs have provoked a great deal of condemnation within Egypt from conservative Islamists and from the general public who are concerned that these Western-imports are "corrupting morals" and leading to greater "sexual perversity" among youth. Amr Khaled (2005) fears that video clips not only arouse desire, but also "pervert the aesthetic sense" and warns that they are "driving society toward flaccidity and collapse." One commentator suggests it is the immense popularity of these programs among youths that has attracted such calamitous premonitions and bred so much fear among conservative groups. This fear, he adds, stems from the challenge to "cultural patriarchy" posed by such values as "relaxed gender relations, personal meritocracy, infectiously joyful music" embodied in these programs (Lynch, 2006). Indeed, while it would be a

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[33] In 2004, an Arabic version of 'Big Brother' originating in Bahrain and aired on MBC, an Arabic satellite channel, was suspended after only a few days following protests in Bahrain. Many saw the series as an affront to Islamic values for putting men and women together in the same house. Retrieved May 2006, from http://news.bbc.co.uk/2/hi/middle_east/3522897.stm. Star Academy on the other hand is based in Beirut, which is considered to be one of the more liberal Arab cities and as such did not attract such an outcry. The popularity of such reality-based TV programs has inspired conservatives to create reality-based shows of their own on a new Islamic channel, Al Risella (which has yet to be launched), in an effort to combine "ethical" programming with entertainment. See "Whose Reality is Real? Ethical Reality TV trend offers 'culturally authentic' alternative to Western formats," by Lindsay Wise www.tbsjournal.com/Wise.html.

stretch to herald video clips as a sign that youth values and norms are becoming more liberal and secular, these video clips do represent "part of longstanding tensions over the status of youth in a patriarchal culture" and provide a "powerful palette for sketching out ideas about sexuality and the body" (Armbrust, 2005). The fear held by moral guardians is probably intensified by the fact that young people can actively participate in what they see and hear by sending in song requests to *Melody* and *Mazzika*, by purchasing mobile ring tones, and by their ability to send text messages anonymously to friends or girl/boyfriends through the *Melody* and *Mazzika* crawl lines.

What makes matters more confusing is the fact that the fans and spectators of Amr Khaled and of "clean cinema," and the fans of music video clips and Star Academy are more than likely to be one and the same. As Tartoussieh (2006) points out, both "clean cinema" and the sexualized video clips "occupy the same cultural space and are both primarily directed towards youth." In addition, Arvizu (2004, p. 31) notes, "the juxtaposition of such topics is reflective of the varying pressures young people feel. On the one hand, there is a desire to adhere to socio-religious norms, but they also enjoy the freedom from those norms. Clear distinctions exist between the behaviors of religiously oriented youth and liberal minded youth, but most youth exhibit actions indicative of both, depending on the context."

Indeed, a young, veiled, and religiously inclined Egyptian woman who is an avid fan of Amr Khaled struggles to explain how she fanatically follows each episode of Star Academy, although what takes place in that program goes against her religious principles. She simply concedes that, "Yes, it [Star Academy] is indecent, but I still like to watch it." As Armbrust (2005) points out, she is "one moment a fan; the next moment an opponent." Others exhibit these conflicting values in a much more cynical fashion. A young woman interviewed in *Campus* magazine explains how she performs the *'omrah* (a religious pilgrimage to Mecca similar to the annual Hajj but less important) in Ramadan every year but returns "to the same life" in Egypt, which involves drinking, doing drugs and other such activities that "probably anger God in a million other ways," (quoted in Arvizu, 2001, p.31).

This contradiction and tension has been the subject of a short film by Ahmed Khaled, a young and aspiring Egyptian director. Khaled's 14-minute film, *Al-Gueneih al-Khamis* (The Fifth

Pound), produced in 2005, revolves around sexual intimacy among Egyptian youth. Khaled explains that the film tries to tackle "the problem of sexual deprivation among the Egyptian youth" and "the double-standards attitude among the community." (Khaled website). The film explores how a young couple finds some degree of privacy and intimacy by sitting at the back of one of Cairo's air-conditioned buses. When the bus finally reaches its destination and the couple step off the bus, the young man returns the two tickets (cost £E2 each) and puts a one pound note into the hand of the bus driver (who could see everything from his rearview mirror), in acknowledgement of his complicity in letting the couple pursue some sexual indulgence at the back of the bus. One of the controversial aspects of the film was the juxtaposition of religious symbols with the illicit acts taking place on the bus. The girl boarding the bus is veiled, usually seen as a sign of greater religiosity and submission to religious principles.[34] In addition, the driver plays the Qur'an on the bus, yet at the same time furtively glances at the couple in the rear-view mirror, fantasizes about being in the young man's position in the arms of his lover, and accepts the extra pound from the young man.

Al-Gueneih al-Khamis is best understood in the broader context of conflicting and contradictory orientations among youth. As Bayat (2003) notes, young people in Egypt "swing back and forth from Amr Diab [one of Egypt's most popular male singers] to Amr Khaled, from partying to prayers." The everyday practices of youth reveal a "relaxation of norms within the confines of the Islamization of society," such as the ubiquitous sight of young lovers (including veiled girls) strolling along bridges or the banks of the Nile, holding hands and even kissing (Abaza, 2001, p.102). Incidentally, one popular music video showed exactly that: a young male singer crooning to his veiled girlfriend (the first music video where the woman in pursuit is veiled) on the Qasr El Aini bridge in Cairo, a popular hotspot for young couples. The video accurately reflects the reality of many in Cairo, particularly those of the lower socio-economic classes, where the Nile's banks provide both a romantic and cheap location, and affirms that the new cultural forms are providing space for youths to project their own values and the realities of their lives. These new forms also demonstrate how youths are navigating their way through the conflicting liberal and Islamist discourses by creating their own hybrid identities and realities; for example veiling but still dating.

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[34] However, the veil is also a way to protect oneself from other people's gossip. The veil-wearer's manifested "religiosity" allows her to "get away with things" without being suspected.

The following sections explore in greater detail the changing values and behavior of youths, their own perceptions of these changes, and the manner in which conservative Islamist discourse attempts to rein in any challenge to deeply held patriarchal norms.

Premarital sex among Egyptian youth

Walter Armbrust (2005) suggests that the hostility directed at the "sexy" music videos is partly due to the fact that "Arab society gives almost no social sanction to sex for unmarried youth," hence the video clip "rubs salt in a particularly sore spot." In Egypt, this remains an extremely sore spot as the taboo against premarital sex, particularly for girls, remains resolutely in place. Nonetheless, Egyptians express an extremely high interest in sex. According to the Google Trends website,[35] Cairo is the number one city searching for sex, and Egypt ranks as the number two country searching for sex. With this extremely active interest in sex on the Internet, it is inevitable that premarital sexual relations do exist despite the taboo. The difficulty is in determining the prevalence of these relations, as reports and studies often conflict with one another or are based on anecdotal evidence that is difficult to substantiate.

In a study of patterns of marriage and family formation in Egypt conducted in 2004, young men and women were asked if they knew someone close to them who had been involved in a sexual relationship. Approximately 13 percent of single young males responded affirmatively, compared to only 3.4 percent of single females. The number increased to 22 percent when the question was posed to engaged young males, but remained the same for engaged young females. Married males reported the lowest number among the men at just nine percent, while married females at three percent were on par with single females (El Tawila & Khadr, 2004, p. 64). The study also revealed that sexual activity was far more prevalent in urban areas than in rural areas — single, engaged or married men and single and engaged women all reported that the majority of cases they knew were in urban governorates or in urban areas of lower and upper Egypt; the only discrepancy was with married women who reported slightly higher incidences in rural lower Egypt (El Tawila & Khadr, 2004, p. 66). When the same respondents were asked to give their own experiences, the numbers decreased considerably (but this is most likely underestimated since revealing one's sexual history is a very sensitive matter); only 1.4 percent of males reported such an experience compared to less than one percent of females (El Tawila & Khadr, 2004, p. 65).

[35] Retrieved June 2006, from http://www.google.com/trends?q=sex.

In another study conducted in 1996 among university students in four universities in Egypt, approximately 26 percent of males and three percent of females reported having sexual intercourse at least once, which for men at least, is much higher than what was reported in El Tawila and Khadr's study (El-Zanaty & El-Daw, 1996). The number of females having premarital sex is also misleading because most female counterparts of the men interviewed were younger and less educated (they were not university students), and so were not part of the survey (El-Zanaty & El-Daw, 1996). Most researchers admit that the accuracy of surveys probing sexual behavior is difficult to determine because of the hesitation of respondents to report honestly on such a sensitive issue, suggesting that the prevalence of sexual relations may be underreported (Rashad & Osman, 2003, p. 18). But this sporadic evidence does imply that premarital sex is not as rare as might be commonly believed. The perception among a large portion of young people with regards to premarital sex also indicates that youth believe the practice is on the rise; Arvizu's study (2004, p. 79) found that nearly 49 percent of youth agreed with the statement, "More young couples are engaging in intimate/sexual relations before marriage," although they indicated that those engaged in such relations constitute a minority.

Other indicators also reflect the existence of premarital sexual relations, although statistics for these are also difficult to come by and are largely based on observations and anecdotal evidence. Hymen reconstruction surgery is one such indicator. Ahdy Wahid Rizk, a gynecologist based in Cairo, revealed that two or three young women visit his Cairo clinic on a weekly basis requesting hymen reconstruction surgery (Sharp, 2005).[36] The demand for hymen repair is not only confined to urban areas. According to Samia Talaat, a general practitioner in El Mansoura, a largely rural governorate in Lower Egypt, women in rural areas are also seeking hymen reconstruction surgery. She gave the example of one woman who had to save for four months before she could afford the procedure, during which time she pretended to be insane in order to avoid sexual intercourse with her husband (Kadela, 1996).

Another gynecologist, Rima Khofash, says she receives approximately one woman per month in her clinic suffering complications resulting from back-street abortions, which she at-

[36] According to Majdi Mousa, a Cairo gynecologist, Egypt "is becoming an Arab center for performing illegal operations of hymen repair." (Quoted in Kandela 1996: 1615).

tributes to out-of-wedlock pregnancy. Khofash estimates that some 50 percent of young people have premarital sex, a figure far higher than any studies or commentators have suggested. She also says, "There is a revolution in sex between young people – they do it haphazardly – often in short-term relationships," (quoted in Sharp, 2005). Yet Sahar El Tawila believes that the Egyptian media has dramatically overblown the prevalence of premarital sex: "It is not widespread. Sexual relationships do exist, but they should be put in proportion" (quoted in Sharp, 2005).

Other commentators have suggested that non-penetrative sex is widely practiced, at least in urban areas (Sholkamy, 2005). Whilst there are no statistics to back up this claim, interviews with men and women who had been involved in *'urfi* marriages (see below) revealed that all had engaged in varying degrees of sexual intimacy, but not intercourse, with their partners before marriage. This supports the supposition that non-penetrative sex is the second-best option for those who do not wish to break completely the cultural and religious taboos against premarital sex (El Tawila & Khadr, p. 83). Arvizu's study (2004, p. 79) also notes how young unmarried couples "reported using a variety of methods to avoid actual intercourse while (being) intimate in order to preserve their virginity." One young woman stated that she and her partner "didn't have full sex. We didn't have a place to do it. If it was easier, yes, I think I would have liked to" (quoted in Sharp, 2005).

How youth who engage in sexual activity before marriage assess these sexual relations has not been substantially dealt with in the few studies done, but available evidence highlights the tension between an obligation to adhere to Egyptian norms and practices on the one hand, and youth's own desires and practices, on the other. The young woman who pointed to the difficulty in finding a place to have sexual intercourse also said, "It's also our traditions that stopped me. I felt guilty about what we did," which shows that there is anxiety about transgressing social and religious mores (quoted in Sharp, 2005). In addition, there exist very strong double standards that make it more acceptable for men to engage in premarital sexual relations than women. This may account for the discrepancy between males and females who report sexual activity in the studies mentioned above. One young man described how he tried to push his girlfriend towards further intimacy as a "test" of her values: "I just have to stop at a point when I am sure she will refuse to sleep with me — that means she is a good

girl" (quoted in Sharp, 2005). The high value placed on virginity in Egyptian society also acts as a deterrent. As one youth said, "Even if you don't care whether your future wife is a virgin or not, you're still in a community that cares, so you would think twice [about it]" (quoted in Arvizu, 2004, p. 79).

Despite the pressure to conform to Egyptian traditions and expectations — which makes premarital sex such a confusing and guilt-ridden activity — Egyptian youth pursue non-sexual dating relationships with much greater frequency. Although these relationships are still frowned upon in society, they do not hold the same stigma as premarital sex. Approximately 70 percent of single male respondents and 59 percent of single female respondents reported that dating relationships among youth are very common in El Tawila and Khadr's 2004 study (p. 58). From these respondents, 27 percent of males and 24 percent of females admitted they had been involved in a relationship, and these percentages increased slightly for engaged or ever-married respondents (El Tawila & Khadr, 2004, p. 59). Because of the sensitivity of the subject, the researchers believe the figures of those who have actually been in a relationship are under-reported and that the number is "much higher" (El Tawila & Khadr, 2004, p. 60). Single male and female respondents from urban areas were more likely to believe in the widespread existence of dating relationships than their rural counterparts but the number of those who acknowledged personal involvement in a relationship was nearly the same for both urban and rural respondents, and the same was true for engaged and ever-married respondents (El Tawila & Khadr, 2004, p. 60).

When asked about the disadvantages for men of being involved in a relationship, approximately 31.5 percent of all young men saw no disadvantages, compared to only six percent of women. When the women were asked the same question, approximately 53.5 percent said there were no disadvantages for men, but just 6.5 percent saw no disadvantages for women. Indeed 57 percent of men and 61 percent of women felt that a relationship would be detrimental to a woman's reputation, but only 10 percent and 6.5 percent respectively felt the same for men (El Tawila & Khadr, 2004, p. 63). Both males and females identified the main disadvantages of relationships as the harm caused to the reputation of the young women involved, the damage to her future marriage prospects, and the potential of the relationship to evolve into a sexual one (consequently causing further damage to her reputation and mar-

riage prospects). These answers reveal the pressure on youth, particularly young women, to abide by traditional dictates or risk losing one's reputation.

On the other hand, when respondents were asked about the advantages of such relationships, the majority named several positive aspects. More than 66 percent of males and 50 percent of females believed that these relationships increased mutual understanding between the two partners, and approximately 14 percent of males and 21 percent of females believed that these relationships could potentially lead to marriage. These answers indicate that although young people are concerned about losing their standing and reputation on account of these relationships, they also see the personal benefits of being involved in them. The fact that the majority placed mutual understanding before the possibility of marriage indicates that they do not necessarily see the relationship as definitely culminating into a permanent relationship, but as a means of finding companionship and understanding.

‘*Urfi* marriages

Hind el-Hinnawy's ‘*urfi* marriage to the actor Ahmed el-Fishawy brought the practice to the public limelight but it is important to note that even before this case such marriages had been scrutinized, dissected, and denounced in newspapers, television talk-shows, and even television soap-opera dramas, with almost all commentators lamenting this growing phenomenon among Egyptian youth. Hania Sholkamy (2005) has described this form of marriage as essentially a "means of legitimizing sexual relations without the financial and parental obstacles that a traditional Egyptian marriage presents." The ability to engage in "semi-legitimate" sexual relations has been a driving force for youths to enter into these marriages and one of the main reasons prompting commentators to condemn the practice so vociferously. It is also important to understand ‘*urfi* marriages in the Egyptian context where the nuclear family constitutes the central unit of society from which "individuals derive much of their identity and standing" and where young people are bound by "norms of social control," (Al-Tawila, 2003, p. 215). ‘*Urfi* marriages by their very definition challenge these deeply held norms and beliefs as youths use them to escape parental control and authority and engage in consensual sexual relations that only a close circle of friends – if even that – are aware of.

When asked about the main reasons for entering an 'urfi marriage, the most common responses given by Egyptian youth are: the desire to initiate a sexual relationship within a legitimate framework; the desire to legitimate an ongoing sexual relationship; family disapproval of a formal marriage proposal; and lack of financial resources to marry officially (El Tawila & Khadr, 2004, p. 75). In-depth interviews with individuals who had been involved in an 'urfi marriage revealed that all had various degrees of sexual intimacy with their partners, although this never resulted in sexual intercourse, but that the "sexual urge was the main driving cause of the secretive 'urfi marriage" (El Tawila & Khadr, 2004, p. 83). Although most young people admitted that 'urfi marriages are not really religiously acceptable, or at least had doubts about its legitimacy, they nonetheless believed that any kind of framework for engaging in a sexual relationship was better than none at all, which was a view that young men in particular ascribed to: "They expressed a conviction that as fragile as it is, the contract of the 'urfi marriage is useful in defending the accusation of adultery if caught by the police while having sex" (El Tawila & Khadr, 2004, p. 76).[37]

The urge to keep 'urfi marriages as discrete as possible was paramount among all those involved, with most expressing fear of the responses of their families should they ever find out. The need to avoid pregnancy was therefore an obvious priority. In-depth interviews revealed how all the couples used at least one method of contraception to prevent pregnancy, usually the pill, condoms or *coitus interruptus*. However, researchers noted that it was unclear if contraceptives were used correctly, and found "indications of incorrect use in some cases, such as non-compliance with correct pill-use" (El Tawila & Khadr, 2004, p. 85).

Unplanned pregnancies may account for the large number of paternity cases in Egyptian courts today. The question of the paternity of illegitimate children only recently became a hot topic in Egypt, sparked by the court battle between el-Hinnawy and el-Fishawy during which newspapers reported between 14,000 and 21,000 similar paternity cases before the Egyptian courts. But commentators have suggested that these numbers represent only the tip of the iceberg, as many women may choose not to access the courts for fear of scandal (Lutfi, 2005). Moreover these numbers only indicate the paternity cases

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[37] Despite the fact that most respondents were wary of the dubious religious status of 'urfi marriages, when young men were asked for the reasons that attracted them to their partners, most made references to characteristics such as politeness, modesty and obedience, and to the fact that their partners "wore modest Islamic dress" (El Tawila & Khadr, 2004, p. 84). Again, the juxtaposition of contradictory sentiments and behaviors (involvement in an 'urfi marriage, but choosing a partner partly based on Islamic values) reflects how youths both accommodate and reject socio-religious norms.

in courts; there may be thousands of *'urfi* marriages that have not resulted in pregnancy and hence remain invisible.[38]

When asked about their evaluation of *'urfi* marriages, most young people, including those who had experienced an *'urfi* marriage themselves, believed the disadvantages outweighed any advantages and said they would not recommend it to a friend (El Tawila & Khadr, 2004, p. 85). Some expressed misgivings about the religious status of the marriage, and others were anxious about their parents finding out about the marriage or concerned about the possible scandal of pregnancy. This goes back to a point made earlier about the varying pressures that young people feel. There is pressure to adhere to socio-religious norms, which entails obedience to parents and their expectations, but there is also the desire to enjoy freedom from these norms. The ability to enjoy these freedoms, however, is severely hampered by young people's guilt at transgressing social mores. They may consciously decide to become involved in an *'urfi* marriage, but nonetheless they cannot be entirely comfortable with the decision and with their actions.

Young women expressed a further reason for becoming involved in an *'urfi* marriage that was not expressed by young men, and that was "to realize their dreams…in making their own choices and decisions with regard to whom to marry and to live the illusion of escaping their parents' plans for them, without the need for any serious confrontation" (El Tawila & Khadr, 2004, p. 89). These young women expressed exasperation at the contradictions between their mobility while pursuing a university education — a mobility that provided them with the opportunity to interact with men and to make their own decisions — and the restrictions on their mobility outside of this sphere, which essentially forced them to lead dual lives. Researchers noted that these women challenged the prevailing perception of docility and kindness that most males used in describing their female partners, although most surveys examining perceptions of gender identity reveal how these perceptions remain strongly patriarchal. For example, the 2000 Population Council's Transitions to Adulthood

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[38] On the other hand, El Tawila and Khadr contest the belief that *'urfi* marriages are widespread, arguing that "very often this conviction is based only upon the misinterpretation of dating relationships of young couples in public places" (2004: 78). They suggest that unsubstantiated statements on the widespread nature of these marriages may have opened "windows of opportunities for some vulnerable youth" encouraging them to "venture in this direction on the grounds of an existing divide between opponents – mainly parents and the elderly population – and a wide base of supporters; youth just like themselves who…must have had a strong rationale for adopting a pattern that challenges prevailing norms and parents' authority," (2004, p. 90).

national survey revealed how 91.1 percent of boys and 88.5 percent of girls thought that the wife should seek her husband's permission for everything, and 74.5 percent of boys and 59.7 percent of girls believe that if a wife differs with her husband, she must accept his opinion (Population Council, p. 166). However, the researchers noted that contradictions emerged in young people's stated gender views and that "more in-depth research is needed to explore the relationship between their verbal expressions and other manifestations of gender beliefs" (Mensch et al, 2000, p. 31). The sense of frustration expressed by the young women above certainly appears to support this statement.

One observation that would need to be explored further is that young people, especially girls, are not brought up to challenge deeply embedded gender norms despite wider opportunities for education and changing economic and social realities. There are several possible reasons for this. First, education in Egypt "does not always challenge the expression of traditional attitudes for either sex or necessarily encourage wider horizons for girls," and second, a constrained economic environment coupled with discrimination against young women in the labor market provides few opportunities for women to challenge gender norms. Ultimately this means "the traditional gender compact…is unlikely to be seriously challenged for some time" (Mensch et al, 2000, p. 17). The views expressed above by young girls in '*urfi* marriages indicates that they do feel a dichotomy in their personal lives between the home and the educational sphere, but they may not necessarily be able to articulate these feelings.

The rising age of marriage and rising divorce rates: A national obsession?

'*Urfi* marriages are not the only problem challenging the institution of the nuclear marriage in Egypt. Many social commentators lament the rising number of individuals of marriageable age who are not getting married at all, with most putting the blame on high unemployment, the scarcity of housing, rising rents, and other financial difficulties and pressures. In Egypt today, 37 percent of males and 18 percent of females are over 30 when they marry (El Tawila & Khadr, 2004, p. 49). In addition, the number of unmarried women rose from 2.8 million in 1986 to 3.7 million in 1996 (El Tawila & Khadr, 2004, p. 362). Other reasons put forward to explain why fewer men and women are getting married are: the apparent reluctance of young people to plan for their future, choose a life partner or make the decision to settle down; unrealistic expectations on the part of women looking for their knight-in-shining ar-

mor; and the desire among some youth to remain single and free with the ability to enter multiple relations without responsibility.

The intense concern about the rising age of marriage and increasing numbers of unmarried people is directly linked to the fear that the sexual frustration experienced by these unmarried people may ultimately lead to sexual deviation. This is clearly articulated in the 2002/2003 Report of the National Council for Services and Social Development, which states that the delay in the age of marriage in Egypt results in deviations, which "threaten the security and stability of society" (Report of the National Council for Services and Social Development, 2003, pp. 363-364). Nadia Haleem, sociology professor at the National Center for Social and Criminological Research, echoes these sentiments arguing that "deviation" among youth is increasing as a direct result of the rising age of marriage. And Fawziya Abdel Sattar, Law Professor at Cairo University and Deputy Speaker of Parliament, believes that since marriage provides the "legitimate avenue with which to satisfy our sexual urges, which start at an early age, delaying marriage is unnatural and will have dangerous psychological effects." These "effects" usually refer to "deviant" sexual behavior, but one commentator has argued that in addition to the sexual tension caused by this large pool of unmarried people, there is also the danger of religious extremism as religious scholars become willing to "imprison women behind walls or clothes" in order to prevent "easily-excited" men from "enticement," (Amr, 2002).

As if the rising age in marriage is not enough to cause alarm, another crisis looming on the horizon is the growing number of divorces among newly-weds. According to the Hakim Youth Study (2006), the divorce rate among youth is higher than that of the general population. In 2003, 7.9 percent of women and 14.6 percent of men between the ages of 15 and 29 were divorced, compared to 5.2 percent of women and 5.5 percent of men among the general population. Yet overall, it seems that the divorce rate is actually decreasing — in 1986, 14.4 percent of women and 19.3 percent of men between the ages of 15 and 29 were divorced. There are currently some 2.5 million divorced women in Egypt. Of these 43.5 percent were divorced during their first year of marriage and 12 percent during their second year of marriage. Forty percent are above the age of 30.

The anxiety surrounding the "marriage crisis" in Egypt is nothing new. In 1933, the book *Azmat al-Zawaj fi Misr* (The Marriage Crisis in Egypt) put forward similar concerns about the institution of marriage in Egypt and potential future consequences, including a deterioration in morals and ethics and the spread of sexually transmitted diseases (STDs). As in the 1930s, present day writers concerned with the "marriage crisis" are apprehensive about what they see as a decline in the moral behavior of Egyptians. They also fear that without marriage many will resort to illicit relations, which is seen as a threat to a stable society. As one commentator put it, "How is it possible for these [men and women] to practice their natural sexual desires particularly in a conservative society such as Egypt, which does not accept sexual relations outside the institution of marriage? Facing us is a society living on top of a volcano caught between inherited values and traditions that are maintained on the outside at least throughout the generations, and new trends that are in opposition to these traditions."

The rising age of marriage, the perception of increasing divorce rates and the apparent widespread nature of 'urfi marriages fuel the belief that young people are, at best, turning towards unconventional means to engage in relations with the opposite sex and, at worst, engaging in illicit relations.

Sexuality and reproduction: Practices vs. perceptions?
The evidence of increased sexual activity among youth and their apparent willingness to choose 'urfi marriages as opposed to conventional marriages, in addition to the perception among social commentators of increased deviance and indulgence in premarital sexual relations, indicate that the strict code of ethics propagated by a conservative religious discourse does not exert the only influence over Egyptian youth. Nonetheless, this conservative discourse largely informs how matters related to sexuality and reproduction, are dealt with in the public realm, particularly in schools where sex education remains a controversial topic. The outcome of this monopoly is undoubtedly detrimental to youth in a number of ways: they are kept in ignorance about biological changes during puberty and are therefore more likely to be unaware of the sexual and reproductive health implications of their actions; they are likely to experience confusion and guilt over sexual feelings and probably endure great remorse for knowingly transgressing social mores; and they are ill-equipped to deal emotionally with a sexual relationship.

Many families do little to educate their children about puberty, sexuality, and reproduction believing this gap will "protect a child's innocence, and discourage inappropriate behavior," (Population Council, p.143). This approach leaves the majority of young people ignorant about even the most basic sexual matters. According to the Transition to Adulthood Survey, nearly 70 percent of girls but only 45 percent of boys can describe any of the changes that occur during puberty, and the majority of those who can describe the changes learn this on their own. Little information, if any, is disseminated in Egyptian schools about such matters as sexual changes during puberty, reproduction or STDs; only six percent of boys and seven percent of girls reported that they learned about puberty through schools books (Population Council, 2000, p.144). In most Egyptian classrooms the topic of sexuality and reproduction is raised, if it is at all, in biology textbooks, but in most cases "teachers avoid discussing the subject, and when they do, they explain a few biological facts," (Khattab, 2005, p.18).

Adolescent knowledge about family planning was more encouraging, with 99 percent of girls and 97 percent of boys having heard about family planning. The two methods identified most were the pill (92% of girls and 85% of boys) and the IUD (90% of girls and 77% of boys). However, only five percent of girls and 14 percent of boys could identify condoms as a method of contraception. This finding is significant as condom use is the one method that protects against STDs. However researchers have pointed out that because condoms are often associated with illicit relationships in Egypt, it is likely that knowledge of condoms was under-reported, particularly by girls who may have felt it inappropriate to admit knowledge (Population Council, 2000, pp. 148-151).

The overall knowledge of STDs is rather low — 30.2 percent of girls and 19.7 percent of boys were unable to identify any STDs; only 3.4 percent of girls and 11 percent of boys could identify gonorrhea; and only five percent of girls and 3.5 percent of boys could identify syphilis. On the other hand, approximately 66 percent of girls and 76 percent of boys were able to identify HIV/AIDS (Population Council, 2000, pp. 151-152). However, according to the Cairo Demographic Center youth survey, 99 percent of males and females between the ages of 15 and 24 could identify HIV/AIDS as an STD. The CDC survey also questioned youths on methods of protection against HIV/AIDS: 95 percent identified abstinence from illicit sexual relations; 57.3 percent identified caution when taking blood tests or having blood

transfusions; 38.2 percent said avoid using un-sterilized or used needles; 27.8 percent said don't take drugs; and 4.8 percent gave other methods (unspecified). No mention is made of condoms, which suggests that the respondents are ignorant of the use of condoms as a method of preventing the transmission of HIV/AIDS.

The ignorance of sexuality and reproduction in Egypt has direct implications for these young men and women. The first concern is that those engaging in premarital sex do not take the necessary precautions to prevent the transmission of STDs since condom awareness appears to be low. Furthermore, while they may have knowledge of family planning, it is unclear if they know how to correctly use various methods of family planning. El Tawila and Khadr (2004) noted there were indications among couples in 'urfi marriages that contraception was being used incorrectly. Researchers such as Hind Khattab (2006) and Ahmed Ragab (1996) have pointed out that ignorance of the reproductive system may explain why methods of contraception fail; if women do not understand how the contraception works and how it affects their reproductive system, there is a greater chance that they will fail to use it correctly.

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India

Culture, Politics, and Discourses on Sexuality:
A History of Resistance to the Anti-Sodomy Law in India[1]

Radhika Ramasubban

Introduction

This paper investigates the political context of recent debates on sexuality in India, with a special focus on the sexual and citizenship rights of people of alternative sexualities. The historical moment in focus is the expanding HIV/AIDS epidemic in the country. The paper argues that HIV/AIDS has been one of the most significant factors in breaching Indian society's powerful taboo on public discussion about sexuality, in the process creating an unprecedented opportunity for multiple sexuality discourses. This new dialogue challenges narrow constructions of patriarchal gender relations and heteronormativity. A striking illustration of

this opportunity is the new visibility of formerly marginalized sexual and transgender communities, and the current debate over Section 377 of the Indian Penal Code – inherited from British rule in 1860 – that criminalizes them. However, this very opportunity is being complicated by the tendency to sanitize the new openings through a public health discourse, that is, "men who have sex with men" (MSM) as a "risk group" for HIV transmission,[2] and, the persistence of cultural nationalism that essentializes both sexuality and gender.

Using the lens of the most visible symbol of the struggle for sexuality rights in India today — the movement for legal reform focusing on Section 377 of the Indian Penal Code — the paper charts the construction of sexual rights, the key players in these debates and struggles, the positions and strategies of these players, and the strategic dilemmas confronting the sexual rights movement today. The analysis takes place within a framework of various interwoven strands: historical precedents and contradictions; convergences and disjunctions within the rights struggles; the impact of the globalization process, which constitutes a key element in the overarching economic, cultural, and political environment within which the rights struggle is taking place; and the comparative efficacy of the mechanisms available to the struggling actors.

Section 377 IPC: Historical origins

Entitled, Of Unnatural Offences, the anti-sodomy law, Section 377 of the Indian Penal Code, states, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment of either description for a term that may extend to 10 years and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section." The British enactment of Section 377 was in deference to the existence of similar laws in Britain at the time that criminalized all non-procreative sexual behavior, whether homosexual or heterosexual, in keeping with Victorian

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[2] For more on policy effects on MSM and other marginalized groups, including PLWHA and sex workers, see also in this publication: Bahgat, H. & Afifi, W. Sexuality politics in Egypt, pp. 65-66; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, pp. 151, 154-155; de Camargo, K. & Mattos, R. Looking for sex in all the wrong places: the silencing of sexuality in the World Bank's public discourse, pp. 368-369; Le Minh, G. & Nguyen, T. M.H. From family planning to HIV/AIDS in Vietnam: shifting priorities, remaining gaps, pp. 299-300.

values relating to family and sexuality. Additionally, colonial jurists justified Section 377 as a protective measure against what they described as "the Oriental disease." In their unflattering descriptions of Indian society – "culturally degenerate" social institutions like matriliny, polyandry and polygamy, child marriage, female infanticide and widow immolation; weak, effeminate, lascivious Hindu men; oppressed women; a barbaric religion consisting of hundreds of licentious gods – English social reformers also made direct and indirect references to Indian men's proclivity for seeking out the company of young boys, and deplored the corrupting effects of such tendencies (Vanita & Kidwai, 2001).

The combined impact of nineteenth-century Western homophobia, and the sense of cultural inferiority evoked by colonial servitude, resulted in a complex historical process of modernization. Along with laws that abolished practices such as child marriage and widow immolation, systems of marriage like matriliny and polygamy, and sexual sub-cultures such as temple prostitution and "third sex" communities also underwent legal and social change (Vanita & Kidwai, 2001).[3] (See also Chakravarty, 1993; Roy, 1995; Sarkar, 1996; Menon, 1999 for discussions of the women's question under colonialism). The cultural landscape, particularly relating to sexuality, was steadily divested of some of its diverse "little traditions" that had risen and ebbed through history (for example, the country's ancient and medieval mythic, artistic and social traditions that had accorded spaces – albeit marginal, but not criminalized nor labeled deviant – for explicit representations of various forms of non-procreative heterosexual and non-heterosexual sexuality and erotic pleasure).[4] Indian culture came to be reconstructed as unilinear and co-terminus with Hinduism, and Hinduism, in turn, as narrowly "pure" and norm driven.

[3] While the Immoral Traffic (Prevention) Act of 1956 brought prostitution under independent India's criminal laws, the Criminal Tribes Act of 1871 enacted during colonial rule (and still surviving today) had already criminalized *hijras* (traditionally referred to in India as the "third sex") and their cultural representation as cross-dressers and street singers and dancers.

[4] The ancient myths that date back a few thousand years and are today a part of the everyday lives of ordinary people, are replete with stories of love, lust, and desire among gods and humans - both male and female – and portray diverse forms of sexual unions, marriage and family structures (see Doniger, 2000, for a discussion of some of these myths). Fringe religious cults that worship female sexuality as divine energy (*tantric* practices) survive even today. Diverse expressions of sexuality are also to be found portrayed, variously, in temple sculpture, religious and secular poetry, and epic literature, spanning both ancient and medieval periods. Non-heterosexual expressions include references in the Mahabharata to heroic figures who undergo transformation into transgendered individuals, Shiva as *ardhanariswara* (half man-half woman/formless-sexless) which may be interpreted as epitomizing the fluidity between male and female, the Kama Sutra treatise on love-making (that includes references to the pleasures and techniques of oral sex, and to same-sex attraction), and erotic temple sculptures that portray various forms of sexual unions including same-sex acts. Vanita and Kidwai (2001) cite ancient Indian legal texts that identified non-consensual heterosexual behavior as worthy of more stringent punishment than consensual sex between same sex persons.

Section 377 remained unchallenged in independent India until the advent of HIV/AIDS towards the close of the twentieth-century, nearly 50 years after the British left the country. It remains on the statute books nearly 40 years after the anti-sodomy law was abolished in Britain itself. The paradox is that an archaic and outmoded law of colonial origin embedded in nineteenth-century Victorian norms of morality, and what some sexual rights activists describe as culturally alien Judaeo-Christian values (Narrain, 2001), is being defended by the independent, modern Indian state, not to mention large sections of civil society that perceive such sexual practices as violating Indian culture. Widespread "norms" of universal marriage, monogamy, and procreative heterosexuality involving chaste women and masculine men and enforced by the triumvirate institutions of patriarchal family, caste and community, contribute to a consensual societal framework of silence about sexuality.

Admittedly, the direct reach of Section 377 is limited; an individual is only eligible for conviction if he is found committing said sexual act, while those who merely profess same-sex attraction are not. Only 46 cases were brought before the courts in the 150 years between 1860 and 2000, resulting in 29 convictions. Of these, only six prosecuted male-to-male adult anal intercourse and only one involved consensual anal sex, thus exposing the redundancy of the law. Section 377 has been useful in convicting cases of child sexual abuse; 30 cases and 19 convictions (Gupta, 2002, p. 70), a fact used by the courts and the government to argue that Section 377 ought to remain on the statute books as a benign provision. As if in confirmation of this, 1990 to 2000 – the decade of growing visibility of the AIDS epidemic and of people of alternative sexualities – saw the largest number of convictions under Section 377 (24 cases out of the total 46) in 150 years.

Section 377 IPC: Issues of sexual rights

Evidence has been mounting in recent decades showing that the real "strength" of Section 377 lies in the manner in which it attracts police corruption and abuse of power. Being a cognizable (or high intensity) offence, Section 377 does not require a court order or warrant for making an arrest. This gives the police the power to threaten arrests and extort money, or to keep victims in jail indefinitely before letting them go in exchange for bribes. Often victims, particularly those who are unable to pay up, are also subjected to physical, verbal,

and sexual abuse while in police custody, the latter being the very crime for which they were arrested. Thus, most arrests are not pursued in the courts (Counsel Club, 2002; Testimonies in Human Rights Watch, 2002).

Section 377 opens opportunities for the abuse of other criminal laws. There are cases of 377 being read in conjunction with other penal code provisions such as Section 116 (abetment, defined as intention to commit the crime), or Section 109 (interpreted as instigating or encouraging "unnatural sex"), in order to make arrests.[5] Police also make arrests under a variety of criminal laws relating to loitering, soliciting, or indecency, all of which are open to ambiguous interpretations. Examples include various Public Nuisance Acts: Section 268 (any conduct in a public place that causes injury/danger/annoyance to the public);[6] sections 292, 93, and 94 (the obscenity act and its provisions, which proscribes "obscene" literature, paintings, and other objects, and "obscene" acts); Section 375 (sexual assault); the Dramatic Performances Act of 1876 (whereby any play may be banned as "depraved"); the Indecent Representation of Women (Prohibition) Act of 1986 (empowering the state to define any representation of women as "corrupting of public morality"); the Juvenile Justice Act of 1980 (empowering the State to take away a child from parents deemed "immoral or unfit"); the National Security Act No. 65 of 1980 (acting in any manner prejudicial to the maintenance of public order); and even the Customs Act of 1962 (empowering the state to ban the import of any goods which affect the "standards of decency or morality").[7]

In addition to these national laws, several state and city/municipal acts contain provisions that could give police inordinate powers. Among the most notorious are sections under the Bombay Police Act — 110 (indecent behavior in public), 111 (annoying passengers in the street), and 112 (misbehaving with intent to breach the peace) — and sections 92 and 93 (public nuisance) under the Delhi Police Act (Voices Against 377, 2004, pp. 4-5; Desai, 2002, pp. 94; International Tribunal on Human Rights Violations Against Sexual Minori-

[5] This was one of the provisions used in the Lucknow arrests, which will be referred to later in the paper (see Gupta, 2002, pp. 68-73).
[6] The police use these acts in their urban park-cleansing terror campaigns.
[7] In October 1997, the Customs Department of Calcutta confiscated a consignment of copies of Trikone (a magazine for gays, lesbians and bisexuals from South Asia, published in the U.S. and distributed in India by two NGOs, Humsafar and Counsel Club in Mumbai and Calcutta, respectively) under the provisions of this Act on grounds that the magazine was "derogatory to the morality and social system of our nation" (Desai, 2002, p. 94).

ties, 1995, pp. 15-17). All these laws become excuses for harassment and blackmail by both police and members of the public, and for making arrests. This harassment is all the more effective because most victims have little knowledge of the law and fear the social repercussions of public knowledge about their sexual identity.

While the law may not in itself generate homophobia, its very existence moulds beliefs and attitudes, and drives the demeaning and abusive treatment meted out to people of alternative sexualities and those who work with them. NGOs conducting research or outreach work that involves counseling and distribution of health/rights literature and condoms risk becoming victims of human-rights abuses by police who use penal code provisions of "abetting unnatural sex," "obscenity," and even "threats to national security," to get them to stop their work. The state also sanctions and promotes medical educational literature supporting the myth that homosexuality is a mental health problem. Mental health professionals thus maintain the outmoded position that same-sex attraction is an unnatural phenomenon, and resort to potent drugs and/or electric shock therapy when counseling fails to change the preferences of young people brought in by parents.[8] The absence of a rational discourse within the medical profession on sexuality and alternative sexualities – even after the advent of the HIV/AIDS epidemic – makes for doctors who are insensitive or hostile to the medical needs and health rights of people of alternative sexualities and HIV-positive people in general. Shunned by the medical system these people stay away and early signs of (anal) infections and other sexual transmitted diseases (STDs) go untreated.[9]

The greatest mental abuse takes place in the private sphere of the family. Families seek out mental health professionals, threaten children who refuse compulsory marriage, or en-

[8] This is an under-researched area and no statistics exist of numbers of persons subjected to such abuse; what we have is mainly anecdotal evidence. However, there is one landmark case of psychiatric abuse of a homosexual patient, who had been subjected to aversion therapy without consent at one of the nation's leading hospitals in Delhi. The case was filed with the National Human Rights Commission (NHRC) in 2001 by the Naz India Trust's Milan Project, and followed up with a mobilization drive by alternative sexualities groups. The NHRC rejected the case, giving no explanation for its decision. When interviewed on the subject, one of the judges, when asked what considerations influenced the decision, said that under Section 377 the patient in question was a criminal anyway (Narrain & Khaitan, 2002).

[9] Many health professionals tend not to ask about the sexual orientation of their patients due to the cultural assumption of universal heterosexuality. In any case, infection of the sexual organs makes patients morally suspect in the eyes of health providers. Many private doctors do not hesitate to dismiss homosexual patients from their clinics, or, alternatively, to demand exorbitant fees. Even patients who pay rarely receive quality care because of stigmatization. It was this consistent observation that led the Naz India Trust, which works with 'MSM' groups in Delhi, to set up its own clinic (Gopalan, 2005).

force mental "cures" through temporary confinement in religious institutions. There is also physical battering, formal or informal imprisonment, or citing "family honor" to induce guilt, shame, anxiety and depression. Those whose physical appearance does not conform to gender prescriptions and who do not have the economic and social support to undergo sex change treatments have little choice but to leave home. Suicidal impulses, public stigma, loss of primary relationships of family and friends, and loss of economic support through the inability to hold down jobs or dismissal from employment, are all real dangers for those who do not reconcile themselves to marriage and parenthood or who are unable to conform to prescribed gender roles (CALERI, 1999; Fernandez, 2002, pp. 111-117; Voices Against 377, 2004; Chauhan, 2004; Narrain & Bhan, 2005).

Community and family honor still constitute the most important anchors of individual identity in Indian society. And that community, caste, and family relentlessly enforce cultural norms prescribing early and universal marriage and the birth of sons as an individual's primary duty, leading many people of alternative sexualities to submit to heterosexual marriage and to raise families. Many men lead double lives plagued by secrecy and insecurity. The lack of safe private spaces forces them to seek out furtive unprotected sex in public places, a behavior that militates against long-term relationships. If they contract HIV they may pass it on to their wives and unborn children. Vulnerable in public spaces, they become victims of persecution and blackmail by the unscrupulous and police who use the penal code provisions to mete out violence, including sexual violence, further adding to the risk of HIV transmission.

The first salvo against Section 377 of the Indian penal Code was fired in 1992, six years after the first HIV case was identified in the country. It came from a Delhi-based group, *AIDS Bhedbhav Virodhi Andolan* (ABVA) – translated as Movement Against AIDS Discrimination – and followed the first-ever demonstration outside the police headquarters in New Delhi. The protest was against police harassment and arrests of suspected homosexuals in public parks under the nuisance clauses of the Delhi Police Act. The ABVA petitioned the national parliament for repeal of Section 377 on grounds that the law violated several articles of the Indian Constitution: 14 and 15 (protection against discrimination); 19 (right to freedom of speech and expression); and 21 (right to life and liberty, encom-

passing the right to privacy) (Fernandez, 2002, p.165). The attempt was unsuccessful as the organization was unable to enlist the support of even one Member of Parliament to argue the petition (Aggarwal, 2002).

In 1994, ABVA again mounted a challenge to Section 377, this time in the form of a public interest litigation (PIL) filed in the Delhi High Court. The action was prompted by a survey finding that several male prisoners in Tihar Jail in New Delhi, reputedly the largest jail in the country, had tested HIV-positive. When ABVA raised the issue of condom distribution with the jail's superintendent, she refused permission claiming it would be tantamount to legalizing homosexuality. The ABVA turned to the law demanding that Section 377 be repealed on the basis that it is unconstitutional, illegal and void. ABVA also asked that steps be taken to prevent the segregation, isolation, and stigmatization of prisoners identified as homosexual and/or suffering from HIV or suspected to have participated in consensual intercourse; that condoms be freely distributed to prisoners and disposable syringes be used in the jail dispensary; and that jail officials regularly consult with the government's National AIDS Control Organization (NACO). The legal case went the way of the parliamentary petition; it languished in the Delhi High Court and was eventually lost for lack of follow-up by the ABVA. It would be another few years before a fresh petition was filed.

The silence surrounding homosexuality at the time was also the silence surrounding sexuality in general and HIV/AIDS in particular. For nearly a decade following the identification of the first HIV-positive case in the country in 1986, both the Indian state and civil society were in denial apparently convinced that a sexually transmitted disease like AIDS could not possibly spread in a country that had the protective effect of Indian culture.[10] The initial evidence that the virus was carried by sex workers – and in Western countries, by homosexual men – was seized upon as confirmation of HIV's links with all that was criminal and socially deviant (and of "non-Indian" origin). Such "depravity" therefore deserved marginalization. NACO, set up in the late 1980s but hamstrung by this tunnel vision, was unable to give the enlightened and effective policy leadership that the epidemic required. Not only were sexuality issues invisible within the HIV/AIDS sector, including the special vulnerability of people of alternative sexualities, HIV/AIDS itself remained isolated from the mainstream

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[10] This was a public statement by Dr. A.S. Paintal, then Director General of the Indian Council of Medical Research (see Ramasubban, 1992).

health sector and its family planning program (within which condom use had only a marginal legitimacy), and from any other related areas of development planning. The new human rights issues that HIV/AIDS raised did not yet figure in the concerns of women's or human rights organizations, and mainstream media coverage of HIV/AIDS-related issues tended to be scanty, disjointed and sensationalized (Ramasubban, 1998).

The struggle for sexual rights: First phase, the Naz petition

The successor to the ABVA legal petition came six years later in 2001. In 1994 a newly-registered NGO in New Delhi, Naz Foundation India Trust, explicitly adopted the objective of addressing the health problems of gay men and "men who have sex with men" in the context of the HIV/AIDS epidemic. The Naz strategy was to nurture the emergence of distinct class and sexual orientation self-help groups – English-speaking and Hindi-speaking gays, lesbians, *hijras*, and *kothis* – by allowing them to find their feet as discrete entities under its organizational umbrella until they felt confident enough to network across class and linguistic barriers and, perhaps, become registered organizations in their own right (Gopalan, 2005).   When Naz outreach workers graduated from identifying major cruising areas and building rapport, to disseminating educational materials and condoms, they attracted regular police harassment. In the general climate of police persecution against people of alternative sexualities, carrying condoms and sexuality-related literature was itself becoming "evidence" of culpability under Section 377. Added to this were repeated attacks by local hoodlums on visitors to the Naz drop-in center and clinic. The fact that the visibility of its HIV/AIDS work was acting as a roadblock to its attempts at building a stable community for self-care, led Naz to approach the HIV/AIDS unit of the Lawyers Collective, a legal aid NGO committed to fighting for the civil rights of HIV/AIDS-affected persons,[11] to challenge the constitutional validity of Section 377.

The Delhi High Court admitted the resulting petition in December 2001. The petition challenged the constitutional validity of 377 on the following grounds: that the prohibition of pri-

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[11] Beginning in the late 1970s (following repeal of the 1977 state of emergency) a general disillusionment with the state went hand in hand with a surge of NGO activism. The mission of these new non-political civil society formations engaged in developmental activism, was to redistribute the benefits of development in favor of the most disadvantaged. In this general climate, legal aid NGOs like the Lawyers Collective also started coming into their own.

vate, consensual relations violated the right to privacy guaranteed in the constitution "within the ambit of the right to liberty;" that a distinction between procreative and non-procreative sex was unreasonable and arbitrary and undermined the equal protection provision of the constitution; that the punishments prescribed in the section were grossly disproportionate to the prohibited activity; that 377 violated the prohibition of discrimination on the grounds of sex because it criminalized predominantly homosexual activity; and, that the right to life guaranteed in the constitution was violated by the jeopardizing of HIV/AIDS prevention, by the denial that sexual preferences were an inalienable component of the right to life, and by the social stigma and police abuse that was being perpetuated.

The petition emphasized the larger context of HIV/AIDS and the threat that 377 posed to individuals and NGOs attempting outreach to "men who have sex with men." It cited evidence from the report of the first National Consultation on Human Rights and HIV/AIDS, held in November 2000 in New Delhi and organized by the National Human Rights Commission, that MSM continued to be driven underground by Section 377 despite NACO's professed policy of including them in its intervention programs. The petition also named the government of Delhi, the Delhi Commissioner of Police, Delhi State AIDS Control Society, and NACO, as well as the ministries of Home, Health, and Social Welfare. It did not ask for the repeal of 377, but rather the exemption of private consensual adult sex from its purview (Lawyers Collective, 2001). In doing so, both Naz and the Lawyers Collective were deferring to the concerns of child rights groups who were against the repeal of the law given the absence of sound laws that protected child rights.

The prospects looked hopeful. The Lawyers Collective felt it had done its homework well. It had studied judgments from around the world and it had framed the petition within a description of the Indian cultural tradition of tolerance and inclusion of sexual diversity drawn from recent re-interpretations of Indian myths and ancient texts.[12] It was also relying on synergy with the report of the 172nd Law Commission, which was prompted by a public interest litigation asking for a review of rape laws. Filed by Sakshi, a women's rights organization in Delhi, the report recommended a redefinition of sexual assault to make it gender-neutral and inclusive of oral, anal, vaginal, and other forms of penetrative intercourse, including

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[12] A significant source cited in the petition was Vanita and Kidwai's book, *Same Sex Love in India: Readings from Literature and History* (2000).

insertion of objects without consent. The report also recommended more effective laws governing sexual abuse of children, thus rendering Section 377 redundant (Law Commission of India, 2000).

The struggle for sexual rights: Constructions of sexual citizenship and mobilization strategies in the alternative sexualities spectrum

Close to the time the petition was to be filed, however, Naz came in for severe criticism from a new generation of alternative sexualities activist groups, who were beginning to develop their positions on the question of sexual rights. These groups – located mainly in metropolitan cities across the country – had been formed in the 1990s. Several were self-support gay/MSM/*hijra*/*kothi*[13] groups dedicated to HIV/AIDS work. There were also lesbian groups that had organized in the wake of the violence and controversy surrounding the release in 1999 of the Hindi film, *Fire*, which portrayed a lesbian relationship between two middle-class women (discussed later in the paper).

In 2000 the groups held their first National Conference of Sexual Minorities, which resulted in the formation of the Coalition for Sexual Minorities Rights. The groups accused Naz of failing to engage with them in a countrywide consultative process on the petition. They also felt that public spaces ought to have been specified in the petition, and that by privileging private consensual sex Naz had left out in the cold the lower social classes for whom public spaces were the only recourse (poor gay men, and most acutely transgendered persons/*hijras*/*kothis* whose appearance, violative of gender-normativity itself, attracted the most violent abuse). Transgender/*hijra*/*kothi* and lesbian groups did not feel adequately represented given the emphasis on MSM in the petition, since many transgendered persons/*hijras*/*kothis* have complex gender identities and do not necessarily see themselves as MSM. Lesbian groups felt further marginalized by the preoccupation with sexual minorities within the context of AIDS infection. For them the absence of a clearer focus on sexual rights within the framework of patriarchy was a serious gap.

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[13] *Hijras* are transgender people and people with inter-sex conditions, many of whom undergo castration, hormonal treatment, or sex change operations. *Kothis* are biological males who adopt a strategic feminine identity for the purpose of sexual relationships with men. Nanda (1990, 1994) and Jaffrey (1996) contain ethnographic accounts of the lives of *hijras*.

Naz countered these criticisms by arguing that the identification of private consensual sex was the first strategic step in what was, essentially, a long battle on the issue of homosexuality and rights. Both Naz and the Lawyers Collective reminded their critics that they had made consistent attempts to keep interested groups informed about progress on the petition. Regular updates on the petition had appeared in the Lawyers Collective newsletter, *The Lawyers*. The lawyers concerned had also held discussions with individual groups of stakeholders who had taken the initiative to voice their concerns, such as child-rights groups, and they had even discussed the petition at a special session of the National Sexual Minorities Conference in 2000. Finally, Naz had found in the course of its work that gay men and MSM were almost universally married. The importance of reaching out to them as a first priority lay in the fact that their considerable numbers and invisible alternative sexual behaviors made for the violation of women's sexual rights and their right to safety from infection, and fuelled the spread of HIV/AIDS. The fact that MSM had been identified as a target group for AIDS intervention by NACO and its international donors accorded them a certain measure of legitimacy for purposes of the petition.

Some of the polarization described above came about because there was as yet no community of people of alternative sexualities. Many of the activist groups were still at an embryonic stage of development having arrived on the scene after Naz initiated its work on the petition. Localized, small, still engaged in self-exploration, such groups were attempting to expand through networking activities including: organizing conferences and cultural programs on sexuality; building links with international groups working on broader platforms, notably forums on alternative sexualities in Asia (the NGO Naz International based in London, and *Trikone* magazine published in the U.S., both catering to South Asian gays, and the Asian Lesbian Network,[14] were among the earliest contacts) and the International Gay and Lesbian Human Rights Commission;[15] and participating in international AIDS and lesbian, gay, bisexual, transgender/transsexual (LGBT) conferences. At this stage enthusiasm for legal reform was generally weak – or, at least, not a priority – particularly among gay and *hijra/ko-*

[14] Seven women from Mumbai and Delhi attended the first Conference of the Asian Lesbian Network held in Bangkok in 1990, in their personal capacity. At Bangkok, the Mumbai delegates met their Delhi counterparts for the first time. This first contact, encouraged by the new links to other Asian lesbian women, marked the beginning in their evolution into organized groups (Rege, 2002).

[15] For the first time an activist from India testified before the International Tribunal on Human Rights Violations Against Sexual Minorities, in New York in 1995 (Fernandez, 2002, p. 186).

thi groups. Some gay groups with more pronounced left-wing leanings had little faith in the capacity of the legal process to bring about social change. Several groups, particularly *kothis* and *hijras*, were severely economically disadvantaged and had yet to develop the ideological and organizational capability to participate actively in the largely English language debates around law, social change, and human rights.

The lesbian activist groups – middle class, small in scale and mainly located in metropolitan cities – had a somewhat different character, and, besides, were still in the process of working out their level of equality with other groups in the alternative sexualities spectrum. Several had first found their political feet within the autonomous feminist groups that had burgeoned in the 1980s, when the women's movement had undergone a growth spurt following the debates around rape and the campaign for reform of rape laws. Catapulted into political visibility by the turbulence following the release of the film, *Fire*, they continued to identify with feminist agendas and were struggling to gain legitimacy for their identity within the women's movement even while they worked to build their own local lesbian groups, rights agendas and networks. Locating themselves within a critique of patriarchy and viewing lesbian sexual rights within the larger framework of women's sexual rights, they saw legal reform as a positive force for social change. For them, the repeal of Section 377 was as vital for women's empowerment, as was the reform of rape laws to include both men and women and homosexual and heterosexual rape. They framed their political agenda for sexuality rights as one of working for the sanction of alternative sexuality as a private and inalienable right, but demanding state intervention on issues that under patriarchy were considered private, namely domestic violence, incest and marital rape (Rege, 2002; Stree, 2002). To this end they had taken the independent initiative, under the aegis of the Campaign for Lesbian Rights (CALERI) launched in 1999, to demand the repeal of Section 377 in a memorandum submitted to the Committee on Empowerment of Women: Appraisal of laws Relating to Women (CALERI, 1999).

The struggle for sexual rights: Impact of global[16] and local processes

Despite the incipient constructions of sexual citizenship, differing positions, fledgling organizational character, and absence of a cohesive strategy, the voices of Indian activists had been

[16] For a detailed overview of two significant United Nations processes, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

raised, due in large part to the growing momentum through the 1990s of major and complex changes in the national and international political and economic climate. One of the most important changes was undoubtedly the international movement of ideas stimulated by the interrelated actions of the global women's health movement and the global HIV/AIDS epidemic, and aided by a host of bilateral and multilateral donors.[17] Another was the accelerated liberalization of the Indian economy and the sexual revolution that it was inspiring.

The global women's health movement brought to the table a new set of discourses around the interrelated issues of population, gender, reproductive health, and sexuality. The discourse critiqued states-led demographic agendas that focused on controlling women's fertility to the exclusion of their health and it articulated the rights of women (and men) to reproductive health and a safe and enjoyable sexuality. In so doing it de-linked sexual and reproductive health from procreation, highlighting the sexual and reproductive health concerns of unmarried youth, widows and post-menopausal women, women in sex work and non-heterosexual men and women. By challenging the structures of patriarchy the discourse also provided an overarching framework for critically reviewing prevailing sexual behaviors and all forms of sexual violence. It drew its strength from the unfolding global HIV/AIDS epidemic, which necessitated an unprecedented re-examination of ideologies and practices relating to sexuality and gender in individual societies and cultures. Through advocacy and networking at both local and global levels, this global movement of ideas played a critical role in building consensus for national policies that reflected these concerns, as seen in the outcome of the 1994 International Conference on Population and Development (ICPD). International funding agencies that had previously supported states-led demographic agendas now made funds available to NGOs and grassroots pressure groups for research and interventions in women's reproductive health, sexuality, and HIV/AIDS.

Population control had been a major theme in Indian developmental planning since the late 1950s and the Indian family-planning program, initiated in the early 1960s and the largest of its kind in the world, had, from the start, focused exclusively on targeting women's bodies for

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[17] This entire discussion is based on Ramasubban and Rishyasringa (2002).

fertility control.[18] The policy never looked at men's responsibilities for sex and procreation, and generally left unquestioned the social arrangement of the patriarchal family with its gen-der-sexuality equations. The only brief threat to men's sexual hegemony came between 1975 and 1977 in the form of compulsory vasectomy drives during a state of emergency imposed by the then Prime Minister, Indira Gandhi. The political repercussions proved too severe, and the drives were hastily withdrawn; thereafter, any reference, however oblique, to male contraception of any kind, including condoms, receded into obscurity.

The combined manipulation of women's bodies by the patriarchal family (the duty to pro-duce sons rather than daughters) and by the interventionist state (the duty to terminate fer-tility after two or three children) has left a history of severe abuse to women's bodily integrity, including the use of sex-selection tests to abort female fetuses, unsafe (albeit legal) abor-tion services, and sub-standard maternal health services. The result has been widespread reproductive ill health for women arising out of pregnancy, childbirth, and fertility control methods such as abortion, IUDs and sterilization. The debates and struggles led by Indian women's groups and health NGOs around these policies also fed into the global movement of ideas leading to the ICPD accord.

The country's mainstream HIV/AIDS discourse began its slow emergence from the strangle-hold of the conservative medical community in the latter half of the 1990s under persistent pressure from global debates. Evidence from exploratory field-based social science research – often conducted by, or in collaboration with, community-based health NGOs – suggested that widespread poverty and silence around sexuality stimulated the rapid spread of the vi-rus. The research also highlighted, for the first time, the fact that a very wide range of sexual behaviors existed in the country that did not all conform to the idealized set of norms labeled "Indian culture." Further, the combination of poverty, men's tacit freedom from sexual con-trols, and women's duty to unquestioningly submit to the sexual demands of their husbands, seemed a potent factor in women's enhanced vulnerability to STDs and HIV (Ramasubban, 1995). There were pressures on NACO from foreign funding agencies to include MSM in

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[18] See related analysis, also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, p. 319. For other local examples, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 31-33; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

policy-making bodies as critical stakeholders, both in their own interests and in their role as a "bridge population" in infecting women. LGBT activism in Western Europe and the U.S., with its new language of rights, was another crucial influence. Finally, patient activism in those countries pushing for access to generic antiretroviral drugs threw into sharp relief the contradictions in India's new identity as a major global producer of generic antiretroviral drugs; the country's increasing engagement with the world economy, and the concomitant pressures to adhere to the World Trade Organization (WTO) and other trade agreements, compromised the ability of its own citizens to access those very drugs.

The Indian state, as a signatory to the ICPD consensus, renamed the national family-planning program the Reproductive and Child Health Program in 1998; the old demographic agenda was uneasily linked with some elements of the new discourse, notably the reproductive health of married women. But issues of reproductive and sexual health of unmarried and non-heterosexual groups, and of sexuality rights in general and the rights of sexual minorities in particular – raised by the ICPD and predicated by the HIV/AIDS epidemic – remained invisible, both in state policies and in the women's and human rights movements. For both the state and women's groups, the hierarchy of concerns in relation to women had always been weighted in favor of economic equity issues within the developmental agenda of the state. Both sides viewed female sexual minorities, like women in sex work, as victims requiring paternalistic state intervention for their rehabilitation rather than as groups deserving of citizenship rights.

For women's groups, sexual rights outside of heterosexual rape remained a silent issue; lesbian crises were merely "lesbian issues" rather than "women's issues," and discourses on sex worker's rights were seen as aiding women's exploitation. In an environment where women's issues and struggles were just beginning to gain societal acceptability, women's groups feared jeopardizing their own hard-won legitimacy by permitting open discussions about sexuality, sexual rights, or lesbianism (Forum Against Oppression of Women, 2002; CREA, Sangama, & Tarshi, 2004, pp. 15-16, 31). For human rights organizations in the country homosexuality, if not seen as explicitly criminal, was still perceived as deviant. And, for all these progressive groups, as indeed for the established left-wing parties, sexuality was of little concern and homosexuality was a "capitalist aberration," an elitist and imperialist import (Human

Rights Law Network, 2002, p. 152). Post-ICPD, AIDS intervention projects for the two criminalized groups of MSM and sex workers did begin to proliferate under NACO aegis. But, without changes in the criminal law the new visibility of these groups only increased their victimization by the police, and this repression went unchallenged by NACO. Moreover they were without social movement allies, since there was no political support from civil society.

Even while alternative sexuality groups were undergoing birthing pangs, their rights to sexual citizenship still mere cries in the political wilderness, the sexuality landscape of the country had begun to change under the impact of an unexpected source — the globalization of markets and lifestyles. India has been witnessing an unprecedented increase in employment opportunities and disposable income (and with it, economic autonomy) among educated youth due to the rapid pace of urbanization, with its attendant loosening of social controls, opportunities for exposure to multiple cultural influences, revolutionary changes in communications technologies, and a burgeoning domestic market for global material and cultural consumption. One feature of the country's new global capitalist culture is a growing tendency to commodify sexuality. Print and electronic mass media, films and theatre, fashion, advertising, and the Internet bristle with globalized images of heterosexual desire with a price tag. Couched as a public discourse on personal freedom and the right to sexual pleasure, these media messages entitle the country's youth to this pleasure, and nurture the emergence of a new, young adult sexual culture.[19] (Young people constitute more than a quarter of the country's population, are increasingly mobile in the search for material opportunities, and tend to delay the age at marriage.)

Repressive reactions from patriarchal forces have not been slow in coming. The new market-led openings are setting off a crescendo of anxieties among a wide spectrum of political and civil society groups. These groups talk about preserving the "purity" of Indian culture and/or specific regional culture(s), as reflected in the virtue of women, and seek to reinforce orthodox moral codes relating to women's sexuality. The general concern of the entire spectrum is to control the sexuality of mainstream, unmarried heterosexual youth in the face of

[19] Articles running into several pages and agony columns, all devoted to sexual issues (describing pleasures and techniques of lovemaking and discussing sexual aspects of marital and non-marital relationships) have become a regular feature of the metropolitan English press. Extramarital affairs and live-in relationships have become a staple of T.V. soaps and Bollywood cinema, directed primarily at urban audiences.

unprecedented change.[20] Actions include: discouraging "Western" symbols like Valentine's Day; laying down strictures, like dress codes for college students that are disproportionately directed at young women; harassment of young couples in public parks; and public interest litigations demanding censorship of television program content.[21] The most vocal and often violent protests have come from religious fundamentalists of all hues – notably right-wing Hindu fundamentalist political parties and their allies – whose actions are often in concert with instruments of the state, such as the police, and with lumpen elements.

Nevertheless, these social controls are quite unlike the plethora of criminal laws or the cries that "the Indian nation is at stake" when AIDS activists call for public debate on serious issues.[22] It is important to note that the market-driven sexuality of the increasingly affluent urban middle classes runs parallel to the AIDS crisis and the multiple discourses on sexuality that it has generated. It reinforces heteronormativity and has little in common with the aspirations for citizenship, freedom and pleasure of those from the margins who question the prevailing constrictive constructions of patriarchal gender relations. In so doing, its trajectory actually runs counter to the larger and vital political import of the social justice issues raised by the nascent sexual rights movement.

It must be conceded, however, that the globalization of lifestyles opened possibilities, at least in the large metropolises, for persons who were simply part of gay groups seeking a space for social interaction. Whereas railway stations and parks had been the main areas for sexual activity — even for relatively well-off, English-speaking, middle-class gay men in big cities like Mumbai — now smart city clubs and discotheques, spotting an excellent business op-

[20] In December 2004, a male high-school student filmed an oral sex session with a female student using a camera phone. This informally circulated clip using multimedia-messaging service found its way into an Internet auction site ("Delhi schoolboy held in phone sleaze case", *The Hindu*, December 20, 2004).
[21] Two cases made national headlines in 2005. In the state of Tamil Nadu in south India, Khushboo, a film actress who made an innocuous statement on young women's sexual rights, became the target of a spectrum of political parties, the media, and the public, who attacked her for "insulting the virtue of Tamil women" and "promoting" premarital sex. Twenty cases of defamation were filed against her, and there were calls for her exile from the state and for a public apology to Tamil women ("Caught in an urban witch-hunt?" *Times of India*, New Delhi, December 7, 2005). And in Meerut city near Delhi, young lovers in a park were mercilessly assaulted in full view of T.V. cameras, taken to the police station and warned not to return (Debate on moral policing rages on, *Times of India*, New Delhi, December 26, 2005).
[22] In 2000, Sahyog, an NGO working in Almora district of Uttar Pradesh, published a pamphlet, "AIDS and Us," which described local sexual practices in sexually explicit language. In a region and language unused to discourses on sexuality, this was like a spark to a tinderbox. The findings in the report were seen as unsubstantiated and derogatory to the local culture and the organizers were labeled "outsiders" bent on fielding subversive ideas. Leading members of the organization were arrested for 40 days under obscenity statutes and the 1986 National Security Act (Human Rights Watch, 2002).

portunity, were becoming available for partying, discussion, viewing films, and other recreational activities. Electronic mailing lists opened up communication within groups like Gay Bombay. Gay magazines such as the Mumbai-based *Bombay Dost* – begun in 1990 as India's first English language gay and lesbian magazine, with both gays and lesbians on its Board – offered a platform for sharing ideas.[23] A 1993 festival of films with gay and lesbian themes became an annual event. Members of this relatively affluent group are usually married and in the closet but their activities have fostered a certain level of comfort regarding gay sexuality in large urban centers and greater openness from the mainstream English-language press. However, social interactions within groups like Gay Bombay don't extend to economically disadvantaged gay men, *hijras*, and kothis who don't speak English. For them, public spaces such as parks – with the lurking danger of police brutality – are still the only recourse.[24]

A dramatic change occurred in December 1999 that introduced a new and contentious political visibility into sexuality issues. *Fire*, the first-ever Hindi film about a lesbian relationship, was released in cinema houses in metropolitan cities. Set in India and made by Deepa Mehta, a woman of Indian origin based in Canada, *Fire's* central characters are two middle-class women. The film, which had been passed by India's National Film Censor Board, was well received by the public and theatres were even offering women-only shows. But within a few days of the film's release the *Shiv Sena*, a right-wing Hindu fundamentalist party, and its political allies, set off a chain of riots and protests that included the vandalizing of cinemas in Mumbai and Delhi and demands that the film be banned. The protests were led by the women's wing of *Shiv Sena*. The protesters questioned the right of a foreign-resident filmmaker to violate the norms of "Indian culture" – that is, importing alien ideas about women and their sexual desires into a culture that looked upon women as chaste, self-abnegating wives and devoted mothers, and worshipped them as goddesses. They denounced the film on grounds of obscenity insisting that the Hindu community had been hurt by the portrayal of "immoral"

[23] In 1991 *Pravartak*, a Bengali-language gay magazine, made its debut in Calcutta under the aegis of the Counsel Club, but to sustain itself after its debut was not as easy as it was for the English language *Bombay Dost*. It languished for a couple of years then resumed publication as *Naya Pravartak* (Fernandez, 2002, pp. 195-209).

[24] The forces of globalization have, admittedly, opened up a few fringe spaces for public representations by sexually marginalized and criminalized individuals and groups. But these remain minimal. Examples include cultural shows at academic and allied events such as the Rainbow Coalition at the World Social Forum (Mumbai, January 2004); the annual Festival of Pleasure organized by sex-worker coalitions, which also showcase cultural products on the theme of alternative sexualities; and the recent runaway market success of the autobiographical novel by Nalini Jameela, a sex worker in Kerala.

behavior "demeaning" of women, and the use of the name of a goddess symbolizing chastity for one of the two lesbian protagonists (CALERI, 1999, pp. 11-14).

The ensuing debate over women's sexuality took on national proportions, engaging the national and regional media and both houses of parliament. The government-appointed National Commission for Women condemned the violence. Some liberal political parties and groups would only go so far as to declare that they were not against the film. Large sections of the metropolitan intelligentsia and the film community ranged themselves against the conservative forces, predominantly on grounds of freedom of artistic expression as guaranteed by the country's constitution. Progressive groups (including women's and human rights groups, as well as lesbian groups who now found themselves suddenly exposed) volunteered for counter-protests such as picketing cinemas in Mumbai and Delhi where the film was being shown. But they too limited their demands to freedom of expression and opposition to the forces of communalism, sidelining the lesbians' primary plea for freedom of sexual choice.

Lesbian activists who were already part of women's groups mustered a coalition of 31 women-oriented civil society organizations. It was from this group that the most cogent critique was mounted: the constitutional right to freedom of artistic expression and public debate, particularly on the "hypocrisy and tyranny of the patriarchal family … women's sexuality and … the silence around alternative emotional/sexual relationships." A separate statement by lesbian groups highlighted issues of forced marriages, forced heterosexuality, women's exploitation through domestic violence, and mainstream cinema's celebration of physical and sexual violence against women (CALERI, 1999, pp. 21-23).

Very early in the struggle the lesbian groups realized that they were on their own. The film community simply wanted the film back in theatres. The filmmaker quickly distanced herself from her lesbian supporters, declaring that *Fire* was not about lesbians at all but about women's "loneliness and lack of choice" — despite the fact that she had marketed the film in the West through lesbian/gay and university networks (CALERI, 1999, pp. 26-27). For most women's groups, the *Fire* controversy was simply an issue of democratic rights; in the hierarchy of legitimate women's concerns, economic and social rights stood high, and sexual-

ity tended to be seen as a lower-order issue, a matter of "personal choice." Some solidarity came from gay individuals and MSM support groups/help-lines/social-action organizations that were now active in urban centers. But they were unable to empathize entirely with the lesbians; the fledgling gay men's liberation movement lacked a gender perspective, so what analysis it did conduct remained firmly patriarchal. The film itself was sent back to the Censor Board and soon returned to the cinema halls after a few minor cuts. Future screenings took place uneventfully.

Fire marked a political watershed of sorts. It was the first significant moral panic by right-wing political forces that targeted alternative sexualities. It was the turning point for the emergence of lesbians as a political group with its own manifesto, though they remained committed to participation in forums like the annual National Conference on Women's Movements, and to using sexuality issues to push the women's movement to expand its critiques of patriarchy.[25] Eventually, the experience of confronting the diverse political constructions of sexual citizenships moved the lesbians in the direction of making common cause with other alternative sexualities groups, and working towards a consensus on opposition to Section 377.

The struggle for sexual rights: Strategic convergence phase

There was one more flashpoint that was decisive in changing the state of fragmentation on the Naz petition within the alternative sexualities spectrum, and that acted as a tool for mobilizing consensus. It came in July 2001, just a few months before the Naz petition was filed in the Delhi High Court, in the form of state repression of gay activist organizations in Lucknow, the capital city of Uttar Pradesh, one of the largest states in the country and a culturally conservative region in terms of the status of women.

Four activists from two organizations working on HIV/AIDS prevention in Lucknow, Bharosa Trust and Naz Foundation International, were arrested and imprisoned for 47 days following

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[25] There is evidence that women around the country are attempting to defy the weight of patriarchy by entering into relationships with other women, only to be crushed by family repression or public humiliation and even suicide. Interestingly, most press reports about such relationships have, to date, come from small towns and involve lower middle-class women (Fernandez, 2002, pp. 111-116; Rege, 2002, pp. 143-46; Stree, 2002, pp. 147-50).

a police raid on their offices. They were accused of running a gay "sex racket" and the educational materials seized from their offices were declared legally "obscene." They were charged under several sections of the Indian Penal Code: 377 (unnatural offences); 120B (criminal conspiracy to commit a serious offence); 107 and 109 (aiding and abetting a crime); 292 (sale of obscene materials); and the Indecent Representation of Women Act of 1986 (Bandhopadhyay, 2002). Although both organizations were accredited NGOs, recognized by the Uttar Pradesh State AIDS Control Society (UPSACS) and working within NACO guidelines, the judicial magistrate declared they were "polluting the entire society by encouraging young persons and abating [sic] them to committing the offence of sodomy." The prosecution pronounced that by abetting homosexuality, the accused were going "against Indian culture," a remark that was repeated by the senior superintendent of police in Lucknow (Human Rights Watch, 2002; Narrain, 2004).

The arrests sparked protests across the country by alternative sexualities groups. In the months that followed, it became clear that the work of Bharosa Trust and Naz Foundation had been severely compromised; indeed the Bharosa Trust never recovered from the assault. The sense of foreboding among sexuality activist groups was palpable. It was a group of lawyers that played the most constructive role in the incident; members of the Lawyers Collective, so severely criticized by the sexual minority groups over the Naz petition, represented the accused and eventually got them released. The fact that Naz's involvement had been immediate and direct through open, active support and advocacy now generated a minimal willingness among the groups to come together to support its legal petition.

The incident highlighted the vulnerability of people in centers of social and political conservatism outside the big metropolises.[26] It also provided further evidence that major infringements on civil rights followed close on the heels of new visibility, in this case AIDS interventionists with declared group identities, office premises, and funding, all enviable symbols of material progress in a status-ridden society. The police, accustomed to viewing people of alternative sexualities as criminals, were unable to come to terms with this new social legitimacy, which, in their eyes, had no legal sanction, and they looked for opportunities to provoke individuals and groups. The incident also confirmed that the government's

[26] See note 21 above.

AIDS policy leadership – whether at national or state levels – was in silent collusion with the police and the law; UPSACS had not responded to calls for help, and NACO had responded all too feebly and ineffectively.

In terms of the media, the Lucknow case marked a watershed in coverage of sexuality issues. Even in big metropolises, such as Delhi, media attention was mostly prurient and derogatory, prompting even greater police surveillance of cruising areas. Following every media expose, levels of extortion and blackmail of gay men, *kothis* and *hijras*, on pain of arrest under Section 377, rose dramatically, as observed by a gay rights lawyer from the Lawyers Collective who worked on the Lucknow case:

> *"Policemen take advantage of this fear of the judicial process to threaten sexual minorities with Section 377. They employ such threats to blackmail, extort, rape and physically abuse their victims. And because obtaining rapid redress is a virtual impossibility, members of sexual minorities usually pay up or accede to the abuse. This also means that the police records never reflect the fact that the threat of 377 was used, for no case is ever registered. The lack of a paper trail – of records of the prosecution of consensual sexual acts between adult males – is in turn used by the police to claim that Section 377 is a benign provision chiefly enforced, as they falsely claim, to deal with cases of male rape … Today the issue of Section 377 … is a question of corruption, simply because it is one of the lucrative and easy sources of supplemental income for a venal police. Their real objection to its repeal is the fear of losing this easy money,"* (testimony of Aditya Bandhopadhyay, Human Rights Watch, 2002, p. 26).

In the ensuing period *hijras* and *kothis* were subjected to increased brutalization. In 2002 Sangama, a two-year-old NGO working for the rights of *hijras* and *kothis*, faced police repression in its office in Bangalore. Claiming to act on complaints of other residents in the neighborhood who were objecting to the presence of *hijras* and *kothis* accessing Sangama's drop-in center and other resources, the police prohibited these groups from coming to the office, and ordered that their meetings be held outside the city limits (Human Rights Watch, 2002). The fact that this level of discrimination occurred in metropolitan Bangalore – a global information technology hub and cultural icon of India's rapid economic growth – highlights the

coexistence of multiple dualisms; not only a hiatus between metropolitan cities and smaller towns/more conservative areas of the country, but also within metropolitan cities between the cultures of metropolitan enclaves and the rest.

Intensified police repression of sexually marginalized groups was becoming evident across the country. In 2002, VAMP, a sex workers collective in Nipani, Maharashtra, had bought a piece of land and built an office where it held its meetings and conducted its condom-distribution activities under the National AIDS Control Program. Local elites, abetted by the police, ordered the collective to desist from using these premises on the grounds that it was an affront to the "decent" people who lived in the area. The women were ordered to conduct their meetings outside the town, and to refrain from "provoking" the townspeople with their new-found identity and legitimacy as AIDS workers. When the women refused, their premises were attacked and they themselves were threatened with violence, including rape (Human Rights Watch, 2002; Seshu, 2005). In 2004 a subsequent attack on VAMP and its parent organization SANGRAM, under the guise of implementing the "prostitution pledge" (in which NGOs applying for U.S. government AIDS-control funds must promise not to support prostitution) was sanctioned by PEPFAR, the U.S. government's program for foreign assistance against HIV/AIDS, illustrating how externally imposed neocolonial "laws" could be used to echo the hangover of colonial forms of repression in the name of cultural/political "security."

The parallels between the women sex workers of Nipani and the *hijras* and *kothis* of Karnataka, also sex workers, are striking. Both groups are seen as defying the invisibility imposed on them by the institutions of patriarchy, marriage, family and the law, and by lower-class status. In the case of *hijras* and *kothis*, gender non-conformity puts them at additional risk of entrapment by the police in public spaces, and abuse and rape in police stations and jails. While sex workers are criminalized under the Immoral Trafficking Prevention Act (1986), *hijras* and *kothis* are triply criminalized; they can be arrested without warrants under the Immoral Trafficking Prevention Act (1986), Section 377, and the still-surviving vestiges of the colonial Criminal Tribes Act (1871). The sexual violence faced by *hijras* and *kothis* at the hands of police and civilians alike – so effectively documented by Karnataka People's Union for Civil Liberties (PUCL-K, 2003) – illustrates what makes them the most exploited group within the LGBT spectrum.

In September 2003, the government of India filed its affidavit in response to the Naz petition. In stating its position rejecting the plea for the repeal of 377, the government as one of the respondents in the petition argued that, "The purpose of Section 377 is to provide a healthy environment in society by criminalizing unnatural sexual activities … By and large Indian society disapproves of homosexuality … This disapproval is strong enough to justify it being treated as a criminal offence." Most of the judges involved were of the opinion that the matter required detailed consideration and accordingly issued a Rule – a step that courts take when they consider a matter serious enough to be decided in a full hearing. They also issued notice to the Attorney General of India since the constitutional validity of a law was being challenged. However when the petition came up before the Division Bench, headed by the then chief justice, it was dismissed on a minor technicality; that the petition could not be maintained since Naz was not personally aggrieved in that no case under Section 377 had been filed against the group (Grover, 2005).

Legally, Naz now had two options before it, to file a review or to file an appeal in the Supreme Court. The alternative sexualities groups, hitherto on the fringes of the Naz/Lawyers Collective efforts around the petition and maintaining a critical stance even while grudgingly agreeing to a consensus, were alarmed by the government's response and what they saw as the prospect of the law remaining effective in perpetuity. They now approached the Lawyers Collective with a request to be educated on the meaning of the government's position and the options ahead. What resulted was a national meeting, in September 2003, of a spectrum of NGOs representing alternative sexualities (including the lesbian groups referred to earlier), intravenous drug users, sex workers and child rights advocates. The meeting, led by the Lawyers Collective, discussed the Naz petition and resolved to bury differences and form a coalition called Voices Against 377 to carry the campaign forward. The consensus was that a review petition be filed, and that public awareness activities be conducted around the country on the issue of Section 377 to mobilize social support for the petition and to culminate in a million signatures voicing protest.

During this period, another crisis occurred that cast a pall but also pushed Voices Against 377 into taking its case to the Supreme Court of India. On August 14, 2004, Pushkin Chandra, an affluent gay man, resident of New Delhi and employee of USAID, was brutally

murdered in his home along with a friend who was with him at the time. The criminal investigations, widely covered in the national media, revealed his homosexual background, and highlighted his habit of picking up young men, generally poor and unknown to him, for sex. The media's prurient coverage of the homosexual aspects of the case, evoking the "dark underbelly" of Delhi and the "economic and sexual exploitation" of poor young men by the gay community, were accorded an inordinate amount of column inches. Articles deplored the "new gay evangelism," the "growing climate of moral laxity," "gay criminality," and "assault on family values," as well as the "fear" of "ordinary, decent people about speaking out against the perversions in the gay community lest it be construed as intolerance" (Dasgupta, 2004).

Articles in alternative forums pointed out the bias of the mainstream press in equating gay issues with criminality, especially when compared to its silence on the high incidence of rape and rampant trafficking in girl children in the country (Dutta, 2004). The state's position on homosexuality was described as a case of double standards since it did not question the legality of heterosexuality in the face of rape of women and girl children by men (Gopalan, 2005), a criticism that could well have been applied to the civil society response to Pushkin Chandra's murder. The very public debate, however, was evidence that the visibility of people of alternative sexualities, and their determination to carve out their own niche, was coming of age, at least in the metropolitan cities and among the better off, English-speaking classes.

On October 15, 2004, the Lawyers Collective and Naz, with the weight of the alternative sexualities community behind them, filed the review petition. It cited 14 reasons that justified Naz's legal intervention on behalf of a section of the population, whose criminalization made it dangerous for them to access the courts. The review petition was dismissed by the Delhi High Court just 19 days later. The question now was whether Naz should pursue an appeal in the Delhi High Court or, alternatively, file a petition in the High Court of another state of the country. Another round of consultations within the coalition elicited a range of different opinions. There was concern about going before the Supreme Court because once it decided the case there could be no further appeal. After a third round of consultations, despite many lingering differences, the coalition was able to take an informed and collective decision to file an appeal to the Supreme Court on a single issue; whether the Delhi High

Court was correct in finding that Naz Foundation India did not have the locus standi to file and maintain a public interest litigation, and thereby dismissing the petition (Lawyers Collective, 2004, 2005).

Between December 2003 when the Voices Coalition was formed and January 2005 when the final consensus was reached, the Lawyers Collective continued to take the lead in consolidating the opposition to Section 377, organizing meetings in Delhi, Mumbai, Calcutta and Bangalore in association with local groups. Soon there were some 70 groups across the country — predictably concentrated in the metropolitan cities of Mumbai (11), New Delhi (10), Bangalore (11) and Calcutta (8) – discussing the petition and building consensus on the next steps (Sangini, 2005).

In January 2005 the Voices Coalition stepped up its public outreach efforts, staging peaceful demonstrations and holding press conferences in major cities to keep alive the opposition to 377, and collecting signatures in support of the petition as proof that civil society in the broadest sense, with Naz as the tip of the iceberg, had the *locus standi* to protest against a socially unjust law. The evolving consensus among the alternative sexualities groups had come to rest on a composite construction of sexual citizenship: "We state that our struggle against control of sexuality is a matter of social justice and linked to our struggle for women's rights, our fight against fundamentalism, and our vision of a just world where people have the freedom to be different and yet be treated as equals" (Gay Bombay, 2005).

The Million Voices Campaign, as the petition drive was called, is the apex of a broader set of decentralized actions, with each group negotiating challenges at the local level and working, to the extent possible, with police, media, politicians, academia, bureaucrats, and medical institutions and professionals. Individual streams in the coalition are seeking to grow according to their own imperatives and to build their own coalitions with allies (such as lesbians who are out) for whom public sanction of their sexuality is critical, and transgender groups, which are examining their commonalities with sex workers.

On September 26, 2005, the Ministry of Home Affairs submitted its response to the Naz petition. The state's position remained unchanged. The Ministry held that the Naz petition

was merely "academic" in nature and did not call for any "substantial question of law of public importance;" that there was no evidence HIV-prevention work was being hampered due to Section 377; that "public opinion and the current societal context in India does not favor the deletion of the said offence from the statute book;" that "the right to privacy cannot be extended to defeat public morality;" and that it was for the legislature to decide whether homosexuality should remain an offence (Lawyers Collective, 2005).

Nevertheless, the years of advocacy had begun to yield some returns, made easier, perhaps, after the 2004 general elections when the government changed from a right-wing coalition to a centrist/left-of-center coalition. In October 2005, the federal government's Planning Commission appointed a task force to re-examine the laws criminalizing homosexuality and sex work in the light of the spreading HIV/AIDS epidemic. An HIV/AIDS Bill (2005) now before the parliament addresses the civil rights of persons of alternative sexualities among other significant rights relating to HIV-positive people. A government-appointed group is already deliberating on the recommendations of the 172nd Law Commission. On World AIDS Day in December 2005, the Prime Minister appealed to the country for a freer social climate for public discussion of sexuality related issues in the interests of the safety of youth who are falling prey to HIV/AIDS. It was the first significant position on HIV/AIDS taken by an Indian prime minister and, certainly, the most liberal public statement on sexuality by a political leader. Most recently, in October 2006, NACO, under new leadership and in a major position shift, filed its response to the Naz petition – its first publicly stated position on the matter – in which it supported the decriminalizing of alternative sexualities. The other responses are awaited.

In the midst of these hopeful initiatives, again in Lucknow, on January 3, 2006, police entrapped four closeted and married homosexual men in their homes and in restaurants, apparently as an outcome of monitoring gay website chat rooms. Falsely charged under Section 377 on grounds of having been caught having sex in a public park, the men were effectively tried by the media and publicly stripped of all dignity, in violation of all journalistic ethics. Thirteen others were publicly named and their personal and professional profiles broadcast.[27] Around the same time, two young women in Meerut, a town in the vicinity of Delhi, de-

[27] Preliminary report of the fact-finding team on the arrest of four men in Lucknow under the IPC (January 2006).

clared themselves married to each other in a local temple. They were separated and thrashed by their respective families, resulting in one of them attempting suicide.

As the time nears for the Supreme Court judgment, the Voices Coalition has made its final thrust in building public opinion in favor of the petition. In September 2006, English language metropolitan newspapers published an open letter on their front pages titled, Same Sex Love in India: Open Letter Against Section 377. The letter was addressed to the Government of India, members of the judiciary, and all citizens of India, and signed by several prominent Indian citizens, metropolitan and overseas-based professionals from the arts, media and academia headed by Amartya Sen, the Nobel laureate, and Vikram Seth, the internationally acclaimed author. Sen also issued another statement explaining the reasons for his support (AIDS-INDIA, 2006). The letter and the issues that it raised received wide media coverage.

Conclusion: Strategic dilemmas and the way forward

The politics of Section 377 of the Indian Penal Code, with its multiple actors, positions and contradictions, affords a glimpse of the layered and discontinuous nature of the politics of sexuality in India. The foregoing analysis has examined the process of bringing disparate alternative sexualities groups across the country into a national-level community.[28] The various actions taken by these groups in response to repression, in concert with civil society organizations engaged in HIV/AIDS prevention and legal aid, proved instrumental in diminishing conflict around the comparative efficacy of available mechanisms. Their objective was to mount a social movement for countering state instruments of control. For most groups in the Voices Against 377 movement, the significance of the decision to support the Naz petition all the way to the highest court in the land is in its usefulness as a mobilizing tool. Opposition to a law that was itself acting as an instrument of illegality brought them together as no other single principle could, and the legal reform campaign, while serving to develop a common ideology and strategy, relied on this organized movement for strength and legitimacy as it engaged with the state.

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[28] For other local examples of alliance building for sexual rights, see also in this publication: Vianna, A. R. B. & Carrara, S. Sexual politics and sexual rights in Brazil: a case study, pp. 41-51; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, p. 152; Iikkaracan, P. How adultery almost derailed Turkey's aspiration to join the European Union, pp. 266-270. For global-level alliance building, see: Girard, F. Negotiating sexual rights and sexual orientation at the UN.

The movement offers significant lessons on the strategic dilemmas that social activists face when determining how to act instrumentally and effectively; in this case, taking advantage of the spaces created by members of the middle class and the public health discourse prompted by the AIDS epidemic, even as they run the risk of becoming distracted by these discourses.

The inevitable tension between calibrating arguments according to the narrow assumptions of the law and the ideal trajectory of the movement toward broadening rights is one source of ambivalence activist groups experienced in using legal mechanisms. At the broadest level, working through the legal system may result in laws becoming further entrenched, and a change in the law does not necessarily translate into social change. At a more practical level, many activist groups lack the knowledge and literacy necessary to participate in complex legal processes, particularly those who are economically and socially disadvantaged. Paradoxically, criminalization makes it dangerous for affected groups to access the courts on their own behalf, but working through intermediaries may bring with it a sense of opacity and alienation. One of the fallouts in the struggle against Section 377 is that the campaign leadership has remained in the hands of metropolitan-based, educated activists, and the movement itself is still limited to functioning in the relatively more liberal, English-speaking environment of the metropolises.

The "legalization" of the struggle for LGBT rights also throws into sharp relief other problematic implications of class, such as the exclusion of the majority of transgendered persons, *hijras*, and *kothis*, who, on account of their poverty, engage in sex in public spaces. Backed neither by legal reform nor by benefits arising from the globalizing economy, the continuing plight of these groups – further accentuated by their non-normative gender behavior – highlights the perpetuation of the pre-existing dualisms of private and public, metropolitan and non-metropolitan, upwardly mobile and poor, and gendered and transgendered, with little end in sight. Although they are strategic constituents of the current legal reform movement, these grassroots groups are seeking to build their own independent bridges with other potential and real allies for long-term change in social attitudes towards their demand for citizenship rights. These groups, which feel the greatest urgency to publicly advocate their cause, also seek cultural legitimacy by their claim to a historically sanctioned place in pre-colonial,

quintessentially "Indian" regimes of sexuality that celebrated diversity. This claim, already infused with new life from recent and ongoing scholarly work, exposes the instability of essentialist assumptions about the meaning of the past, and how that past justifies the present. But it also runs the risk of a backlash (the reassertion of hyper-masculinity) from dominant fundamentalist political groups, and by accentuating an Indian/non-Indian dualism might further distance these vulnerable groups from the modernist vision of their more affluent and educated metropolitan allies in the alternative sexualities spectrum.

The public health formulation of "men who have sex with men" has its own contradictions. The acceptance of the sanitized identity of MSM may have gained for the movement a shift to the center from the margins. But it highlights the problematic role of gender, self-identities, and multiple sexualities in influencing political balances within the incipient LGBT community, the relative legitimacy of different groups in relation to the state, and the movement forward of a broad-based rights agenda. Here again, it is the gender-ambivalent transgendered persons, *hijras*, and *kothis* who are at a distinct disadvantage. The MSM approach also carries with it the potential loss of some aspects of women's sexual rights, most notably lesbian rights. By virtue of the fact that the MSM concept does not engage with the patriarchal organization of gender, which is at the root of the current crises around sexuality, it precludes LGBT alliances with other significant social movements such as feminist groups, whose own emancipation is contingent on overturning this same gender organization.

One of the strengths of the consensus that built up around the Naz petition was that it did not allow the strategic use of the MSM concept to get in the way of collective mobilization for the limited objective of legal reform. The recently changed stance of NACO, the deliberations of the 172nd Planning Commission, the open letter of social support signed by metropolitan citizens, and the progress of globalization with its concomitant opening up of spaces for freer sexual expression (albeit commodified and confined to metropolitan cities) may, together, make for a supportive external environment for the final push for the reading down of Section 377. But the reassertion of normative sexuality and stigma is always a possibility as are changes in the external environment, both national and international, such as the "routinization" of national AIDS policies, conservative shifts in international AIDS funding, the political resurgence of fundamentalist forces, or a widening chasm between

those regions of the country witnessing a faster pace of globalization and those undergoing a much slower process of social change. The only bulwark against these possibilities is the development of a theoretical and political agenda for sexual rights that includes the entire spectrum of people of alternative sexualities, that draws its strength from the debates and struggles generated by the HIV/AIDS epidemic, and that goes beyond the freedoms held out by the market. In other words, a willingness to critique patriarchy, dominant masculinity, and sexual violence, which govern both the subordination of women and repression of marginalized sexual and transgender communities, and recast sexual rights in terms that go beyond market definitions of heterosexual pleasure, to social justice for all sexualities.

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Peru

Sexual and Reproductive Rights Policies in Peru: Unveiling False Paradoxes

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Introduction[1]

Issues of sexuality and sexual and reproductive health and rights in predominantly Catholic Latin America are inevitably seen as sensitive, in spite of the relatively liberal stands adopted by the region's governments in recent global forums.[2] Such issues always carry the potential for sudden controversy and as such are used and misused by politicians. In the 1990s, an authoritarian government used a feminist discourse to establish a major surgical contraception program, which was severely criticized by women's and human rights organizations for coercion, lack of informed consent, and medical negligence in the context of numeric program goals. The program had to be stopped due to public outrage and pressure from the unusual

confluence of the Catholic Church and women's groups. Later, fundamentalist Catholics in an unstable democratic government alliance used the social concern created by these events to undermine the reproductive health program at the Ministry of Health and to censor terms such as "gender" and "sexual and reproductive rights" in key normative and programmatic public sector documents.

The study is focused on the discussions and events in relation to sexual and reproductive health, gender and sexuality in Peru between 1990 and 2004, and the roles played by the state (particularly the executive and legislative powers) and other key stakeholders (the Roman Catholic Church, international agencies, social movements such as feminist groups, lesbian/gay/bisexual/transgender (LGBT) groups, people living with HIV/AIDS (PLWHA), and professional networks). Besides analyzing the transition in the reproductive health program, the study considers two parallel developments of sexual/reproductive rights and health rights — the political processes resulting in legal changes and the adoption of a broadly supported national HIV antiretroviral program (in spite of uncertainties about management and sustainability), in the context of a revitalized social movement; and, the small but significant legal victories regarding sexual diversity rights in the Constitutional Tribunal and, to a lesser extent, in Congress, in the context of many new LGBT activist initiatives (in spite of prevailing widespread homophobia).

The main arguments of this analysis[3] are threefold:

First, when comparing Peruvian government policies in reproductive rights (including women's access to contraception and abortion), HIV/AIDS prevention and treatment, and sexual diversity regarding rights of bodily integrity or personal autonomy, we found that reproductive

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[3] In terms of a methodological approach within the multi-centered framework, this study used qualitative information and secondary sources to collect research data and analyze it from a social science and public policy perspective. A limited number of interviews were conducted with key informants in the Congressional Vigilance program at Manuela Ramos and on the Sexual and Reproductive Rights Vigilance Panel, and with the adjunct ombudsman for women, the former president of the Constitutional Committee in Congress, the president of the Society of Obstetrics and Gynecology of Peru, the health secretariat of the Peruvian Catholic Church, and local activists from DEMUS (women's rights), MHOL (LGBT rights), and PROSA (rights of PLWHA). The study also involved the analysis of secondary data sources: reports from the Congressional Vigilance Office, official legal texts, selected newspaper articles, official texts of programs at the Ministry of Health, and recent academic or policy studies, among others.

rights are always followed with far more attention and generate deep public controversies and debates. This is particularly so when the issue of abortion is raised directly or indirectly. HIV/AIDS comes in second among public concerns since it is portrayed as a potential threat to everyone and therefore deserving of concern and sympathy, in spite of the prevailing stigma resulting from fear of contagion and the presumption of dubious morals. Finally, sexual diversity rights are still perceived as a demand/problem of "others" and hence trivialized and treated with disdain. As a result, mixed progress has been more possible on HIV/AIDS due to the widespread support. In sexual diversity rights positive changes have occurred when a low political and institutional profile was maintained. In reproductive rights centrality and visibility are always present, and progress is more difficult in a context of international conservatism, when backward changes may actually occur.

Second, the policy making and program implementation in these areas reveal the weakness of the national institutional framework, which enabled two very different (even contradictory) approaches to public policy in reproductive health at the turn of the twenty-first-century, and, more importantly, the disregard of these public policies for the individual as a citizen with rights although they were framed as rights-based programs to gain political legitimacy.

Third, by suppressing or marginalizing the "sexual" in official policies related to sexuality in favor of a low-profile "public health" discourse, advocacy groups sometimes create opportunities for important legal changes. By doing this, however, they fail to confront the public agenda and to challenge conservative powers opposing the recognition of sexual and reproductive rights and the full citizenship of women and sexual minorities.

Historical and political context

Three trends of Peruvian social history must be emphasized in this paper — the conservatism of its ruling elites, the prominent role of the Roman Catholic Church both in official circles and cultural values, and the resistance to authoritarian policies. Catholicism became the nation's official religion in the 1530s when the Spaniards conquered the Incas. The con-

quest created a fragmented society divided between powerful colonizers and colonized Indians. This division would later include in its lower ranks populations of African and Asiatic origins. The Viceroyalty, created shortly after the conquest along with an array of religious orders, devoted significant resources to "civilizing" the natives, namely to the eradication of traditional beliefs and practices in the Andes (including pre-Columbus sexuality). During the first 100 years of colonization the native population declined dramatically as a result of new diseases to which natives had no immunity. However, indigenous communities resisted. An open rebellion occurred in 1780 when Túpac Amaru, an Indian leader of Cuzco, and his wife, raised an army that defied the Viceroy (shortly thereafter he was captured and executed by the Spanish authorities).[4]

The origins of conservatism can also be traced to the colonial period when religious orders were proprietors or administrators of extensive agricultural lands and urban premises. The Catholic Church maintained strict control of higher education, marriages, hospitals, and the so-called "forbidden books" through the Inquisition. For example, instead of civil registration records, baptism certificates, for which the Church charged a fee, were the main individual identity documents. Although Peru became an independent republic in 1821, the Church maintained its prominence in a fragmented society dominated by urban elites. During the republic, ceremonial functions of the state were still integrated into the rites of the Catholic Church. The twentieth-century brought the development, mainly in urban centers, of a middle class, workers' unions, and populist political parties that demanded social services and civil registration records. But conservative forces were successful in undermining social reform; for instance, although divorce was recognized it was restricted in the 1930s, and women did not get the vote until the mid-1950s.

A major feature of the twentieth-century was political instability, reflected in a cycle of weak democratic and authoritarian periods. While the Church experienced a critique from within (led by the priest Gustavo Gutierrez, author of *A Theology of Liberation*), religion continued to influence Peruvian culture.[5] For example, on abortion the Church and most Peruvian

[4] For a general history of Peru see: Contreras, C., & Cueto, M. (2000). *Historia del Perú contemporáneo: desde las luchas por la independencia hasta el presente*. Lima: Instituto de Estudios Peruanos; and Klaren, P. (2000) *Peru: Society and nationhood in the Andes*. New York: Oxford University Press.
[5] Gutiérrez, G. (1972). *Teología de la liberación: perspectivas*. Salamanca: Ediciones Sígueme.

politicians believed that it was a crime not only at an individual level but also to the nation because it was under-populated. The scare caused by "overpopulation" in the U.S. of the 1960s never became a major issue in Peru. These developments occurred as the result of significant changes in Peruvian society. The total number of inhabitants grew almost three-fold from over seven million in 1950 to about 20 million in the early 1980s, and in a wave of migration from the rural areas the population began moving from the Andes to the coast and urban areas. By the early 1980s, Lima, with about four million inhabitants, was the main city of the country. The rapid increase of popular demands clashed with an authoritarian state and the elite and elicited a new period of crisis.

Peru became a breeding ground for political strife in the late 1980s and early 1990s when the country experienced hyperinflation, recession, rampant unemployment and grave human rights violations. The deepening crisis affected health services and the access to these services by the poor. According to sociologist Juan Arroyo the public health system was "in a state of collapse" by the late 1980s.[6] This deterioration occurred under democratic regimes that were unable to control the terrorist actions of the Maoist Shining Path. Founded by university professor Abimael Guzmán, Shining Path launched an attacked against public officials and "neutral" civilians in its so-called war of liberation.[7] Another rival guerrilla group, the Túpac Amaru Revolutionary Movement, emerged in Lima and some areas of the Amazon. Civilian governments failed to elaborate a strategy to undermine these political forces and turned to the military, which applied counterinsurgency techniques indiscriminately. Some years later a Truth and Reconciliation Commission estimated that about 70,000 deaths occurred during the period 1980 to 2000, which were attributed to both the terrorists and the military.

In 1990 an unexpected turn of events was prompted by the election of a new president. Alberto Fujimori, who was of Japanese descent, won the elections running against Mario Vargas Llosa, a novelist who led a neoliberal coalition. Shortly after assuming power, Fujimori embraced neoliberal and authoritarian policies dictating an economic shock treatment based

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[6] Arroyo, J. (2000). *Salud, la reforma silenciosa: políticas sociales y de salud en el Perú de los 90*. Lima: Universidad Peruana Cayetano Heredia, Facultad de Salud Pública y Administración.

[7] Degregori, C. I. (1990). *El surgimiento de Sendero Luminoso: Ayacucho, 1969-1979*. Lima: Instituto de Estudios Peruanos.

on radical free-market rules and privatization of public companies to attract foreign inves-tors. Fujimori also launched an all-out military attack on terrorist forces. In 1992, almost in-dependently from the government, a small police intelligence unit captured Guzmán, which marked the beginning of the end for Shining Path. Fujimori seized the moment to bolster his authoritarian rule – he had dissolved Congress and the courts a few months before – and he went on to win the 1995 election and to stand for a third term in 2000, which ended with a formal, short-lived "victory."[8]

Fujimori relied heavily on his chief advisor Vladimiro Montesinos, who was later implicated in the bribing of owners of TV stations and opposition leaders, and in organizing death-squads. Juan Luis Cipriani, an Opus Dei provincial archbishop and later cardinal of the country, who dismissed any human rights considerations in the fight against terrorism, sec-onded Fujimori's autocratic policies. However, human rights groups, NGOs, and opposition political parties challenged Fujimori´s authoritarian rule and cynical arguments in seeking a third term accusing the regime of fraud, corruption, outrageous control of elections, and fuelling a growing economic crisis.[9]

Late in 2000 Fujimori resigned following a major bribery scandal involving himself and Montesinos, which implicated them in money laundering operations through bank accounts all over the world. Fujimori resigned by fax from Japan, claiming dual Japanese/Peruvian nationality to avoid extradition. A transition government, headed by the leader of Congress Valentín Paniagua, a moderate constitutional lawyer, presided over new elections that took place in April 2001.[10]

Alejandro Toledo, the head of a new centrist political party formed by diverse coalitions among which were conservative Catholic groups, won the presidential poll that year.[11] Great hopes for democratization, economic recovery, fighting corruption, and judicial independ-ence came with Toledo. However, he lacked political and health priorities, presided over

[8] Levitsky, S. (1999). Fujimori and Post-Party Politics in Peru. *Journal of Democracy*, 10:3, pp. 78-92.
[9] Crabtree, J., & Thomas, J. (Eds.) (1999). *El Perú de Fujimori: 1990-1998*. Lima: Universidad del Pacificon.
[10] Taylor, L. (2005). From Fujimori to Toledo: The 2001 elections and the vicissitudes of democratic government in Peru. *Government and Opposition*. 40: 565-600.
[11] Barr, R. R. (2003). The persistence of neopopulism in Peru? From Fujimori to Toledo. *Third World Quarterly*. 24:6: 1161-1178.

governmental mismanagement, lacked a solid political base, and made ineffectual decisions that made him unpopular after only a few years in power. Partially because of the inconsistency of his regime, Toledo maintained an alliance for a number of years with Luis Solari and Fernando Carbone, physicians allied with the ultraconservative groups Opus Dei and *Sodalitium Cristianae Vitae*. Solari was Minister of Health and, replaced by Carbone, became Prime Minister a few months later, maintaining a strong position in the government from mid-2001 to late 2003. Both men were consistent in working to impose their religious views on gender equity and sexual and reproductive health policies. Despite its weakness and blurred alliances, the Toledo administration staggered on until elections in 2006.

This brief historical context provides a basis for the events we will describe and analyze in the subsequent sections.

Developments in reproductive rights

Without doubt, sexuality and reproduction are political issues that bring together stakeholders, powers, and interests. The history of such policies and their implementation over the last 30 years shows that the policies on women's bodies, sexuality, and reproductive capacities have corresponded more to the interests of the state and other powerful entities, such as the Catholic Church and conservative groups, than to the needs and rights of women.

Main actors
The state and political elites: Political elites have approached population policies largely from two positions, pro-natalist/ultraconservative or anti-natalist. In certain cases pro-natalist population policies were launched to generate employment and increase population size as a strategy to protect national security. In other cases they reflected opposition to pressure exerted by the United States for South American countries to introduce birth-control policies. Among administrations that were pro-natalist the military regime of Velasco Alvarado, inaugurated in 1968, prohibited all state family planning services.[12] The political arena was opposed to family planning services, a position that reflected not only the government's view but also that of other political groups on both the left and the right of the political spectrum.

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[12] Clinton, R. (1983). El contexto de formación de la política de población en el Perú. En: Antecedentes de la política peruana de población, varios autores, pp. 47-74. Lima: CONAPO.

The military government of Francisco Morales Bermúdez, which came after the Alvarado regime, enacted a timid Peruvian Population Policy in 1976 that recognized "the right of individuals to determine family size."[13] In 1979 the Reproduction Regulation Service at the Ministry of Health was suspended. This measure brought protests from one of Peru's earliest feminist organizations, Action for the Freedom of Peruvian Women (ALIMUPER), which denounced it as unfair because women were refused "the right to decide on issues regarding their own bodies." ALIMUPER was also active in proposing the decriminalization of abortion at the start of the 1980s.[14]

In 1980 the government of Belaúnde Terry created the National Population Council and re-activated the Reproduction Regulation Service. In 1985 the National Population Policy Law was introduced with objectives that included the promotion of "the right of individuals and couples to make free, informed, and responsible decisions regarding the number and timing of children with the support of health education centers." In language typical of the 1974 Population Conference in Bucharest this law excluded abortion and sterilization as birth-control methods and established the obligation of the state to provide post-abortion care.[15]

The Feminist Movement: The struggle for the recognition and enforcement of women's human and reproductive rights first appeared on the public agenda during the 1970s. The feminist movement was one of the main influences in initiating the debate on the sexual and reproductive freedoms of women. Demands around such issues as the right to self-determination, sexuality, and reproduction were linked with demands for social justice and women's participation in the public debate on policies that affect their bodies and lives.

By the 1980's there were already active feminist organizations in Peru. Their agenda with regard to sexual and reproductive rights centered on the recognition of the right to self-determination with respect to women's bodies, sexuality and reproduction. While they rejected all

[13] In fact, the policies of both Morales-Bermudez and Belaúnde followed the Population Conference of Bucharest (1974). In the 1980s and 1990s Latin American family planners associated with IPPF often used Peru as an illustration of a country with liberal stances, which since the 1970s had been fighting against the Church and the pro-natalist military. This occurrence is relevant also because it shows how international agreements had political influence long before Cairo.
[14] Palomino, N. (2004). *Las organizaciones feministas y los derechos reproductivos. Informe de investigación*. Lima: UPCH.
[15] "The state adopts appropriate measures, coordinates with the Ministry of Health to help women to avoid abortion. It provides medical and psychological support to those that have suffered." Law No. 346.

methods of birth control that violate individual liberties they called for the decriminalization of abortion, sex education, and free access for men and women to contraception within the health service, including surgical sterilization. In addition, feminist organizations called for the improvement in living conditions and changes in the status of women in society,[16] like the right to participate in public policy decisions.

The Catholic Church:[17] Even before the surge of a feminist discourse on these issues the Church hierarchy and conservative Catholic leaders sought to stir up fears that modern contraception would encourage sexual promiscuity and destroy family values. Throughout the years this position has not changed; in fact this conservative stance remains alive and active in current policy debates. However, the figures collected by demographic and health surveys in Peru indicate that in the case of contraception the Church is fighting a lost cause. The use of modern contraceptive methods increased from 31 percent during the years 1991 and 1992 to 41 percent in 1996, 50 percent in 2000 and 46.7 percent in 2004. The downturn seen in 2004 can be explained by a reduction in public health service contraceptive supplies during the Solari and Carbone administration.

These contraceptive prevalence rates are quite high considering the religious and political resistance to fertility regulation and the fact that more than 80 percent of the Peruvian population is Roman Catholic. It is not surprising therefore that abortion would quickly become the main target of moral conservatism. In recent years, the hierarchy of the Catholic Church has constantly highlighted what they see as the abortive nature of certain contraceptive methods (IUDs, hormonal contraceptives) as a means of attacking contraception and preventing any initiative intended to relax abortion laws.

Debates in the early 1990s: Abortion[18]

While in Peru throughout the years abortion has triggered the most intense debates, the policy outcomes of these debates have been weak. Legally abortion is only permitted when the life of the mother is in danger. The illegality of abortion in Peru must be analyzed against the background of the country's maternal mortality rates, which are amongst the highest in

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[16] (1987, May 22). El movimiento feminista opina: Es un acto de desesperación pero. *El Peruano*.

[17] For more on the advocacy activities and positions in global and local sexuality politics and rights of the Catholic Church, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN, and, Nowicka, W., The struggle for abortion rights in Poland.

[18] See also in this publication: Nowicka, W., The struggle for abortion rights in Poland.

Latin America. The prohibition of abortion does not prevent growing numbers of women from resorting to the procedures, as demonstrated by the measurements conducted by Ferrando and Singh and Wulf in the late 1980s.[19] In 1994, the national estimate of the number of clandestine abortions was of 271,000 and for the year 2000 it was 350,000.[20] While these figures seem to suggest an increase, comparisons are difficult because conditions for estimates over time have changed, as has the number of women in the reproductive age group. However, the fact that figures remain high in spite of illegality indicates that women continue to resort to abortion.

During the early 1990s advocacy for the decriminalization of abortion in cases of rape was initiated in the context of consultations leading to the reform of the 1924 Criminal Code. The reform bill proposed decriminalizing abortion not only when the mother's health or life was in immediate danger,[21] but also in order to terminate pregnancy before 12 weeks if it was the result of rape and if the mother consented. The conservative sectors and the Church struggled hard to prevent its introduction. The Archbishop of Lima fiercely attacked any congresspersons who dared to defend or approve the bill.

In defense of the initiative feminist organizations[22] emphasized what they saw as the discriminatory nature of illegal abortion for women in poverty. They also formulated an ethical approach on true freedom from a human rights standpoint and called into question the meaning of motherhood imposed by violence.[23] Representatives of these organizations demanded observance of the constitutional principle that separates the Church and the state, and spoke of the need for a secular state where policy responded to the needs of individuals and not religious beliefs.[24]

[19] Singh, S. & Wulf, D. (1991). Calculation of levels of abortion in Brazil, Colombia and Peru based on hospital records and fertility surveys. In: *Perspectivas Internacionales en Planificación Familiar*, Número especial, pp. 14-19. New York, U.S.A.

[20] Alan Gutmacher Institute. (1994). *Aborto clandestino: una realidad latinoamericana*. New York: Alan Gutmacher Institute; Ferrando, D. (2002). El aborto clandestino en el Perú, hechos y cifras. Lima: Flora Tristán, Pathfinder. The number of abortions per 100 live births rose from 42 percent to 54 percent, but the annual rate per 100 women at fertile age remained constant at 5.2 percent (Ferrando, 2002:26).

[21] The Criminal Code of 1924 recognized abortion as legal only to preserve the health or life of the pregnant woman. The previous code included the diluted concept of abortion, *honoris causa*, to protect the honor of the woman (Rosas, 1997:106).

[22] Such organizations included *Centro de la Mujer Peruana Flora Tristán, Movimiento Manuela Ramos*, DEMUS (*Colectivo de Derechos Reproductivos*), CLADEM (Latin American Committee for the Defense of Women's Rights), among others.

[23] CLADEM. (1990, July 15). Aborto y violación: el acuerdo es possible. *El Comercio*; (1990, July 15). En extenso comunicado grupos feministas se pronuncian sobre legalidad del aborto por violación. *Página Libre*.

[24] (1990, July 23). Momento de decisión. Fondo, trastorno y aristas del aborto en el Perú, un problema embarazoso que se debe discutir con realismo ¿y las violadas? *Caretas*.

The Peruvian College of Physicians and leading intellectuals and artists came out in support of the decriminalization of abortion, and after more than a year of public debate, public opinion was also mainly in favor. However, the final outcome of the debate would be a big disappointment among women committed to this cause. Political pressure from the Church and the more conservative leaders of professional associations such as the Lima College of Lawyers, in opposition to the Peruvian College of Physicians, succeeded in preventing the approval of the decriminalization of abortion in cases of rape in 1991. The three-month penalty for having an abortion continued to act as a symbolic sanction obliging women to endure pregnancies resulting from rape or non-consented insemination.[25]

One of the biggest setbacks for those in favor of the decriminalization of abortion was the approach taken by the 1993 Constitution. Some time before, conservative forces had proposed a constitutional reform to classify unborn children as individuals and treat abortion as homicide. This proposal was rejected and instead the recognition of the "unborn child"[26] was introduced into the 1993 Constitution, which stated that unborn children shall be "entitled to all the rights that may benefit them." The introduction of legal status for the unborn child in the constitution placed at risk any legal initiative for relaxing the laws regarding induced abortion.

Debates in the late 1990s: The surgical contraception program[27]

Official discourses of the mid-1990s supported women's right to contraceptives since, according to Fujimori, poor women should also be able to access services to regulate their fertility. For the first time public hospitals in Peru offered free contraceptive services (previously, women could access these services only if they had a serious health risk). Moreover, in 1997 a law recognized domestic violence as a crime, usually directed against married women, and a year later a law secured the right of pregnant teenagers to finish their secondary

[25] Palomino, N. (2004). *Las organizaciones feministas y los derechos reproductivos. Informe de investigación.* Lima: UPCH

[26] Everyone has the right to life, to identity, to have their physical, psychological and moral integrity respected, to freedom to develop, and to well being. The unborn child is entitled to all rights that may benefit them (Article 2, Amendment 1, 1993 Constitution). The Constitution of 1979 established that "those about to be born are considered to be born in all aspects that favor them."

[27] See also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, p. 319; Ramasubban, R., Culture, politics, and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 104-105; Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 31-33; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

schooling. Many of these initiatives were eagerly supported by the United States Agency for International Development (USAID), United Nations Population Fund (UNFPA) and the U.K. Department for International Development (DFID), which provided generous funds for population programs and to strengthen the AIDS program and post-abortion care in Peru.

However between 1996 and 1997 the Fujimori regime, obsessed with reducing poverty rapidly by any means available, abandoned its population policies and programs on reproductive health in favor of a coercive and focused anti-choice intervention that enticed poor women into irreversible surgical procedures. The decision was partly prompted by the fact that there had been no major reduction of acute poverty or unemployment in the country, despite the close implementation of World Bank directives for structural adjustment, privatization of public companies, and market-oriented policies.[28] The government secretly determined numerical targets for its contraceptive services and bribed or posed undue pressure on women of poor rural areas and shantytowns. These were usually indigenous women with little or no schooling who had to accept sterilization from a regime that was hoping these drastic measures would contribute to its goal of poverty reduction.

During the second half of the 1990s, the reduction of the fertility rate among poor rural women, which was then about six children (see Table 1), became the main goal of Fujimori's population policy. The actual reduction of this rate in the past 15 years, however, most likely resulted from a variety of socio-demographic and cultural factors, in addition to the effects of public health policies.

While Fujimori had formed a coalition with conservative groups to gain control of Congress during his first administration (1990-1995), and consequently had made compromises on reproductive health issues, the 1995 elections gave him a comfortable majority. The change in tone in his relationship with the Church and its traditional issues became clear in his inauguration speech when he announced the legalization of surgical contraception and "women's full access to contraception" and referred to the Church hierarchy as "sacred cows who are

[28] For a more detailed analysis and overview of these global neoliberal policies, see also in this publication: de Camargo, K., & Mattos, R., Looking for sex in all the wrong places: The silencing of sexuality in the World Bank's public discourse.

against progress." As Ewig has pointed out, Fujimori used the global feminist discourse on reproductive rights to "cloak" his coercive population control policy.[29]

As predicted, in late 1995 the Peruvian Congress legalized surgical sterilization of women and men as a fertility regulation method. Many progressive groups and individuals supported the decision in the hope that this was a first step of a comprehensive reproductive health program — after all Fujimori had participated in the Beijing Fourth World Conference on Women that year and signed its Platform for Action, the Ministry of Education had launched a new sexuality education program in schools and the new Ministry for the Promotion of Women and Human Development (PROMUDEH), and a new Public Ombudsman office on Women's Rights had been established, all of which appeared to fulfill feminist demands. Moreover government officials sought the participation of feminist NGOs, such as *Movimiento Manuela Ramos*, to validate the new guidelines for sexuality education in schools and train schoolteachers.

Table 1: Evolution of the Total Fertility Rate in Peru

Source / Year	Total Fertility Rate (for the 3 years prior to survey)		
	National	Urban	Rural
DHS 1986	4.1	3.1	6.3
DHS 1991-1992	3.5	2.8	6.2
DHS 1996	3.5	2.8	5.6
DHS 2000	2.8	2.2	4.3
DHS 2004	2.4	2.0	3.6

Source: INEI, Peru, Encuesta Nacional de Demografía y Salud (ENDES or DHS),1986; ENDES 1991-1992; ENDES 1996; ENDES 2000; ENDES 2004.

[29] Ewig, C. (2006). Hijacking global feminism: The Catholic Church and the family planning debacle in Peru. *Feminist Studies*, Summer; Palomino, N. (2004). *Las organizaciones feministas y los derechos reproductivos. Informe de investigación*. Lima: UPCH.

However, the Ministry of Health had not ensured sufficient staff training nor appropriate equipment renovation for the implementation of sterilization services in a short period of time. Overworked surgical personnel, usually general medical practitioners, filled the gap conducting sterilization procedures in substandard conditions, which usually resulted in medical complications. Oral contraceptives were intentionally withheld to promote permanent sterilization. Deception, food or clothing incentives, and humiliating threats against poor women of rural areas were other coercive methods used to obtain consent.

Among the victims were women with no children and post-menopausal women. There was little done in terms of checking medical histories, quality of service, informed consent, counseling, or follow-up care. In order to fulfill the obligatory targets set by a dictatorial regime and facing the loss of jobs if the rigid quotas were not achieved, many local health facilities adopted abusive measures that violated women's rights. Taking into account the low salaries of the Ministry of Health, the bonus offered to health workers who reached the targets was another stimulus. It is estimated that some 200,000 women were sterilized in the mid-1990s by the Fujimori regime's Ministry of Health.[30] The Peruvian state established numeric goals at the national level, exclusively for surgical sterilization, with quotas assigned by the establishment and by staff members. In many places, particularly in rural areas, this led to a disregard of women's informed consent and of adequate quality of care, as documented by Tamayo and reports of the Ombudsman's Office.[31]

As this restrictive policy was unacceptable to some donors, they tried to force a change behind doors.[32] As Anna-Britt Coe has demonstrated, USAID, the most important bilat-

[30] Coe. A. B. (2004, November 12). From anti-natalist to ultra-conservative: Restricting reproductive choice in Peru. *Reproductive Health Matters*, 12(24), pp. 56-69.

[31] Defensoría del Pueblo, Anticoncepción Quirúrgica Voluntaria I. Casos Investigados por la Defensoría del Pueblo, Lima, 1998. La Aplicación de la Anticoncepción Quirúrgica y los Derechos Reproductivos II. Casos Investigados por la Defensoría del Pueblo, Lima, 1999. Anticoncepción Quirúrgica Voluntaria III Casos Investigados por la Defensoría del Pueblo, Lima, 2002. CRLP, CLADEM Silencio y complicidad. Violencia contra las mujeres en los servicios públicos de salud en Perú. Lima, 1998. CLADEM Nada personal. Reporte de derechos humanos sobre la aplicación de la anticoncepción quirúrgica en el Perú 1996-1998, Lima, 1999.

[32] For more on the local influence of international donor policies, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 40; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 102, 114; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 238; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 281-283.

eral organization in this field at an official level, was willing to support only population and sexual-reproductive programs, which had little relationship with sterilization practices.[33]

With regard to the women's movement, it must be noted that during the 1990s there was a process of greater institutionalization among feminist non-governmental organizations. New vigilance and advocacy strategies were implemented as a result of a stronger influence on public policies. For example, *Reprosalud*, a five-year project later extended for five additional years and implemented by the *Movimiento Manuela Ramos* with USAID funding, was oriented to rural women from the poorest departments in Peru and sought to increase their demand for reproductive health services.[34] While *Reprosalud* obtained an unprecedented level of funding for activities implemented by feminist NGOs, it also implied some level of political dependence on controversial USAID policies by a section of the women's movement. Chief among these was the "global gag rule" reinstated by U.S President George Bush during his first days in office in January 2001, which prohibits USAID and its implementing agencies from supporting not only organizations that provided abortion services, but even those that made referrals, counseled or advocated for safe, voluntary abortions.[35] While the "gag rule" was not in place during 1996, USAID was already being influenced by the political pressure that was being exerted by U.S. Congress representatives on international affairs in the reproductive health field. When the gag rule was re-established all non-governmental organizations under a contract with USAID had to accept it. According to Mollman and Chavez, the gag rule affected the abortion debate in Peru to the extent that feminist NGOs with a clear position in favor of the decriminalization of abortion were silenced.[36]

Another important field of action for feminist NGOs was participation, in collaboration with international networks, in the major United Nations Conferences held in the 1990s: Conference on Environment and Development (Rio de Janeiro, 1992); Conference on Human

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[33] Coe, A. B. (2004, November 12). From anti-natalist to ultra-conservative: Restricting reproductive choice in Peru. *Reproductive Health Matters*, 12(24), pp. 56-69.

[34] Anderson, J. (2001). Tendiendo puentes. Calidad de atención desde la perspectiva de las mujeres rurales y de los proveedores de los servicios de salud. Lima: Movimiento Manuela Ramos.

[35] Coe, A. B. (2004, November 12). From anti-natalist to ultra-conservative: Restricting reproductive choice in Peru. *Reproductive Health Matters*, 12(24), p. 56-69; CRLP. (2003, July). The Bush global gag rule: Endangering women's health, free speech, and democracy. Item: F033, http://www.crlp.org/pub_fac_ggrbush.html

[36] Mollman, M. & Chávez, S. (2003). La regla de la mordaza y la acción política en la lucha por la despenalización del aborto. Cuaderno de debate, Centro de la Mujer Peruana Flora Tristán, Lima.

Rights (Vienna, 1993); International Conference on Population and Development (Cairo, 1994); Fourth World Conference on Women (Beijing, 1995).[37] The strong participation of Peruvian feminists in the Cairo and Beijing conferences[38] institutionalized, to a certain extent, the feminist movement's political agenda, and, paradoxically, reduced the scope of its demands to the defense of the progress already achieved. The feminist agenda was definitely not the same as that of the United Nations but many subsequent strategies of feminist organizations from the second half of the decade were related to the implementation of government commitments.[39] The process also involved the participation of a number of former feminist activists in governmental offices, multi-sectoral committees, and even cooperation agencies. This change in institutional faces combined with relative support for government positions to upgrade the reproductive health program made it difficult to adopt a critical distance from the Ministry of Health and to develop a shared critical perspective about its policies and programs. This combination of factors reduced the radical political edge of the 1980s discourse on reproductive freedom and women's control over their own bodies.

Feminist NGOs spent some time researching and compiling the evidence necessary to denounce the surgical contraception activities of the government. Though the findings in the Tamayo investigation sponsored by the Latin American Committee for the Defense of Women's Rights (CLADEM) were not immediately and fully recognized by the mainstream press, they would eventually be picked up by some newspapers and the Ombudsman's Office. The research looked at a number of issues such as the political practices and directives that led to forced sterilization, including: surgical sterilization targets; the use of incentives; practices that violated the principle of informed consent; lack of time for people to consider the decision to be sterilized; pressure on staff contracted to meet those targets; and sterilization of women simply with the approval of their partner. The research also highlighted a disregard for health rights, medical risks and sound medical practices and recovery procedures, and the use of practices contrary to user rights. Furthermore user complaints were not properly

[37] For analysis and an overview of women's participation in UN global processes, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

[38] The Centro de la Mujer Peruana Flora Tristán played a leadership role in the preparatory process leading to the Beijing Conference through Gina Vargas, who assumed the coordination of Latin American NGOs.

[39] Grupo Impulsor Nacional Mujeres por la Igualdad Real. (1997). Salud reproductiva en el Perú. In *Del Compromiso a la Acción. Después de Beijing, qué ha hecho el Estado Peruano*, pp. 83-104. Lima.

addressed. All of these arguments were set within the framework of human rights and government obligations.

In 1997, the Ombudsman on Women's Rights began its own investigation of the policy and, finally, at the end of that year the scandal hit the newspapers, which denounced forced government-sponsored sterilization in rural areas. They reported that women had been sterilized against their will or without their knowledge and that young mothers had died because of post-surgical complications.[40] At that point, conservative Catholic leaders, including some physicians, used the evidence to advance their own agenda, calling for an immediate end to all family planning services. They found an echo in U.S. anti-choice groups and their counterparts in the U.S. Congress who followed closely any possible participation of USAID in the Peruvian surgical contraception program. Some of them even claimed that USAID had unknowingly funded sterilization practices and a congressional investigation was ordered to determine the involvement of the bilateral agency in the abuses in Peru.

Catholic Church representatives managed to secure a great deal of press exposure from the surgical contraception affair strengthening their political and institutional role and cementing their position as moral guides for the country. Through the constant questioning of the shortcomings of Fujimori's family planning policies the more conservative sectors called into question all contraceptive methods and reproductive related issues. In the same way that the feminist movement and the state presented their case for contraception, so the Church put forward its opposing viewpoint. The Church stated that sex should be confined to marriage and only for the purposes of extending the family. It is also interesting to note that the Peruvian Episcopal Commission alludes to freedom of choice: "The Catholic Church considers morally unacceptable…family planning services that do not respect the freedom of married couples, or the dignity and human rights of participants."[41] However, its conception of human rights regards the couple as a legally recognized unit with specific rights and it does not recognize the power relations that exist within couples;[42] thus, the Church defends matrimony as indissoluble.

[40] Zauzich, M-C. (2000). Perú: política de población y derechos humanos: Campañas esterilización 1996-1998. Lima: Comisión Alemana Justicia y Paz.

[41] Retrieved October 9, 2005, from http://www.iglesiacatolica.org.pe/cep/docum/310805.htm.

[42] Iguiñiz, R. (2001). Enemies or allies: The feminist - religious debate over Peruvian family planning in the 1990's. Washington D.C.: LASA.

After facing national and international pressure, in March of 1998 the Peruvian Ministry of Health acknowledged the existence of problems. However, it denied the existence of an official policy of quotas for sterilization and blamed the abuses on a few local doctors and regional directors. The Ministry also pledged to reform its sterilization services and improve its family planning program. But although sterilization targets were discontinued, subtler forms of violations occurred in the next few years; for example, informed consent and counseling were weak in contraceptive services. As a result of the confusing situation created in the final years of the Fujimori regime, efforts to advance reproductive health and rights moved slowly and progressive NGOs were not clear about their own goals and priorities in this area.

In the late 1990s, with the reproductive health actors somewhat divided, many social movements started to focus on the increasingly clear mechanisms of illegal influence on political institutions to eliminate their independence and, more importantly, to secure a third term for Fujimori. Feminist leaders together with other social activists prioritized a return to democracy and new organizations emerged, including *Mujeres por la Democracia* (MUDE) and the *Movimiento Amplio de Mujeres* (MAM).[43] These new groups became increasingly active between 1999 and 2000, and participated in the Marcha de los 4 Suyos in July of 2000, protesting against Fujimori's self-proclaimed re-election. A few months later Fujimori would leave Peru for his "no-return" trip to Japan.

Debates 2001-2005: On "gender" and "reproductive rights"

After eight months of a transitional government (November 2000-July 2001), which approved a norm for the provision of emergency contraception in public health services, Alejandro Toledo assumed the presidency. Between 2001 and 2003 Toledo's government surrendered its authority over the Ministry of Health. As part of the political debts he had to pay to the diverse array of groups that supported his candidacy, he offered the Ministry to authoritarian far-right conservative Catholic groups that were very much against former anti-natalist population policies. Their power in government came because some of their leaders were part of the initial clique of Toledo's ruling party. To make matters worse, in the indecisiveness characterizing his government, as Anna Britt Coe has underlined, President

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[43] Palomino, N. (2004). *Las organizaciones feministas y los derechos reproductivos. Informe de investigación*. Lima: UPCH.

Toledo did not clarify his position with regard to contraceptive services, reproductive health and women's rights.[44]

Among the medical leaders of these far-right conservative groups were Luis Solari (Toledo's first Minister of Health and later Prime Minister) and Fernando Carbone (Minister of Health between 2002 and 2003).[45] Both left in place a number of key officials in the Ministry of Health and both worked in concert with sympathetic U.S. congressmen such as Chris Smith and Henry Hyde and U.S. anti-choice groups such as Human Life International. They were also favored by the fact that international donors were wary of supporting reproductive health activities in Peru because they were under siege in their home countries.[46] Similarly, while not a U.S. agency, UNFPA relied heavily on U.S. funding, and also became subject to pressures from conservatives in the U.S. Congress, which resulted in increasingly weak political stands. In addition, U.S. foreign policy for Peru under the Bush administration began to emphasize the "war on drugs" over all other development programs, and to de-emphasize all U.S.-sponsored public health assistance.

Solari and Carbone moved quickly to apologize for the Ministry's abuses during the government of Fujimori and virtually discontinued sterilization activities in the public health services. They also used these abuses to justify the incorporation of their interpretations of religion into public policy, which implied the questioning of scientific evidence published in mainstream academic journals and showed little regard for individual choice. For example, they used opportunities in the media to condemn premarital sex and homosexuality and to question the use of condoms, which were portrayed as not only immoral but also unsafe in terms of individual and public health. Reproductive technologies and drugs were also discredited.

Moreover these right-wing ministers discretely censored terms like "gender," "sexual and reproductive rights," and "sexual orientation" in all official Ministry documents. Abstinence

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[44] Coe, A. B. (2004). From natalist to ultraconservative: Restricting reproductive choice in Peru. *Reproductive Health Matters*, 12: 24, pp. 56-69.
[45] Both were very close to the *Sodalitium Christianae Vitae*, a conservative clerical Catholic organization founded in Peru in 1971, as well as its non-clerical branch, the *Movimiento de Vida Cristiana*.
[46] Coe, A. B. (2004). From natalist to ultraconservative: Restricting reproductive choice in Peru. *Reproductive Health Matters*, 12: 24, pp. 56-69.

and natural means of family planning were promoted as the only safe methods for young-sters and heterosexual married couples. In addition, they resorted to an entrenched notion in Peruvian society, the role of women in the family as mainly motherhood, obedience to their husbands and devotion to their children. In this they found an ally in Lima's Catholic Archbishop and Opus-Dei member Juan Luis Cipriani. The argument sought to appeal to the conservative values of Peruvian society and to the survival strategies of the poor, in which the family had been an important resource, and promoted obedience to, and subordination and domination by, older males.[47] This position was openly criticized by a number of NGOs that worked in the field of reproductive rights as well as by a number of medical doctors.

As a result the Ministry of Health and PROMUDEH (renamed MIMDES [Ministry for the protection of Women and Human Development] under Toledo) removed all official policies and programs designed to advance gender equity and reproductive health services. In the negation of reproductive rights the traditional family is used as the articulating element for social policies. The Peruvian legal framework continues to defend marriage and make its dis-solution difficult. Conservative officials at the Ministry for Women and Social Development have formulated a National Family Policy (2004-2011), which seeks to strengthen traditional values and make a family focus crosscutting in all policies. Family rights are considered in opposition to individual rights, disregarding internal power imbalances as well as potential situations of gender violence.

Modern contraceptives, condoms, and post-abortion care almost disappeared from public hospitals. In 2002 Carbone attempted to remove the IUD from the Ministry's protocol for contraceptives on the basis that it was an abortifacient. As a result of a proposal by Solari, Congress named March 26 as the National Day of the Unborn Child.[48] In May 2003, Car-bone issued a Ministerial Resolution creating the National Unborn Child Registry through the Regulations on the Organization and Functions of the Health Directorates nationwide. This resolution aimed to "protect the life and health of all children from the moment of

[47] Cávez, S. (2004). Cuando el fundamentalismo se apodera de las políticas públicas: Políticas de salud sexual y reproductiva en el Perú en el período julio 2001-junio 2003. Lima: Centro de la Mujer Peruana Flora Tristán.
[48] For further examples of fetal politics, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 33; Nowicka, W., The struggle for abortion rights in Poland, pp. 179-181.

conception until their natural death, officially registering them as unborn children and recognizing their constitutional rights." This norm was never implemented, although it has not been rescinded.

Eventually both ministers resigned after an intense campaign led by the Monitoring Group on Sexual and Reproductive Rights,[49] which examined and reported the negative impacts of the Solari and Carbone policies, combined with the Solari cabinet credibility crisis. Civil society and the Public Ombudsman demanded an adequate supply of resources for contraceptive services, deplored the increase in unsafe abortions, and demanded President Toledo stop the Solari/Carbone policies. In an unexpected and unclear turn of events a new Health Minister, the neurologist Pilar Mazzeti, was appointed in February of 2004. Mazzeti had a strong clinical background and was supported by a new network of health related civil society organizations called *Foro Salud*, which included the Monitoring Group on Sexual and Reproductive Rights as a thematic workgroup. She quietly moved to reverse the radical practices of the far right. Although she did not launch an aggressive campaign for women's rights and free choice, she denounced the misinformation campaign on contraceptives boosting her support from NGOs and progressive medical and health groups. A new opportunity for Peruvian women's increased access to abortion care in specific circumstances has emerged with the recent decision of the United Nations Commission on Human Rights in favor of Karen Llontoy, an adolescent who was denied the possibility of interrupting an anencephalic pregnancy. Llontoy was even forced to breastfeed her anencephalic daughter during the four days the baby survived.[50]

In spite of the importance of sexual and reproductive rights for people's lives and well-being, this issue has not resonated in the public sphere. Public debates on such subjects occupy, for the most part, positions of secondary importance on the agendas of political parties. The political parties in Peru did not, and still do not, have a clearly established position with respect to government-sponsored reproductive health services or to sexual and reproductive rights in general; the opinions expressed by political leaders reflect their personal positions and are

[49] The monitoring group began its advocacy when Toledo took office in 2001 and installed the far right Minister of Health. Over two years the group built broader alliances, including the media, and was thus able to make it politically infeasible for Toledo to continue with these policies.
[50] CCPR/C/85/D/1153/2003. (2005, November 17). Human Rights Committee, International Agreement for Civil and Political Rights.

not officially endorsed by their parties. The lack of an established position by the political parties with respect to reproductive rights has not been studied, which may be due to the divisive nature of these issues or because it is thought that issues connected with people's private lives are less important than broader political ones. This omission by political parties creates the risk of leaving the issues of reproduction and sexual freedom open to moral regulation and the influence of religious groups. This situation goes hand in hand with the fact that many political parties in Peru lack any real grassroots support and have very little political clout so they often prefer to ingratiate themselves with the Church.

Developments in HIV/AIDS

In 1983, about two years after AIDS was identified in the U.S., the first case appeared in Peru. At that time, only a few Peruvians were aware of this terrible disease. In its early years HIV/AIDS posed a two-fold challenge to Peruvian scientists, physicians, health workers and the population at large. In the first place, little was known about the disease; there were no means for its diagnosis, treatment, or prevention, nor were there specific policies in place. Second, it was linked to a debate on sexuality, an intimate topic that was hardly discussed openly in Peruvian society. The first AIDS studies and initiatives aimed at meeting the challenges arising from the medical side, and at mitigating the social stigma.

Between 1983 and the early years of the twenty-first-century, there were three often overlapping stages of HIV/AIDS policies in Peru. Despite their often intermittent, incoherent, and precarious nature, these policies followed an independent path set by the social and political context in which they emerged, and by the studies and initiatives of various individuals and organizations.

An initial stage in the history of HIV/AIDS policies runs from 1983 through 1987 when two short-lived commissions and a government program were organized to address the new disease. During those years official decisions were influenced by initiatives from physicians, scientists, journalists, and a few individuals living with AIDS. The media spread panic and anxieties about "sexual promiscuity," and presented the disease as coming from outside the country or from marginal segments of society such as gay men working in hair salons

and prostitutes. Both physicians and scientists, notably Raul Patrucco from the University Cayetano Heredia, confirmed the disease had arrived in Peru, and explained its natural history and the means to diagnose it. A powerful and unexpected institutional actor in the initial official activities to identify HIV was NAMRID, a modern U.S. Navy laboratory set up in Lima that conducted a large study and performed the functions of epidemiological surveillance during the years of the Alan García regime, when the country faced one of the deepest economic and social crises of its history. Towards the end of his administration, in 1990, García authorized a conservative law on AIDS that attempted to impose control over gays and other minorities groups "to control the epidemic."[51]

Governmental activities in this first stage assumed that AIDS was a biomedical issue that specialists might control through diagnostic tests and bio-safety measures in health facilities, while warning the population to avoid "risky" groups or behaviors.[52] As would become clear later, the attempt to define AIDS as a biomedical concern and the very notion of "risk" were soon swamped by reality. Another difficulty faced by AIDS workers was the attempt to de-emphasize the disease through comparisons with the country's morbidity and mortality rates for other preventable conditions. Then as now, many thought that AIDS should not become a priority for the Peruvian public health system overburdened as it was with widespread troubles such as diarrhea and respiratory infections, which for some seemed more relevant, less costly to resolve, and easier to treat.

A second stage started in 1988 when the Special AIDS Control Program (PECOS) was established in the Ministry of Health, but in its early years it was limited by scarce resources, few personnel, and little political commitment. This stage concluded in 1996. During these years, the first government official with specific responsibility for HIV/AIDS was appointed.

More importantly, the first activists and volunteers emerged, some of who were people living with HIV/AIDS (PLWHA). The latter began coming together in non-governmental organizations that provided medical care. They worked for greater access to medical services and for

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[51] Cueto, M. (2001). *Culpa y Coraje. Historia de las políticas sobre el VIH/Sida en el Perú.* Lima: CIES, UPCH.
[52] For more on policy effects on "risk" groups like MSM, sex workers, and PLWHA, see also in this publication: Bahgat, H. & Afifi, W. Sexuality politics in Egypt, pp. 65-66; Ramasubban, R. Culture, politics, and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 94, 98-100; de Camargo, K. & Mattos, R. Looking for sex in all the wrong places: the silencing of sexuality in the World Bank's public discourse, pp. 368-389; Le Minh, G. & Nguyen, T. M.H. From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 299-300.

some basic rights such as confidentiality, counseling, and autonomy. In this second stage, the influence of Jonathan Mann's office in the World Health Organization began to be felt in Peru but produced no major change in the official response to the disease. The local officials and NGO members who joined official initiatives were confronted with diminishing interest for the disease in the media and a rising economic and political crisis in the country. The limitations of PECOS reflected those of a Peruvian state that had crumbled at the end of the 1980s and began rebuilding with the introduction of structural adjustment policies at the start of the 1990s.

The emergence of new institutional players in the early-to-mid 1990s, such as UNAIDS under the leadership of Peter Piot, was an occasion for renewed perspectives, tension, and struggles. The second stage was marked by a confrontation between PECOS and *Vía Libre*, an AIDS non-governmental organization that brought together a number of leaders from the medical and research communities and people living with HIV/AIDS. The history of tensions between the state and private-health organizations underlines the difficulties in undertaking joint health efforts against sexually transmitted diseases (STDs) in Peru. One of the assumptions under which PECOS operated was the conviction that disseminating adequate information about the disease would suffice to create "rational" behaviors, in particular among risk groups like teenagers. Official government policies at the time were not only restricted to information dissemination, but also intended, as reflected in a 1990 law to "control" potential "agents" of the disease. *Vía Libre* was very much against this law.

A third stage commenced in 1996 with the inception of PROCETSS, a modern STD and AIDS control program, though its first accomplishments were preceded by initiatives of the last of the PECOS directors. PROCETSS, an almost independent unit of the Ministry of Health, incorporated the leaders of Via Libre in exchange for neutralizing their critiques of the government. In this period the official program received a spike in funding, established clear protocols, procedures, and regulations for health professionals throughout the country, and created offices in several provincial cities. The recommendations of international health organizations, especially UNAIDS, were closely observed, while modern regulations prevented discrimination, established mandatory counseling before and after testing, and protected the confidentiality of AIDS patients. In addition PROCETTS and NGOs lobbied successfully for a new modern law on AIDS, which was approved by Congress in 1996.

Although discrimination against people living with AIDS did not vanish automatically from health facilities, PROCETSS brought forward other critical aspects in a successful health intervention, including training STD professionals, building greater understanding of teenage sexual perceptions and practices and the physical and cultural factors that make poor women more vulnerable to the disease, and the design of wiser and more persuasive strategies to modify people's behavior patterns. Most of the changes that took place at the time were the result of the incorporation of several *Vía Libre* members into the PROCETSS staff. It is clear that this step accounts for a temporary change in the efficiency, modern approach, and growth of government measures to tackle HIV/AIDS.

However, this initiative was not without criticisms. To some it hurt the political dimension that HIV/AIDS activists tried to bring to their struggle in the previous stage. For others the problem was that an authoritarian director managed the program behind closed doors, just as it started to monopolize a number of efforts that were previously performed by various organizations. Moreover, the program decided to say or do nothing with regard to free access to antiretrovirals, which was becoming a major issue in developing countries. Lastly, from a political viewpoint, it has been held that health programs operating as islands of modernity within authoritarian regimes, as was President Alberto Fujimori's, are not viable or sustainable in the long run.

PROCETSS was first beheaded and later dismantled in the final months of the Fujimori regime. An important detail in the decline of PROCETSS was the lack of support from NGOs, AIDS activists, and human rights groups, which can be explained by the authoritarian style of its directorship and the fragmentation of the AIDS activist community. However, in the first years of the twenty-first-century, a re-emergence was observed in the movement in conjunction with the general revitalization of social mobilization against Fujimori's second re-election bid. New groups emerged and a larger network, the *Colectivo por la Vida*, a consortium of NGOs supporting access to treatment together with PLWHA groups, took the lead in pro-access activism. Shortly afterwards, *Peruanos Positivos*, the Peruvian Network of Persons Living with HIV/AIDS, was to be constituted.

The AIDS program became a "risk reduction" activity with a low profile. In 2002, Carbone attempted to reduce public trust in condoms, the key HIV prevention device. Taking advantage of recent news on the detrimental effects of the spermicidal nonoxynol-9 in condom protective effects against sexually transmitted infections, Carbone appeared in the media encouraging people to rely on abstinence and fidelity rather than on condoms for HIV/STD prevention.

The UN General Assembly Special Session on AIDS (UNGASS) in New York in 2001 marked the start of a new political climate for HIV/AIDS funding, which eventually led to the creation of the Global Fund for AIDS, Tuberculosis and Malaria (GFATM). After a first, unsuccessful submission of a national proposal to the GFATM, a more representative mechanism with representatives of civil society called CONAMUSA was constituted and a new proposal was formulated, which requested support in HIV/AIDS, Tuberculosis, and the dual infection. It was submitted to GFATM in 2002, and early in 2003 both the HIV/AIDS and Tuberculosis components were approved for implementation with a budget of some US$24 million for HIV/AIDS and US$26 million for TBC. Simultaneously the Ministry of Health had been working on the establishment of technical norms for treatment provision and in May 2004 it officially launched a highly active antiretroviral treatment (HAART) program, which, after strong initial support from the GFATM project, would eventually become funded solely with domestic funds.

The coordination and governance modality required by the GFATM, namely the "country coordination mechanism" (called CONAMUSA in Peru), has had an impact on the interactions among actors in HIV/AIDS decision-making processes, by intensifying communication across stakeholders and forcing the public sector to listen to other sectors. However, given the speed of the process and the relative weakness of some of the actors, a new equilibrium emerged whereby power was shared by a larger but limited group of actors. In particular, the participation of members of affected communities has been for the most part subordinated given their lower level of formal education, their own lack of cohesion, and the customary practices of incorporation and persuasion of other more powerful actors.

During the design process of the HIV intervention project, the Ministry of Health made decisions that implied a big share of responsibility in the eventual implementation of the

proposal in the health services. Funding for such participation was offered as a financial counterpart from the National Treasury. However, the Ministry of Health overestimated its capacity to respond to the logistic and administrative requirements of the rapid implementation of the national HAART program. This has had negative consequences at various levels: logistical systems have been overwhelmed; efficiency in other areas under its responsibility has decreased, namely prevention activities and, more generally, normative functions, including those needed to regulate the implementation of other GFATM-funded project activities by sub recipients; and a distortion in the demands for efforts around health problems other than HIV/STDs.

A year after its inception in May 2004, the National HAART program had achieved coverage of 50 percent of those who needed treatment. It intends to raise such coverage to almost 100 percent. Congress modified the 190 AIDS Law in 2004, making HAART a right. At the same time, however, it made HIV testing of pregnant women mandatory, supposedly as a measure of protection for the unborn child. There was hardly any opposition in Congress to the provision of HAART to people who could not access it, in spite of the significant funding required. However, Congress does not normally take into account the budgetary implications of propositions and the Executive Power will always, in practice, reserve the right to fail to respect the law when it can persuade others of a lack of funds to cover expenses. Normally the affected groups must bring a claim for a legal right to be respected.

Developments in sexual diversity rights

The situation of sexual diversity rights in Peru is not easy to characterize, since certain aspects of the social and legal status of LGBT communities may be regarded as progressive or as having undergone significant improvement in the last decades, while others still reflect deep social exclusion. The 1924 Penal Code legalized homosexual acts between consenting adults,[53] but homosexuality has remained heavily stigmatized in the local culture, with regional and class-related variability. The various parts of the country have different perspectives on homosexuality, which reflect diverse levels of exposure to global cultures as well as the experience of indigenous cultures with varying degrees of integration with Spanish culture.

[53] As stated in the Peruvian Penal Code of 1924.

In addition to this, in the middle classes homosexuality was understood as sexual acts between persons of the same sex, while in poorer settings it was interpreted as the adoption of gender and sexual norms attributed to the opposite sex, becoming a trait associated with "feminine" men and "masculine" women rather than with their sexual partners.[54] In the media, depictions of homosexuality were restricted to transvestites and "feminine" men for a long time, and references to homosexuality in the news were usually in lists of "moral vices" that also included prostitution, drug abuse, and crime. For most of the twentieth-century, homosexuality was a clandestine experience among professionals in the middle classes, who might even marry and have children. Information on homosexuality among specific individuals was largely the subject of rumors and misused for blackmailing political, commercial, or social adversaries, in keeping with the Peruvian saying, "God forgives sin, not scandal."

For the most part, LGBT activism in Peru started early in the 1980s, with the constitution of the Movimiento Homosexual de Lima (MHOL). At that time, MHOL was mainly a small middle-class movement connected to the local intellectual/artistic elite and with the *Centro Flora Tristán*, a prominent feminist NGO. At this point, MHOL adopted the rhetoric of post-Stonewall North American gay activism and implemented consciousness-raising workshops derived from the model of 1970s feminism. Mostly male at its inception, MHOL maintained close relations with the all-female Self-Consciousness Group of Feminist Lesbians (GALF), some of whose members became MHOL assembly members in the late 1980s. Conversely, the participation of transgender persons (including male travesties) was weak and would remain so for more than a decade reflecting the prevailing stigma of transgender persons within the middle-class gay community.

The parallel emergence of the AIDS epidemic, clearly concentrated on men who have sex with men (MSM) in Peru,[55] had important effects in the history of sexual diversity rights here, as in most of the world. It made LGBT activism more visible and pushed international funders to MHOL for HIV-prevention work and, later, for organizational strengthening.

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[54] Caceres, C., & Rosasco, A. (1999). The margin has many sides: Diversity among men who have sex with other men in Lima. *Culture, Health and Sexuality* 1(3), pp. 261-276.
[55] Cáceres, C. HIV/AIDS among men who have sex with men in Latin America and the Caribbean: A hidden epidemic? AIDS 2002, 16 (*Suppl.* 3): S23-S33.

MHOL obtained its first grant in 1985 with support from NOVIB, a Dutch development agency. As a prerequisite to receive the funds MHOL needed to assume the structure of a "not-for-profit private organization," not the best option for a social movement given that it implied a closed membership and less flexibility to relate with its base.[56] MHOL received direct support from USAID in 1988 to establish an information hotline, and hold a counseling program and safer sex workshops for the local gay community. Almost simultaneously it received support from NORAD for organizational development. The epidemic also drew the attention of the state (i.e. Ministry of Health) and the media to the gay movement; both entities considered the movement a stakeholder and key informant.

Given these successive grants, MHOL was able to establish several services — medical, legal, communications, a documentation center, training — in the late 1980s and early 1990s. Late in the 1980s a serious internal conflict took place between two factions on whether to emphasize MHOL's connections to broader groups of LGBT people (albeit less political and more entertainment-oriented) or to take a more sophisticated and politicized, yet elitist, approach to LGBT politics (adopted by most of the MHOL founders and their colleagues from GALF). In 1989 MHOL-Perú was dissolved and the *Movimiento Homosexual de Lima* legally established with an assembly comprising most of the members of the more political faction of MHOL-Perú and some of the GALF members. MHOL's increasing visibility around 1990 facilitated a strong connection with the International Lesbian and Gay Association, and in the early 1990s it took over the association's Latin American regional secretariat. This enhanced international role created local tensions, which eventually led to the migration of the MHOL president and the resignation of its executive director.

For several years during the 1990s, in part due to a financial crisis, MHOL scaled back its operations and became a part of a new network of NGOs working on AIDS, the Peruvian HIV/AIDS Network (Red SIDA-Perú). MOHL also started to accept sub-contracts, which excluded involvement in political discussions or program design, from the National AIDS Control Program to implement HIV-prevention activities among MSM. With limited funding, and in the context of political demobilization that characterized the Fujimori years,

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[56] Moreover, due to fears of legal problems that could delay the process, a strategy was adopted to avoid a reference to the *Movimiento Homosexual de Lima* and, instead, to simply refer to "MHOL-Perú" as the new institution's name.

MHOL remained open and kept a low profile. Only one political event stands out during the early 1990s: a proposition by Congressman Julio Castro, a left-wing physician, to legalize same-sex marriage.[57] This proposition was presented in a rather candid fashion and did not involve the weakened LGBT movement. Not surprisingly, it failed completely.

The re-emergence of the social movement towards the end of the decade also established the basis for a renewed, diversified LGBT movement.[58] In this phase several new elements could be identified:

1. Emergence of an ever-increasing number of groups including groups outside of Lima that developed from the HIV peer promotion programs on MSM implemented by the local health directorates;

2. In Lima, the emergence of groups within universities and others aligned to specific political traditions (e.g. left-wing groups), locations (local groups in peripheral areas), or leisure preferences (e.g. "bears," "leather groups," etc.). Interestingly, the issue of HIV has remained distant to their interests for the most part, probably as a result of a desire to separate sexual diversity activism from HIV/AIDS;

3. Proliferation of both electronic and face-to-face dialogues and the increasing theoretical sophistication of activist thinking and exchanges, in part related to the emergence, with the new millennium, of academic programs on gender, sexuality, and sexual health;

4. Building of alliances with a variety of actors including women's organizations, sexual health NGOs, PLWHA organizations, and human rights institutions. These alliances departed from the positive experience of social mobilization that led to the fall of Fujimori in 2000.

Among the most important recent events, a series of legislative propositions have been raised, some of which have been successful. Early in Toledo's government, in the context of planning advocacy for a number of constitutional amendments, the idea of adding an explicit

[57] Interview with Jorge Bracamonte, LGBT activist from MHOL.
[58] Interviews with Jorge Bracamonte, LGBT activist from MHOL, and Pablo Anamaria, PLWHA activist from PROSA.

mention of sexual orientation to the list of causes of discrimination from which there should be constitutional protection was posed by a historical supporter of LGBT issues, left-wing Congressman Diez-Canseco. In this the Congressman collaborated with the Group for Non-discrimination on Grounds of Sexual Orientation, a coalition formed by various LGBT, women's, and human rights organizations to promote "an inclusive constitution." This initiative failed as a result of political compromises in Congress, but the coalition remained in place with its focus now on "an inclusive legislation." It started to gather signatures in support of a comprehensive proposition to prevent discrimination on grounds of sexual orientation, and to visit parliamentarians and their advisors in search of support. In late 2003 a new proposition for the legalization of gay civil unions was raised by a Fujimori partisan, although this initiative seemed to be a smoke screen and was not even supported by the LGBT movement.

That same year, MHOL received a two-year grant from the British Council to undertake a series of activities to strengthen the national LGBT movement. These activities were implemented successfully although not without tensions given the tremendous growth experienced by the movement in a short period of time. The project ended in mid-2005 with the first national LGBT meeting, where regional representatives were elected to a national steering committee. By the end of 2005 MHOL was set to receive a new grant from HIVOS, another Dutch donor, to continue promoting the development of a national LGBT movement. Dutch donors such as HIVOS and NOVIB, plus the British under the Labor Party government, have been supportive of inclusive policies and programs oriented to sexual minorities.

In early 2005 Cecilia Tate, a Congresswoman and government partisan, publicized a new anti-discriminatory legislative initiative and was invited to address the Panel for Non-discrimination on Grounds of Sexual Orientation, after which a new channel of coordination was established with her. Finally, between 2004 and 2005 Congress approved a new Code of Constitutional Procedures, developed by the Congressional Committee on Constitutional Affairs, which included sexual orientation as a cause of discrimination against which citizens should be protected. Similarly, the Constitutional Tribunal declared in a historic decision that four aspects of the Military Justice Code violated the constitution, including one that designated homosexual activity while on duty as a crime. The decision made it clear that

there should be no difference between heterosexual or homosexual activity before the law and the state should not intervene in the sexual lives of people.

On the negative side conservatives have dominated the Congressional Committee on Health Affairs since the Toledo inauguration. In 2004, they tried to block Peruvian support for the Brazilian resolution on sexual orientation as a human right at the U.N. Commission on Human Rights.[59] In a letter to the Ministry of Foreign Affairs these conservative forces suggested that the right to a sexual orientation would open the door to pedophilia, a perspective that was not discussed given Brazil's decision to withdraw the resolution. Moreover, in June 2005 they reacted angrily to an invitation to the opening ceremony of the First National LGBT Encounter, calling the invitation an insult in spite of the fact that the British Ambassador was going to give a special address.

Interpreting commonalities and divergences

The struggle for sexual and reproductive rights in Peru is set within a still fragile democratic system subject to abrupt changes and complex social tensions. The social, cultural and political history of Peru has been framed by systems of exclusion, which are now starting to be questioned and broken. However, there still remains a great deal to change. The emergence throughout the twentieth-century of social movements seeking changes in the hegemonic gender and sexuality structures, and the efforts of communities whose rights had been left aside, have led to great advances. Among women, progress in the fields of education, labor, the law, and politics is evident, and even access to reproductive health services has improved significantly. Sexual violence is increasingly being seen as a crime, despite a continuing tendency to determine the severity of the offence in accordance with the victims' sexual conduct or identity, their relationship to the aggressor (marital rape was only recognized in 1991), and the cause for the violence. The Truth Commission collected testimonies that demonstrated the systematic use of rape by the armed forces during the period of armed conflict. Many of these crimes went unpunished, especially in those cases where the aggressors had social or political influence and the victims did not. More recently the killings of several gay, other men who have sex with men, and male-to-female transgendered people, perpetrated in the

[59] For details, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN, pp. 339-349.

late 1980s by the Tupac Amaru Revolutionary Movement, became public[60] and was widely repudiated, at least at the level of discourse.

While cultural norms around sexual diversity have a long way to go to become truly inclusive, the visibility and legitimacy of those who are sexually different has significantly improved in the last two decades. Public perceptions of people living with HIV/AIDS have also improved. All these cultural changes both reflect and influence legal and political changes.

Probably one of the last battlegrounds in the system of power based on gender and sexuality is the control of one's own body. A "macho," sexist, and homophobic culture based on the defense of the traditional family unit and a hierarchical gender system, is in conflict with the changes being promoted through new ways of thinking, which seek greater social acceptance of diversity, the rule of a secular state, and the enhancement of citizen rights.

Such changes not only originate from intellectuals and activists but also from the mobility of social classes, migratory processes and urban growth, the technology revolution, and communication globalization. New factors further complicate these changes, which remain largely unstudied within Peruvian society. These factors include increased migration of people and health personnel, increased international commerce, and the intense application of neoliberal economic policies, the effects of which are not necessarily visible. Other factors include the emergence of new forces such as different types of social movements, sexual subcultures, and various artistic groups that exist throughout the different social strata creating a mix of diverse cultural expressions within Peru. Sexual practices within the different social groups are also rapidly changing and breaking dominant social standards, even if they do not always radically question the relationships of power in the area of sexuality.

This study is focused on three themes: reproductive health and rights, sexual rights (with an emphasis on sexual diversity), and HIV/AIDS, linked perhaps to the most relevant public policies in this period, and also to the most visible political actions by citizens. Common sense brings those issues together as related to sexuality and the control of the body. However, each has its own specificities in terms of social history, stakeholders, dominant dis-

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[60] Retrieved July 14, 2006, from http://www.ilga.org/news_results.asp?LanguageID=2&FileCategory=29&ZoneID=19&FileID=638.

courses, and resistance projects. While this happens in many places of the world, contrasts take a specific configuration in each context.

In the last 15 years in Peru, the reproductive rights debate has been at its most intense and conflicted, and has gone through three phases: mobilization for the decriminalization of abortion (early 1990s); implementation of a mass governmental program focused on surgical contraception (mid-to-late 1990s) which, given its poor consideration of ethical issues, generated strong opposition from the feminist movement as well as the Catholic Church; and the conservative backlash which used the sterilization scandal to attack reproductive health more generally.

Conversely the debate on sexual diversity rights has been peripheral and sporadic with a high level of conflict among a more limited set of actors (mainly the Church, activists, and a few politicians). Here, the community (including the media) seems to observe rather than support any specific perspective, with a tendency towards slowly accepting sexual minorities on grounds of benevolence and tolerance in keeping with a new international trend, although with initial signs of the development of a concept of sexual rights.

Finally, the debate on HIV/AIDS clearly shows that HIV work was greatly simplified when it was taken out of the field of sexuality and placed in the field of disease, which enabled practical interventions and dampened further discussions on a positive view of sexuality and its relationship with prevention work.[61] This became much more evident when treatment access became the main focus of attention and discussions, if any, were centered on budgetary affairs but never on "the right to treatment access."

Interviews and materials reviewed provide evidence for our first analytical argument, in the sense that each field has achieved variable levels of progress although the points of departure, the challenges, and the possibilities were different. The problematic trajectory of the reproductive rights agenda responds both to the remarkable effort made by transna-

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[61] Cáceres, C. (2003). La Pandemia del SIDA en un mundo globalizado: Vulnerabilidad, subjetividad y los diálogos entre la salud pública y los nuevos movimientos sociales. En C. Cáceres, M. Cueto, M. Ramos, & S. Vallenas, (Eds.) *La Salud como Derecho Ciudadano: Perspectivas y Propuestas desde América Latina*. Lima: UPCH.

tional conservatives to develop and implement coherent strategies to counter the progress achieved, and to the compromises resulting from the Cairo and Beijing discussions, which imposed limitations on demands at the local level. Moreover, this process took place in a context of an apparently sincere pro-women's rights rhetoric from Fujimori, and limited interest on the part of most politicians to assume a strong position in defense of sexual and reproductive rights since they were aware of the difficulty of addressing this subject in public discourse. The aggressive stand of the Catholic Church, and the intrinsic abstraction of "sexual and reproductive rights" made it unwise to embrace progressive causes, although it was clear that new contraceptive technologies were usually well received by the population, and even abortion was widespread in spite of the stigma.

The agenda of sexual diversity rights has long been perceived as political utopia to the extent that for a long time politicians allowed themselves to react to any progressive proposition in this direction with politically incorrect jokes. That discursive marginality, however, made it possible for some positive changes to take place when a low-profile strategy was adopted. At times of greater visibility, such as the discussion around the Brazilian resolution or the debate on same-sex marriage generated by the 2005 Spanish law on this topic, the Church has reacted strongly against sexual diversity rights. Even its furious opposition to a discourse on gender is portrayed as resulting from the "secret purpose" of creating new genders, a direct allusion to transgender persons and homosexuality. In any event, the belief among many people that this is a minority issue, as well as the impact of international changes, has presented an opportunity for positive change.

Finally, the higher impact of work on HIV/AIDS results also from a strong international movement for access to treatment and rejection of structural exclusion of the most affected communities, but also from the conceptual transformation of HIV/AIDS from a moral problem into a health and human rights issue. In the absence of strong activism for other diseases, we are witnessing the paradox of higher expenditure on HIV/AIDS than in other chronic diseases. When talking about caring for people living with HIV/AIDS at this stage, references to people's sexuality and diversity are suppressed. Even PLWHA activism, in a country where HIV is highly concentrated among MSM, chose for a long time to avoid referring to their sexuality and seemingly obtained positive results.

As much as divergences from the articulation of these processes tell us, commonalities contribute to a more complete understanding of their political meanings, opportunities, and challenges. In this regard we found evidence for our second argument in relation to what these phenomena have in common. From different angles and in different degrees, those three issues address sexual autonomy and the legitimacy of sexualities that do not conform to the heterosexual, reproduction-oriented framework of hegemonic discourse. Note that this discourse differs from both the evolving legal framework (which is much more susceptible to the influence of international instruments) and people's common practices. The fact that emergency contraception, abortion, same sex practices, and sex work are all very common is not a problem; the goal is to keep them away from what is acceptable in the public discourse on moral values. In other words, the issue is not to eliminate "sin" from the world, but to keep it sinful, shameful, clandestine, and morally inferior.

Emergency contraception, abortion, same sex practices and sex work are realities, but they are not legitimate; they must submit to the power and benevolence of traditional institutions, especially the Church, which always reserve the right to act upon immorality. Moral surveillance is, after all, the main reason of existence for many of these institutions. Since sexual and reproductive rights relate to the autonomous and legitimate exercise of an individual's sexuality, institutions protecting moral values undermine the conception of these rights by all means possible. In the last few years, the development of notions around "the unborn" and the attempts to equate their rights to those of human beings represent a smart utilization of progressive instruments (human rights perspectives) to hamper a specific group of rights, namely, those of women as autonomous moral agents.

Without doubt, the excesses of Fujimori, Solari, and Carbone, far from representing a contradiction, share this refusal to recognize sexual and reproductive rights. While Solari and Carbone represented a Catholic fundamentalist perspective, Fujimori departed from an extremist utilitarian and pragmatic point of view, where the goal was the reduction of poverty through demographic control and individual rights were merely legal barriers that had to be tackled. In that context, the manipulative utilization of pro-women's rights rhetoric was a cynical strategy to gain support from civil society. At a different level, Catholic fundamentalists also made use of the human rights framework to attack the surgical contraception

program as genocidal and, surreptitiously, to undermine the reproductive health program in its entirety. No one thought that the democratizing response of the next government would cause setbacks in the provision of the services and programs for which the feminist movement had fought for several decades. Interestingly, a somewhat opposite trend was observed in Solari and Carbone with regard to HIV/AIDS; while they showed veiled opposition to promoting safe sex and condom use, particularly among "high risk" groups, subsequently they had no problem in supporting the formulation of an AIDS project for funding from the GFATM, nor in co-funding a national HAART program.

The apparent paradox of a transition from an extreme neo-Malthusian approach to a Catholic fundamentalist policy only illustrates that, above all, the main absence was that of citizens' rights. In both cases of authoritarian paternalism, ensuring appropriate informed consent was not a priority. A second element to note is the extreme weakness of institutional systems and programs (particularly in the health sector), which allowed for radical programmatic variation. Moreover, the undermining of sexual and reproductive health programs during the Solari/Carbone period was set against international trends and also opposed the national legal framework, so that it needed to occur silently through self-censorship of health providers who knew what the preferences of those in power were, and also through betrayal and rumors. Solari and Carbone always denied in public what was an open secret in the Ministry of Health. So, again, after a relatively strong reproductive health program during the Fujimori period, the partial dismantling of the program can only be understood if institutional weakness is taken into consideration.

The role of international actors and trends should be discussed further. With respect to reproductive health policies, the analysis is particularly difficult since specific actors have not been necessarily consistent in their perspectives vis-à-vis different subjects over the years, and hence the consequences of their actions have varied. Since this was not the primary focus of this study, we feel that more definite conclusions deserve a separate, specific study.

With regard to sexual diversity rights, international events, actors, and especially the media have generally played a more positive trend setting role. While stereotypical and commercially oriented, the profusion of positive LGBT characters and themes in films and TV shows

is contributing to a normalization of sexual diversity, particularly among those with access to cable TV. At a more official level, new international instruments recognizing sexual rights, as well as positive legal changes in other countries, are sending a clear message to local lawmakers and judges. Opposition to positive changes is usually limited to the Vatican, locally expressed by Peru's Catholic hierarchy.

International trends with regard to HIV/AIDS were even more favorable, at least until recently. Since the UNGASS meeting in 2001, as was the case in other countries, local activists perceived that they were working in a climate favorable towards access to treatment, in spite of the high cost implications and sustainability concerns. The establishment of a funding mechanism such us the GFATM and the various negotiation processes to reduce the cost of antiretroviral drugs also converged to transform the plans for a HAART program into a political need with little opposition. It should be noted, however, that this process has had a cost, reducing the visibility of sexuality and vulnerable groups and hampering prevention.

Finally, something should be said on the evolving public perception of these various issues. In Peru abortion is very difficult to accept on moral grounds, and the reproductive rights discourse on autonomy is often considered frivolous and lacking compassion. However, many women pragmatically accept abortion when concrete cases are considered. Emergency contraception is considered a handy alternative to abortion, and consequently unlikely to be rejected as "abortive." Opposition from the Church is considered normal and not taken into account for personal decisions. This view extends to contraception in general, including sterilization; as long as people receive adequate information and are allowed to choose, they value the existence of contraceptive methods and will use them regardless of religious criticisms.

With regard to sexual diversity, an intense process of reconfiguration of public representations of homosexuality is taking place. Visibility of the sexually diverse has never been higher or more positive either. In a discursive context of increasing inclusiveness, sexual minorities are likely to see a slow but irreversible process of recognition, which implies a challenge to discriminatory ideas and jokes normalized in everyday language.

Interestingly, the social representation of HIV/AIDS remains mixed in various ways. It is still treated as a plague in spite of increased awareness of its treatable character. Many people

report they feel vulnerable but often that concern is not reflected in their sexual practices. People living with HIV/AIDS are as much rejected and excluded, as they are the objects of compassion, at least at the discursive level. In public policy, however, it seems that the majority approves inclusive, effective AIDS-control programs that include treatment and comprehensive care, reflecting an interest for ensuring a new standard of care for a disease that "could affect anybody."

Conclusion

In spite of their contradictory nature, the reproductive health policies of the second half of Fujimori's government and the first half of Toledo's administration share some commonalities. During the transition from coercive anti-natalist to ultra-conservative reproductive health policies in Peru there was little regard for gender equity and reproductive rights. In one way or another the actions of both administrations hindered the development of these rights and created the conditions for weak public spaces to debate their policies. Under Fujimori health providers were forced to perform non-voluntary sterilization in inadequate and unsafe conditions and with little attention to women's rights. During the first half of Toledo's mandate the far right was free to dismantle and discour age reproductive services. Reproductive options and human rights, particularly those of poor and indigenous women, were violated by the Peruvian state in two different forms.

This negation of reproductive rights, in a context of institutional weakness that allowed temporary powers to prevail over professional standards, corresponds to the events that took place in relation to sexual diversity and to HIV/AIDS. Progress in sexual diversity rights has occurred for the most part in the privileged spaces of the Constitutional Tribunal or the Constitutional and Justice Committees in Congress. It has also been observed in a slow but significant improvement of public attitudes towards diversity, largely related to international trends in the media and legal frameworks. However, sexual diversity rights are publicly embraced by only a handful of parliamentarians. The politically correct discourse still favors silence, and the conservatives, led by the Church, retain ample latitude to speak against homosexuality. It looks like the "sin" is being slowly forgiven, at the cost of a low profile.

Similarly, the HIV/AIDS agenda experienced unprecedented progress once the focus changed from prevention to access to treatment. In a country where access to expensive chronic therapies is still limited by work and economic status, international support for increased access, as well as the desexualization of persons living with HIV, contributed to the operation of a well-organized campaign for access. While this campaign spoke of health rights, consensus was easier to the extent that even the religious conservatives could connect from a charity standpoint.

By considering the trajectories of these different but related subjects in the recent experience of Peru, we have found that, more than their obvious differences, their shared connections to sexual autonomy illustrate the complexity of hegemonic sexual and reproductive norms. They also show that traditional forces seek control of public discourse as a main strategy to impose an official morality or to legitimize public policies. Now that the extreme situations recently experienced in terms of access to reproductive health have apparently been resolved, social movements must develop new ways to advance the discussion of sexual and reproductive rights in the public space, since barriers to progress remain, for the most part related to the inability to talk about choice, diversity, and pleasure with the same legitimacy as discussions about the family, "the unborn," and fidelity. Similarly, we must construct the conditions for a stronger institutional framework that ensures professional standards according to international scientific and legal standards and avoids public policies that depend on the beliefs, or mores, of officials in power.

Poland

The Struggle for Abortion Rights in Poland

Wanda Nowicka

Wanda Nowicka

Introduction: Setting the stage[1]

This study examines why it was relatively easy for decision makers in post-communist Poland to abolish a woman's right to abortion after almost 40 years of liberal legislation and access to the procedure. This turn of events is especially noteworthy as it occurred in the first years of democracy when the vast majority of the society did not question the existing approach to abortion and opposed legislative restrictions – as they still do. In light of these facts, what were the reasons for and processes by which sexuality-related issues emerged at the top of the country's political agenda soon after the communist system collapsed in 1989? How is it that reproduction and sexuality have remained the focus of the most controversial public debates? And how did these debates lead to the introduction of one of the most restrictive anti-abortion laws in Europe?

The current position on abortion can be attributed in part to the fact that the almost 40 years of legal abortion under communism was based on instrumentalist and needs-based

approaches rather than on the concept of rights, let alone women's rights or human rights. Abortion was never a right that women themselves fought for and won as a result of their struggles. This instrumentalist approach to abortion was further entrenched by the attitude that gender equality was established under communism and there was no need, therefore, for a women's movement. Finally, Polish society is bound to powerful cultural traditions that privileges family, community, and society over individuals and celebrates women as self-sacrificing "mothers of the nation" whose primary function is reproduction and serving others.

The political shifts of the past decade have greatly reinforced the vulnerabilities resulting from the passive genesis of abortion under communism, lack of a rights-based approach and traditional values. The country's left wing, never a strong supporter of women's equality or reproductive and sexual rights, has grown weaker over the past decade, while the Catholic Church has grown steadily stronger as a political actor. The Church had its own political agenda, which was guided and supported by Pope John Paul ll, known affectionately by many inside and outside Poland as the "Polish Pope."

The emerging and still relatively small Polish feminist movement has made strenuous efforts to lobby government, shift public opinion, and establish a prominent public presence. Despite these efforts it has, as yet, been unable to develop the coalitions and effective strategies required to change the prevailing discourses and values concerning women's reproduction and sexuality. Consequently, conservative abortion policies remain in place.

The many conflicts, wars, and uprisings that punctuate Polish history are evidence of the country's continuous struggle for national independence. Independence was finally achieved in 1918 at the end of the First World War following more than 200 years of struggle, but was lost again 26 years later when, at the end of the Second World War, a communist regime was established under the control of Soviet Russia. Some 50 years later, the Solidarity Trade Union was founded and pushed for democratic transformations that resulted in parliamentary elections on June 4, 1989, the date recognized as the symbolic end of communism in Poland. That date also symbolizes the beginning of attacks on women's reproductive rights. Abortion legislation has been in flux since democratization and women, key partners in the struggle for independence, have not yet been able to claim their right to legal abortion.

Liberalization of abortion (1956)

The first debate regarding abortion took place from 1929 to 1932, before the Second World War and during the work of the Codification Commission to reform the Criminal Code. According to the Criminal Code of 1932, abortion was legal if a pregnancy resulted from a crime and where a woman's health and life was at risk. The more liberal draft provision of abortion on socio-economic grounds failed. The law of 1932 remained in force until 1956.[2]

A liberal abortion law was adopted in 1956 despite protests from Catholic circles. The primary arguments favoring legal liberalization referenced high maternal mortality rates due to unsafe "underground" abortions. The law decriminalized abortion for social reasons but did not actually recognize a woman's *right* to abortion. Women who wished to obtain an abortion had to consult with two doctors, which constituted a significant barrier to the service. Therefore, in 1959 the Ministry of Health issued a special regulation, which, in practice, introduced abortion on request. From that point, abortion was widely practiced in public hospitals and private clinics. This law remained unchanged until the beginning of the 1990s.[3]

Table 1. Abortion Legislation in Poland

1932 – Criminal Code allows abortion on medical and criminal grounds

1956 – Law allowing abortion on social grounds

1959 – Regulation of the Minister of Health introduces, in practice, abortion on request

1993 – Anti-Abortion law (Act on family planning, human embryo protection and conditions of permissibility of abortion) criminalized abortions carried out on social grounds

1996 – Abortion on social grounds liberalized

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[2] Kolarzowski, J. (1994). Polski Spór o Aborcję (Polish fight for abortion). In M. Chałubiński (Ed.) *Politics and Abortion*. Warsaw: Agencja Scholar.

[3] Zielińska, E. (1990). *Przerywanie ciąży – warunki legalności w Polsce i świecie (Interruption of pregnancy)*. Warsaw: Wydawnictwo Prawnicze. See also: Heinen, J., & Matuchniak-Krasucka, A. (1995). *Aborcja w Polsce – Kwadratura Koła (Abortion in Poland)*. Warsaw: Polskie Towarzystwo Religioznawcze.

> 1997 – Constitutional Tribunal states that abortion on social grounds is unconstitutional
>
> Abortion on social grounds de-legalized again
>
> 2004-5 – Unsuccessful attempt to liberalize law and pass the draft law on responsible parenthood

Restrictive law of 1993

Under communism there was little public debate on abortion. Once liberalized, abortion was not considered an issue. Few publicly questioned the law and the majority took it for granted. The first visible and ultimately unsuccessful attempt to challenge the 1956 abortion regulations occurred in 1988. It was followed by a second attempt in 1989, shortly before the first democratic elections. Draft legislation on the protection of the unborn child proposed criminalizing women who underwent illegal abortions. Immediately following the democratic changes during the first parliamentary period, (which lasted for only two years, 1989 and 1991), 11 restrictive drafts were proposed, two of which were discussed by the parliament.[4] Many members of the anti-communist opposition became actively involved in the anti-abortion campaign, which was strongly supported by the Roman Catholic Church hierarchy and had the personal backing of Pope John Paul II.

One of the first major public debates took place in 1990, prior to the Pope's scheduled 1991 visit. Ultra-conservative members of parliament were eager to outlaw abortion, to "make a gift" to the "Sainted Father." This bill failed. An even more restrictive bill, suggesting that abortion should only be legal in cases where it would save a woman's life, was tabled in 1992. The draft provoked strong opposition and two MPs initiated a grassroots movement called the Committee for a Referendum on the Criminalization of Abortion.[5] The committee called for a national referendum and thousands of people across the country collected over 1.3 million signatures on a supporting petition. Parliament ignored the petition and rejected a bill proposing a national referendum on abortion. However, it also rejected the most restrictive draft.

A new bill, called the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion, was finally passed by parliament in January 1993. It made abortion on social grounds illegal. In real terms, this meant that women in difficult socio-eco-

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[4] Kolarzowski, op.cit.
[5] Nowicka, W. (2001). *Struggles for and against abortion in Poland. In: Advocating for abortion access.* Johannesburg: Women's Health Project, Witwatersrand University Press.

nomic conditions could no longer obtain legal abortions. Therapeutic abortion and abortion on criminal charges, which had been legal in practice, became almost completely inaccessible. Soon after the law came into force, it became apparent that, in fact, it had not stopped abortions but had pushed them into expensive, and not always safe, "underground" facilities. Legal abortions have become almost unavailable in the public-health system, where, officially, less than 200 abortions are performed annually. It is important to note the active role of the medical community in limiting access to abortion during this period. Simultaneous with the legislative process, anti-choice doctors who had promoted anti-choice positions in medical circles in the 1980s, succeeded in having the Code of Medical Ethics adopted by the General Assembly of Physicians as early as 1991. The code only supports abortion on medical and criminal grounds, a position questioned by the Ombudsman on Human Rights as it contradicted the Polish law of that time. The attitudes of doctors played a significant role in the introduction of legal restrictions to abortion in 1993. In implementing the law, physicians, particularly gynecologists, have played the role of gatekeepers who deny abortion even to women who are entitled to it. At the same time many gynecologists provide so-called "underground abortions" in their private clinics. The hypocrisy and greed of physicians is proverbial, and makes the struggle for legal abortion especially difficult.

Anti-abortion law liberalized (1996) and restricted again (1997)

In 1996 pro-choice parliamentarians made a second attempt to change the law following the election in 1995 of the new pro-choice president, Aleksander Kwaśniewski. The former president, Lech Wałęsa, had vetoed the first attempt in 1994. The anti-abortion law was amended by the Polish parliament in August 1996 to allow abortion on social grounds and was signed by the new President. It came into force on January 4, 1997. The Solidarity Trade Union played a leading role in trying to defeat the bill and challenged the new law in the Constitutional Tribunal,[6] which decided that abortion on social grounds was indeed unconstitutional. Many prominent lawyers criticized the Tribunal's decision and its justification, but the decision was accepted by the new right-wing parliament elected in 1997.

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[6] Decision of the Constitutional Tribunal, May 28, 1997: "The constitutional regulations in Poland do not contain a rule of a direct protection of human life. It does not mean, however, that human life is not characterized as a constitutional value… The basic rule from which the protection of human life results is article 1 of the constitutional rules being in force, especially the rule of a democratic country under the rule of law. A democratic country under the rule of law gives priority to a man and the goods must be of value to him. Life is a value that in a democratic country must be constitutionally protected at every stage… Life is a value protected by a constitution and life in a pre-natal stage cannot be differentiated. There are no satisfactorily precise and proved criteria allowing for such differentiation depending on the particular stage of human life. From conception, however, human life is a value constitutionally protected. It concerns the pre-natal stage as well."

Recent attempts to liberalize – debates of the twenty-first century

The most recent attempt to liberalize the anti-abortion law took place from 2003 to 2004. A coalition of left-wing parties (SLD-UP) won the parliamentary elections of 2001 and controlled almost half the seats of the Sejm – the Lower House of the parliament – and the vast majority of the Senate. Although SLD-UP promised to liberalize the restrictive anti-abortion law during the election campaign, soon after the victory the leaders denied having any such plans. They justified their reluctance to address the abortion issue by claiming they had other "more important issues" to deal with, such as accession to the European Union (EU). Nevertheless, women's groups advocated strongly for changes to the law, and as a result the left-wing Women's Parliamentary Group decided to draft a law liberalizing abortion. The drafting committee submitted the draft on responsible parenthood to parliament on April 1, 2004. There it lingered until February 2005 when the parliament decided it would not be discussed.

The next attempt to liberalize the law is not expected any time soon as right-wing parties won the elections on September 25, 2005. Indeed, in the current political climate, there are well-grounded fears that an even more restrictive abortion law will be passed.

Opinion polls – discrepancy in attitudes on anti-abortion law and abortion

Although the results of different opinion polls regarding the position of the society on the anti-abortion law vary significantly, they tend to show that the majority of the society, despite its Catholicism, does not support the ban on abortion. According to a 2003 CBOS (Center for Research on Public Opinion) opinion poll on attitudes towards the anti-abortion law, the prevailing view is that the law needs to be changed (49%). This represents a decrease in the number of supporters of legal change from 1994 when 58 percent of respondents agreed that the law must be changed. By 1996, 52 percent of those polled supported this position. Although those who support the change are on both sides of the debate, the majority (61%) supports liberalization of the anti-abortion law. Twenty percent would like to restrict abortion even further and 19 percent have no opinion. Fifty-six percent support abortion on social grounds, 32 percent are against it, and 13 percent have no opinion.

According to an OBOP (Public Opinion Research Center) opinion poll carried out in 1996, 48 percent of respondents supported abortion on social grounds, compared to 65 percent in 1993. Thirty-nine percent were against abortion.

As Duch[7] argues, there is a significant difference between attitudes towards actual abortions and abortion legislation. According to a number of studies done in the 1980s, more than half of the respondents believed that abortion is murder, a moral evil. At the same time, abortion is broadly justified and practiced. This discrepancy between opinions on abortion as a deed and abortion law may go part way in explaining the reluctance of the society to become more involved in struggles against legal restrictions. Moral ambivalence makes it difficult for some to defend abortion as strongly and openly as is both necessary and justifiable.

The meaning of abortion under communism and soon after

Needs versus rights – rationale for liberalization

In all the debates on reproductive rights, the main pro-choice arguments used can be put in two categories: first, the right of a woman to self-determination, and second, a woman's need for abortion because of socio-economic hardships and to avoid the dangers of unsafe abortion. It may be useful for analytical purposes to adopt the ethical framework proposed by Petchesky,[8] who notes the tension between rights-based and needs-based approaches in the debates around reproductive rights. Although this distinction has been used to describe the major philosophical difference between pro-choice and anti-choice movements operating in the United Nations system, it can be adapted to the Polish context.

In the UN debates, anti-choice groups have criticized the pro-choice focus of human rights-based approaches to health for ignoring the basic needs of women, arguing that the human-rights approach is inferior to the discourse on basic needs, which emphasizes women's very survival.[9] Although I agree with Petchesky that this is a false dichotomy, that both needs and rights are interconnected, this dichotomy is useful for the analysis of different pro-choice strategies used in communist and Western countries.

[7] Duch, D. (2000). Abortion and values: The research report. In W. Nowicka (Ed.) *The anti-abortion law in Poland: The functioning, social effects, attitudes and behaviors*. Warsaw: The Federation for Women and Family Planning.

[8] Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*. London: Zed Books.

[9] For an analysis and overview of these debates, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

In the 1950s abortion was legalized in Poland and other countries in the region as part of a needs-based approach to women's health and lives. The fact that many women were dying as a result of illegal and often unsafe abortions convinced decision-makers that a change in the law was necessary to save women's lives. The rights of women to autonomy or self-determination were not part of the reasoning behind this period of abortion liberalization.

Legal abortion – not a product of the women's movement
In spite of the egalitarian propaganda preached by communists, women did not attain equality with men under communism. Women were *granted* certain resources according to their needs and the needs of socialist society. Although the needs-based approach significantly changed the everyday lives of individuals and families, it did not transform the social structure, which remained patriarchal in its foundations maintaining traditional gender roles for men and women. Men occupied the public sphere and were responsible for decision-making and women confined themselves mainly to private and family life, even if working professionally. I emphasize the word "granted" (above) because women did not fight for their rights in the 1960s and 70s, as did Western women. A spontaneous women's movement, just like any other civil groundswell, could not exist under a totalitarian regime and since women's movements did not exist in meaningful numbers anywhere in the world in the 1950s – Western women would win reproductive rights only about 15 years later – there was no precedent for Polish women to emulate.

At first glance it may seem a good thing that women in Poland did not have to fight for abortion in the same way their Western sisters did. It may appear progressive that women were granted access to abortion simply because they needed it to protect their life and health, but this passive genesis of abortion access always left open the possibility that women might lose what they had been granted – and that is exactly what happened. A right that is granted rather than won can be easily taken away especially if the women's movement is weak and unable to organize resistance, as was the case in Poland at the end of the 1980s. The absence of a movement implied a lack of pro-choice discourses.

Interestingly, by the 1990s, the needs-based argument in favor of abortion proved unpersuasive in attempts to liberalize the abortion laws. Memory of the pre-abortion past was not very

strong by the 1990s and few doctors had experienced the old days when women were dying as a result of underground abortions. Moreover, it turned out that maternal mortality due to unsafe abortion did not increase after the restrictions were imposed.

Debates of the 1990s – the needs-based approach continued

During the abortion debates at the beginning of the 1990s, before restrictive legislation had been introduced, few references were made to the concept of a woman's right to self-determination. The core opposition argument, especially in the later debates, was based on socio-economic realities. Referring to previously described models most leftwing MPs used needs-based arguments in their call for liberal abortion laws. They usually raised two points: that the economic hardships women faced led to their (always difficult) decision to have an abortion, and that given past experience the restrictive legislation had the potential for negative consequences. In this approach, women are presented as poor and helpless victims who may die as a result of restrictive legislation, as is evident in this extract from a 1992 parliamentary presentation by Danuta Waniek, a one-term MP: "Past experience shows that poor and helpless women will use drastic means [because of the restrictive law]… No one promoting the [anti-abortion] law mentions that it will kill many women and will bring tragedy to many families. Nobody mentions the easily predictable effect of the law, which will be an increase in infanticide, as was the reality before 1956."

Other pro-choice MPs presented abortion as a difficult social problem: "The abortion issue is one of the most difficult and most important issues of the end of the twentieth-century," said two-term MP, Izabella Juruga Nowacka, in a 1996 parliamentary debate. Still others, like two-term MP Jerzy Wierchowicz arguing in a 1994 debate, presented abortion as a tragic phenomenon always associated with poor economic situations: "The richer the country, the fewer the women in this tragic situation and the fewer the reasons for making such tragic decisions." As these quotes illustrate, the protection of women's health from the negative effects of unsafe abortions was recognized as the main reason to propose the compromised 1992 draft law.[10]

Needs-based approach limits women's autonomy

The arguments used by the pro-choice lobby present women as disempowered victims, and

[10] Parliamentary Proceedings: Marek Balicki, MP, 1 term, 21 sessions. (24.07.1992).

as passive recipients of the law. These arguments conform to the idea that abortion is always the avenue of last resort and the main reason it is adopted is because of economic hardship. Autonomous decisions by women to have abortions for reasons other than economic hardship are not easily justified within this framework. And although many women have been victims of the law and suffered as a result, this argument has proved ineffective and, moreover, strengthened the patriarchal model of society where men are the protectors and women have nothing to say. It is an approach that removes women as actors in the political sphere, and keeps them as passive recipients of state policy, lacking the means to fight back. Women are not treated as equal citizens in the society and are not approached for their opinion, let alone empowered to decide about policies that affect their lives. What these pro-choice arguments tell us is that women don't have certain rights and are incapable of demanding them.

The needs-based approach to abortion also implies that access to abortion is conditional — if a woman's life is not threatened and she has other means of preventing unwanted pregnancy, why should she require this right at all? This argument was frequently used in the Polish debates of the late 1990s and was only slightly modified after the revelation that underground abortions were relatively safe and maternal mortality had decreased (Why, then, should abortion be liberalized if there is no strong necessity?). The same basic argument is also being used – in Poland but also in some international forums – in connection with contraception: if there is full access to contraception why do women need abortions? Such an approach is best illustrated by the slogan, From Abortion to Contraception, which suggests that abortion can be fully eliminated by contraception. The rights-based approach on the other hand, implies unconditional entitlement to abortion – a woman should have the right to terminate an unwanted pregnancy, even if she does not choose to use that right.

Barriers to promoting rights-based approach
Under communism, the absence of a tradition of the rights-based approach to abortion compromised the attempts of the very young feminist movement to introduce such arguments to the public debate. Slogans like those used in the pro-choice demonstrations – Abortion on Demand, My Womb Belongs to Me, or Right to Choose – sound inappropriate in the Polish context. The concept of women's rights did not resonate here. It sounded as if women were demanding something to which they were not entitled or that they wanted more than they deserved.

It took a number of years for women's groups to introduce the concept of rights to the public debate and this could only be achieved because of the support of human rights institutions, especially the United Nations Commission on Human Rights, which recognizes that restrictive anti-abortion laws violate women's rights. The Federation for Women and Family Planning, the main pro-choice NGO in Poland, submitted shadow reports to the UN in 1999 and 2004, which outlined Poland's violations of women's rights in the context of the International Covenant on Civil and Political Rights. This got the Polish media's attention – a headline from *Gazeta Wyborcza Daily* in that period stated, The UN Defends Polish Women. But the publicity did not legitimize the call for women's rights, as had been the case for women elsewhere in the world – the Polish media are still far from recognizing that the right to legal abortion should be granted.

Historical and cultural context: Social constructions of gender and sexuality

Individual versus community
Another useful framework for analyzing the current situation is the relationship between the individual and the community in the society. A major reason why Polish women have found it so difficult to defend and retain their reproductive rights is related to a general lack of acceptance of women's individual rights, which are seen as subordinate to the rights of their families and the society. Women are minimized for many obvious reasons, including the fact that Poland, like most societies, is patriarchal. Women's reproductive functions are not seen as an individual issue but actually constitute the basis for their subordination – since women's reproduction contributes to the growth of the community, the community has assumed the authority to control it. The idea that women need to be controlled by the society, that without control they will take irresponsible decisions, is still very strong (as is apparent in parliamentary debates described later on).

Nineteenth-century heroic motherhood
Historically, the identity of Polish women is closely connected with the struggle for national independence, which elevated them to the position of national heroines while at the same time subordinating them in positions of obedience and sacrifice to social norms. This "cult of womanhood" has been internalized by many women and continues to affect them, disempowering and discouraging them from actively demanding their rights.

Following the loss of national sovereignty and independence in 1794, Poland was divided between Russia, Austria, and Prussia. In the nineteenth-century the Polish people made several unsuccessful attempts to regain freedom, most significantly in the uprisings of 1830 and 1864. Women were actively involved in the national resistance movement and played many key roles following each defeat. While men chose political exile, or died, or were sent to Siberia, women remained at home and kept the society together. This included sustaining the family and preserving national identity. The upbringing of children had become a key political issue as the family was seen as the main guarantee of national and independence values. The family was the place to raise young patriots who would continue the struggle for independence in the future. This role led to the position of women being elevated; procreation was more than a private family act – it was a patriotic act on behalf of the nation.

It is from that period that the Polish people derive the symbolic "Mother Pole," which means that a woman is primarily a mother and her motherhood is a patriotic and heroic act. The strong cult of Saint Mary, emblematic of Polish religiosity, contributed to this construct. The "Mother Pole"[11] model idealized women as saints rather than as human beings, attributing to them high moral standards with important roles to play. But all of this made it very difficult for women to realize their ambitions outside of family. Any attempt by a woman to liberate herself from family roles was treated as betrayal of the nation and the Church.

As Duch observes, "On [the] biological level [a woman] was reproducing children, on the social level she was reproducing the culture" (besides taking on the role of breadwinner as men were killed or imprisoned). This model, of the omnipotent woman who does not have any individual needs or goals, who plays multiple roles and sacrifices herself for the family, the community, and the nation, is deeply rooted in Polish history and Polish women's identities. Such a position, although sometimes painful, gave many women personal satisfaction and fulfillment.

In the twentieth-century this model continued to exist but in different forms – for instance, one of the biggest obstetric-gynecologic hospitals in Poland, built in the 1980s, is called the

[11] See general analysis of the same point also in this publication: Girard, F, Negotiating sexual rights and sexual orientation at the UN, p. 314.

Hospital of the Mother Pole. Interestingly, in 1984 a public debate took place over whether abortions could be performed at all in this particular hospital.[12]

Women's rights versus family rights

Arguments used by right-wing politicians in parliamentary debates of the 1990s confirm that the rights of a woman to self-determination are set against the rights of the family and/or community. The idea that a woman has a right to individual freedoms is seen as imbalanced, and women who espouse this model are thought of as indulgent and excessive, living a materialistic lifestyle and concerned only with their own needs. Women's aspirations for professional and/or scientific careers are secondary to their primary role of having children; their ambitions for self-fulfillment are seen as egoistical.[13] All of this denies women any interests and ambitions outside of the family, and obviously, (taking these arguments further), there is no woman's interest that could ever justify an abortion. Even economic hardship is not seen as sufficient reason for decisions about abortion; in fact, whatever reason a woman might have for considering abortion is minimized, seen as unimportant. As many anti-choice MPs would say, Polish people don't die of hunger so their other difficulties can be dealt with in ways other than abortion.

Sexuality penalized

Others go even further. They elevate women to the prestigious position of child bearer, mother, and priestess of family life, but they "understand" that such elevation is demanding. From this point of view, abortion means easy choices, sex without responsibilities, sex for pleasure, and most alarmingly, it means promiscuity. This perspective was typified by one-term MP, Wanda Sikora, in a 1992 parliamentary debate: "If we oppose solid moral law [for an] easy solution, if we cultivate freedom without duty, if we tolerate promiscuity, tomorrow we will have a generation of egoists." "Freedom" here relates to "sexuality." Expressions of sexuality are conditional, accepted only if a woman is prepared to "take responsibility." A woman is not free to enjoy sex merely for pleasure, and she should always be prepared to bear the consequences of sex, that is, ready to accept pregnancy.

These ideologies, although mainly espoused by conservatives, are prevalent in the society as a whole, deeply rooted as they are in Polish culture. This allows for very strong judgmental

[12] Zielińska Eleonora, op.cit.
[13] Parliamentary Proceedings: Halina Nowina Konopka, MP, 1 term, 21 sessions. (24.07.1992).

attitudes towards women in all aspects of their sexuality and relationships. For example, women are judged on the basis of whether they have partners and how many; women who have more than one partner are criticized for promiscuity, but those without a partner are devalued and viewed as incomplete. According to a 1989 survey 79 percent of the society believed that a woman should have children in order to feel whole and worthy.[14] Among rural women, who are even more conservative due to the particularly strong influence of the Church outside urban centers, one third believed that it is a wife's duty to have sex with her husband and nearly 50 percent were of the view that wives are obliged to have children. Many feel guilty for using contraception as it prevents pregnancy.[15]

Quite often pregnancy and childbirth are used as a means of punishing women for having had sex. It is a common experience for pregnant women in Poland's delivery wards, including the author, to be chided by assisting midwives with admonitions like, "Be patient; first you had the pleasure now you need to suffer." Even when abortions were legal, similar comments from midwives and doctors in public hospitals were common during abortion procedures in public hospitals. In many cases abortions were carried out without anesthetic; women were made to suffer for their "pleasure." It is not surprising that the majority of women chose to have abortions in paid private clinics in order to avoid such treatment. Women's sexuality had to be punished somehow. They have to be made to feel guilty for sex; they have to be put in their place. By suffering, the woman can be absolved: "Since she had sex with many partners, now she should [pay for it and] have a baby." In this scenario the child becomes an instrument of punishment without regard for its future well being.

"To whom does a woman belong?"
A woman should be ready to sacrifice her interests and to continue with her pregnancy even if it was the result of having been raped. A raped woman should be "magnanimous; she should host the fetus until delivery then she may give it up for adoption," according to MP, Anna Knysok, in a 1992 parliamentary debate. This attitude shows clearly that a woman's

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[14] Siemieńska, R., & Marody, M. (1996). Miejsce i rola kobiet w nowym ładzie ekonomicznym (Women's place in the new economic order). In M. Marody (Ed.) *Oswajanie rzeczywistości. Między realnym socjalizmem a realną demokracją (Taming reality: Between real Socialism and real Democracy)*, Warsaw.
[15] Nowicka, W., & Grabowska, M. (2000). Attitudes of rural women towards issues of reproduction: Report on the survey conducted by the RUN. In W. Nowicka (Ed.) The anti-abortion law in Poland: The functioning, social effects, attitudes and behaviors. The Federation for Women and Family Planning: Warsaw.

body does not belong to her but to the society. The right wing does not see a woman as an individual, autonomous being. Bożena Umińska and Jarosław Mikos in an article headlined, To whom does a woman belong?[16] observed that a woman is treated as a "controlled reproductive machine" and that "a pregnant woman does not belong to herself, she belongs to the fetus." The authors also point out that a woman does not lose her rights in favor of the fetus but, rather, in favor of the society – that is, the state, the nation, and the Church. So it is more about control over women than the protection of the fetus.[17] Umińska and Mikos predict, "The consequences will be borne not only by women. Sexuality, feelings, family will be suppressed by legal restrictions and obligations."

It is not surprising that the slogan, My Womb Belongs to Me, outraged the majority, even some pro-choice advocates, because it was considered extremely radical. It is about symbolic ownership of a woman's body and while no one explicitly said that the womb belongs to the society not to the woman, this is what is assumed.

Women's mission

In Poland, a woman is not seen as a single, independent, and equal person. She is always perceived in relation to other people who have the right to limit her autonomy by forcing on her responsibilities towards the society as a whole, the family, and the child in particular. Umińska and Mikos note that, "In the awareness of the average person, a woman is not as equal or autonomous as a man. She is in her place if she has a husband and children. That does not provoke suspicions, pity, or mercy. In the awareness of the average person (also her own), she is not independent. She is colonized."

Such an approach is deeply rooted in the stereotype of the Mother Pole. According to MP Kazimerz Pękata, in a 1992 parliamentary debate, "Motherhood is a woman's mission; it gives her more value, dignity, and majesty. Motherhood is a gift." In a 1994 debate MP Andrzej Gąsienica Makowski was even more vociferous: "Polish mothers are fulfilling a public service of the highest value. This is another lesson of Polish patriotism, because the youngest Poles living beneath the mother's heart are future fathers, mothers, wives." Note too that

[16] Bożena, U., & Jarosław, M. (1989, August 4). Do kogo należy kobieta? (To whom does a woman belong?). *Polityka.*
[17] For further examples of fetal politics, see also in this publication: Vianna, A. R. B. & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 33; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 136-137.

in the 1970s the leader of the communist party handed out medals to mothers of miners, acknowledging these women as "exemplary patriots."

So women are simultaneously elevated and restrained; being a mother means being a patriot. That is, the mission they fulfill is obligatory and since they cannot escape their fate they might as well enjoy it.

Poland needs more children

A woman's mission is to deliver children because the society needs more children. The fertility rate in Poland — similar to the pattern in Central and Eastern European countries and in Europe — has never been high. The highest fertility rate, in 1983, was 2.4 falling to 1.8 in 1993 and 1.22 in 2005. The introduction of the anti-abortion law in Poland has not reversed this trend at all but this fact has apparently made no impression on right-wing policymakers who, ignoring the reality, continue to tout demographic arguments in the abortion debate. Most right-wing politicians maintain that restricting abortion will increase the birth rate: "A liberal abortion law is against the interest of the nation… Why, being a free country, are we are proposing a law liberalizing abortion? Why now since Poland, for the last 13 years, is facing a systematic decrease in the birth rate; when we have reached the edge threatening our development; when more people are dying than being born," proclaimed MP Aleksander Bentkowski, in a 1996 parliamentary debate.

Women's rights v. fetus rights

Małgorzata Fuszara, a well-known feminist and professor at the Social Sciences Institute, noted that "the creation of the third subject (the fetus)" took away women's rights. The more the personhood of the fetus is asserted, the less autonomy and rights for the woman. It is important to see the position of the fetus in relation to women. The fetus is becoming more and more alienated from women to the point where it has almost absolute rights, while women's rights are being more and more limited. Pregnancy deprives women of rights, bringing only the obligation to continue the pregnancy till term. Fetal politics, as Petchesky refers to it, creates "fetus identity" as separate and autonomous from the mother.[18]

Similar arguments are used in the already mentioned decision of the Constitutional Tribunal, which stated that the protection of motherhood cannot be considered only from the

[18] Petchesky, R. (1990). *Abortion and Woman's Choice*. Boston: Northeastern University Press.

woman's point of view, and that the child and its development is an equal subject of this protection. Equalizing fetus rights with women's rights confirms the instrumentalization of women's bodies — once pregnant women have no right to decide about pregnancy. The Tribunal recognizes reproductive functions as the foundation of the family and equates "born children" with the fetus: "The relationship between parents and their born children should be protected in the same way as the relationship between parents and children in their pre-natal stage." "Unborn children" must be protected by the state even against the will of the prospective parents.

Actors and non-actors

A. Church and state

The Church under communism

The Catholic Church has traditionally played a strong political role,[19] which it has never given up even in the worst phase of the Stalinist period. Under Communism the position of the Church went through different phases. In the Stalinist period of the late 1940s and 1950s the relationship between the Church and the Communist Party was very bad. In the 1970s communist leaders sought to improve these relations and the Church took advantage of this shift to build its power. Many new churches were constructed during this period; large pilgrimages to sacred sites, a typical Polish Catholic ritual, become increasingly visible; tens of thousands turned out for the first visit of Pope John Paul II in 1979.

The concessions made by the Communist Party to the Church implied the withdrawal of the state from certain social spheres, especially from so-called family issues and issues related to morality. The Church intensified its moral teaching and its anti-choice position on abortion constituted a significant part of it. Many national religious movements sprung up, especially among young people and Catholic professional associations of doctors, pharmacists, and lawyers. These movements constituted a base for anti-choice activists who were quite often

[19] For analysis of the role played by religious authorities, especially the Vatican, in global debates on sexuality, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN; for local examples see: Bahgat, H., & Afifi, W., Sexuality politics in Egypt, pp. 59-69; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive rights policies in Peru: Unveiling false paradoxes, p. 135.

political opposition leaders.[20] Every parish ran premarital courses, which included classes on "natural" family planning. These courses were obligatory for those who wanted a Catholic wedding (which was almost everyone) and over time they have become stricter and more demanding of young couples.

The Church – the major beneficiary of transformation

When communism collapsed, the Church took full advantage and gained real political power. Church officials entered the mainstream of public life, becoming very visible and influential. In terms of political gains, the Church secured its economic position by claiming the private property confiscated under communism and regular funding from public resources for multiple Church initiatives and institutions. The state built religion into the entire operational system. No public ceremony could proceed without religious symbols and rituals. The major legal changes stabilizing the position of the Church versus the state included establishing religious instruction in schools (1990) and kindergartens, chaplains in the army and religious services in the health-care system. Church officials have influenced the education curricula of public schools, especially "pro-family" education (that is, sex education). The Concordat, a special agreement between the state and the Vatican introduced in 1996, institutionalized relations between the Church and the state. It obliged the state to finance religious schools at all levels, including universities. In 1999 separation as an alternative to divorce was introduced into the Polish legal system.

The Church – the key political actor

The Roman Catholic Church was the main driving force behind the criminalization of abortion. It used the political and economic transformation of the state in 1989 to carry out a moral transformation of the society. The collapse of communism brought about the devaluation of its egalitarian and materialistic ideology, which has been replaced by the cult of neoliberalism and Democracy. It is not by accident that the push for restricting abortion took place during this period of huge political, economic, and social transformation of the state. At that time many people questioned why it was important to discuss abortion given that there were so many more important political and economic reforms to be undertaken by policymakers. But, in retrospect, it was a positive strategic move to address it at a time when everything was in transition since anti-abortion activists could use the enthusiasm for change — including the thrill of overturning the past communist regime — to achieve their own ends.

[20] Heinen, J., & Matuchniak-Krasucka, A. op.cit.

For its part the Church took advantage of these changes to promote new moral values as a sign of progress and a break with the past. The Church was significantly supported and guided by John Paul II, who was adored by Poles and who visited the country eight times between 1979 and 2002.[21] During these visits, at least three of which coincided with debates regarding reproductive and sexual rights, the Pope made a number of strong statements on these issues, which had a significant impact on policymakers. Poland was charged with the mission of obeying moral values and promoting them in the world, especially in the European Union. The "protection of life" was at the top of the list. The concept of a "civilization of life," invented by Pope John Paul II, was advanced as a means to eliminate the "civilization of death" symbolized by the Communist regime. These concepts of "life" and "death" have become entwined with the public discourse on abortion ever since. And although the majority in Polish society were not prepared to absorb this teaching or to practice it in everyday life, they appeared unable or unwilling to oppose it.

No war with the Church

Bringing abortion back to public debate was seen by some politicians as a direct confrontation with the Church, given that the restrictive legislation of 1993 seemed to end the whole discussion. Politicians wanted to avoid such a conflict and often stated that they did not wish to provoke the Church, a position that confirms that women's rights were sacrificed for political gain. In 2002, an informal agreement was reached between the government and the Church hierarchy just before the National Referendum on European Accession when the left-wing government postponed debate on the abortion issue in order to have the Church's support on accession. A letter from 100 well-known Polish women, including the Polish Nobel Prize winning poet, Wisława Szymborska, film-maker Agnieszka Holland, and artist Magdalena Abakanowicz, criticized the left for selling out women's rights, especially their right to abortion, and for making a deal with the Church behind women's backs. The accusations rang true, especially in light of earlier statements by the right-wing MP, Włodzimierz Puzyna, who, in a 1996 parliamentary debate declared, "The attempt to liberalize abortion starts a dangerous game, which may lead to abolishing social peace, breach the dialogue with the Church, and instigate unnecessary antagonisms." Years later, left-wing politicians continue to sidestep controversial issues by insisting that they wished to avoid a conflict with the Church, and

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[21] Pope's visits to Poland: 1979, 1983, 1987, 1991, 1995, 1997, 1999, 2002.

instigate unnecessary antagonisms." Years later, left-wing politicians continue to sidestep controversial issues by insisting that they wished to avoid a conflict with the Church.

B. Women as political actors

The contemporary women's movement began developing toward the end of the 1980s. The women's movement had been relatively strong before the Second World War but had completely disappeared under communism — literally and from popular memory. It is important to realize that under communism there were no grassroots social movements pushing for social change. Any form of civil-society organizing was controlled by the state system. The first spontaneous and independent social movement was Solidarity, which was linked with trade unions in big factories and therefore had ample logistic resources and a concrete social base. Many women were involved in Solidarity and played important roles but it is important to note that they never developed a women's agenda within Solidarity and never got involved in the nascent women's movement.

The early women's movement was quite weak but it quickly got involved in the abortion debate. But lacking experience, human and financial resources, and strong leadership, the movement was forced to face one of the most difficult women's issues while at the same time striving for survival. Many of the earliest groups operated on a voluntary basis and were active for some time, but eventually disappeared due to sheer exhaustion. Few groups from the early 1990s survived into the present period.

Barriers to the early women's movement
As Fuszara observed, the issue of abortion was instrumental in the creation of the Polish feminist movement. But although the abortion debate helped in the establishment of the new women's movement and the development of a women's agenda, the movement itself was too weak to play a stronger role in the abortion debate due to the lack of strong leadership, which at that political moment should have come from the Solidarity women. Those women connected with the former communist system, even if they held politically correct views, had insufficient authority to seriously impact the debate; when speaking in favor of legal abortion, they were neutralized by opponents because of their affiliation with communists. In the beginning of the 1990s these political divisions between women activists,

whether coming from Solidarity or the left, were profound, weakening the movement and making collaborations more difficult.

With the exception of Barbara Labuda and Zofia Kuratowska, both with Solidarity backgrounds, it is hard to name other female public figures who had enough power and respect to get involved in the abortion debate and risk conflicts with their former comrades from the anti-communist underground of the 1980s.

Women of Solidarity – human first, women second
To better understand the attitudes of women who were active in civic movements for independence but who showed little interest in the abortion debate, it is interesting to look at the lives of some of the women who were active in the Solidarity underground and who had the potential to play important roles in the pro-choice movement. Studying their stories tells us a lot about the priorities and choices of Polish women in terms of their involvement in social movements.

Shana Penn, an American writer and researcher, studied the history of the women of Solidarity for more than 10 years. Her findings were published in her book, *Solidarity's Secret*, which focuses on the women who created the Solidarity Press Agency during the period of martial law, and established the underground *Regional Weekly*, before starting *Gazeta Wyborcza*, the most popular Polish daily newspaper, after the collapse of communism.[22]

Although they played a key role in the Polish underground after martial law was declared in 1981, these women have remained anonymous, not only because of their illegal work but also because they wished to remain members of the independence movement rather than become leaders. Many of the male opposition leaders who were confined by the totalitarian regime retained their leadership roles, while many women, who did not want or expect to be recognized, carried on doing a large amount of underground work. When Solidarity won power in 1989, very few women took part in the formal negotiations with the communists on the future of the country.

[22] Penn, S. (2005). *Solidarity's Secret: The women who defeated Communism in Poland*. Michigan: University of Michigan Press.

It is ironic that it was an American researcher who started to ask basic questions about the Solidarity movement and its leadership. At a time when the whole world knew of Lech Wałęsa, as well as some other male leaders, Penn asked, "Where are the women? Were they active in the Solidarity movement? If so what role did they play?" These questions were obvious ones for an American feminist who saw the world through a gender lens. They were not so obvious in post-communist, patriarchal, Poland where male dominance in public life was never questioned, where there was no feminist movement and a women's political agenda did not exist, and where the issues at stake were about family roles, certainly not abortion.

The perspective of the outsider enabled Penn to see more clearly than many insiders that the Solidarity women were dedicated to the cause as a cause of the nation and not the least interested in power for themselves or even in fighting for their own interests. Penn rightly attributes such an attitude to the historical icon of the Mother Pole, who never fights for herself but always for others.

A number of these women held powerful positions in the new legalized media, which would have allowed them to play important roles in the abortion debate if they chose to. Many of these women were against restrictive legislation, but they did not get involved. In fact, when Penn's book was published in Poland in 1999 some of them were offended that their role had been made public, which they neither expected nor wanted.

Why did these women remain silent when abortion became one of the hottest political issues? Most of them were pro-choice and critical of the draft anti-abortion law as well as influential enough to have had a real impact on the debate. There are certainly many reasons for this passive attitude towards the abortion question, but the main one is the internalized hierarchy of values they shared. After so many years of struggle for the freedom and independence of the nation, engaging in the abortion debate seemed so much less important to them; while democratic values concerned every citizen, abortion was seen as important to only half of the society, and even then not all of that half. Without a clear feminist political agenda they were not able to see abortion as an equality or human rights issue. Moreover, as Barbara Labuda told the U.S. feminist magazine, *Ms.*, in the summer of 1990, "Women were promised that their concerns would be addressed as soon as the 'more important' political and economic problems are solved. At least, women themselves shouldn't say, 'Let's wait,

there are more important things now.'" As Penn observes: "Influential opposition women did not seize the moment to protest the draft bill because they weren't looking for an opportunity to seize. They have accepted and internalized their role as a support team for the men and carried it over into the new democracy."

Interestingly, at the grassroots level, ordinary Solidarity members in the Women's Section opposed the organization's official stand on abortion. In May 1990, during the National Congress of Solidarity, in which women constituted only 10 percent of the delegates, a resolution in favor of the legal protection of the "unborn" was adopted. The Women's Section protested against it on the basis that women should be the ones to make such decisions. As Małgorzata Tarasiewicz, a leader of the Women's Section, stated, "The male leadership was shocked by our position. They never expected women to contradict them." As a direct result, the Solidarity Women's Section was dissolved in spring 1991.

The simple truth is that Solidarity betrayed women. As Maria Janion, a well-known professor of literature and a feminist, said in a 1999 article in *Gazeta Wyborcza*, "In Poland, the woman is not an individual, but a family creature who should turn away from politics and take care of the home. The moment when I realized this was during the 1990 meeting of the National Congress of Solidarity, which took up the bill to protect unborn children. It was the beginning of our male democracy."

Elżbieta Matynia[23] says that the re-establishment of patriarchy by Poland's new leadership was best symbolized in a Solidarity poster for the 1989 election campaign. The poster shows an image of Gary Cooper in the Hollywood western, *High Noon*, wearing a Solidarity badge on his chest. It was meant to encourage people to vote for Solidarity candidates but in a deeper sense this macho image represents a new state dominated by male values. "In opposition to a gendered image of the nation, which has been always female, the gendered image of the newly institutionalized, democratic state of Poland, the source of societal hope at the end of the twentieth-century, emerged as unquestionably male. And at that time nobody, not even Polish women, seemed either alarmed or even aware of being excluded," Matynia wrote.

[23] Matynia, E. (2003, Summer). Provincializing Global Feminism. *Social Research* (without the High Noon story). Chapter in Matynia, E. *Performative Democracy,* (forthcoming).

The women's movement of the 1990s

In spite of these difficulties, the women's movement gradually became more influential. Although it was never very strong it was visible enough so that politicians started to take its demands into consideration. But a significant section of the movement did not take a position on abortion. In fact, apart from openly pro-choice groups, very few worked on this subject. The Federation for Women and Family Planning was the key group working for reproductive rights in this period.

Women's groups worked with parliamentarians in 1996 and 2004 to liberalize the anti-abortion law. The Federation played an active role in this change launching two reports on the effects of the anti-abortion regulations that were publicized widely in the media, and participating in the Parliamentary Commission mentioned above that formulated the draft law on "responsible" parenthood.

In 2002 and 2003, NGOs undertook a number of advocacy actions in order to raise awareness about the need to change the law. Bringing "Women on Waves," a Dutch abortion service run from a ship, to Poland in June 2003 was the most spectacular of these initiatives. For two weeks the ship *The Langenort* was on show in the Polish shipyard Wladyslawowo. It was the biggest advocacy project undertaken by Polish pro-choice NGOs and it attracted huge media coverage in Poland and internationally.

C. Women's private attitudes towards public debates on women

The common cultural background, experience, memory, and identity of Polish women at certain points in history allows for assumptions about the attitudes of ordinary women towards abortion and the legal process leading to restrictive legislation. Recognition of this cultural and historical heritage gives us a better understanding of the absence of any mass movement of women or mass mobilization in defense of reproductive rights.

Morality v. reality

Some insights can be gleaned from a 2000 focus study on the right to abortion. Duch Danuta and Zielińska Agata conducted the study for the Market and Social Research Agency (RUN), which had been commissioned by the Federation for Women and Family Planning. Two groups of women took part – a group of younger women (18-25) and a group of older women

(30-45). Participants were asked their opinion on abortion, their awareness about the process leading to legal change, and whether they had ever been involved in any action or taken a public stand in this debate. The results of the study confirmed that while abortion in itself is seen as morally wrong, liberal legislation is perceived as justified and is tolerated.

Significant differences of opinion were observed. Young women see abortion as a moral issue and not as a rights issue. They believe that abortion is wrong and that the law limiting access to abortion is necessary, with rational foundations, although they do think it is too restrictive. Interestingly, they are not fully aware of the legal grounds for abortion, but they do put forward reasons they believe justify abortion. These reasons vary but most agreed that abortion should be legal on medical and criminal grounds and in cases of difficult life conditions. They felt that pregnant teenagers should be allowed to have abortions but not women in a good economic situation who want to build a career. They believe women should try to avoid abortion by using contraception. They also believe that women should have the right to express their opinion about the law, but they themselves are not eager to undertake any such initiative although they might support an action proposed by others, like sign a petition. They were too young to join the abortion debates of the early 1990s, and were only vaguely aware of social protests mounted in the mid-90s. The study also found that the attitudes of young women are affected by the teachings of the Catholic Church. For example, some of them reported seeing *Silent Scream*, a misleading documentary film directed by Bernard Nathanson, which surmises that the fetus suffers during the abortion procedure.

Older women in the study were very critical of restrictive legislation. They saw abortion not as a moral issue but as a human right to which they are entitled: "I respect life but I need to have the right to choose as a free person in a free country." For them the anti-abortion law violated their dignity and personhood. The right to abortion is closely connected with their responsibility for children they already have and for whom they want to provide the best conditions for development. They emphasized child rearing over childbearing and felt the anti-abortion law threatened good child rearing by forcing them into childbearing they cannot afford. These women certainly do not agree with the popular Polish saying, "If God gives children he will also give (support) for the children." They noted that the restrictive laws had been introduced by men and were adamant that men should not decide such things when it is women who

bear the full responsibility of childbearing and child rearing. They felt lonely in the everyday care of children without support from men or the state, and hurt that legislators forced them into motherhood. They were aware of the numerous campaigns and protests from both perspectives and some of them had even signed petitions supporting abortion, although they had never considered any serious involvement in activism around this issue.

A comparison of these two groups shows stark generational differences. Older women have more life experience and are more consistent in their views. They remember times when liberal laws were in force and see the restrictive legislation as a violation of their fundamental rights. Younger women brought up under the new legislation are more prone to accept and justify it, largely due to strong and consistent propaganda from the Church, which has succeeded to some degree in shaping the perception of the issue from the perspective of the fetus rather than that of the woman.

Women do not see themselves as political actors – private v. public
In the study, even older women who seem quite motivated and committed did not see themselves as actors in this conflict. They complained that no one had taken their opinions seriously but they never considered expressing their opinions publicly. They do not believe they might have any impact on political decisions, even those that concern them. They also complained that politicians, mainly men, make decisions about their lives but in principle they accept this system — it has simply never occurred to them that they could demand something from politicians, who are completely alienated from their lives, or that they themselves might become politicians. They see themselves as private persons acting mainly in their private lives, coping with everyday routines while men operate in the public sphere. This traditional perception seems to be accepted by many Polish women without question and may be one of the reasons why most women remained silent and passive in the abortion debates.

These attitudes highlight the weaknesses inherent in Polish democracy, whereby half the society does not feel sufficiently empowered to have an impact on policies that affect their lives. It is a vicious cycle in which the political sphere is inaccessible to women by virtue of the fact that they do not have a critical mass in decision-making bodies and cannot, therefore, make their voices heard.

Taboos on sexuality limit involvement in public debate

Speaking about sex and sexuality is neither natural nor accepted in Polish society. A popular language to describe sexual relations and sex organs, and that is neither medical nor vulgar, has not yet developed given that discussing sexuality is not a socially accepted norm. Polish women did not develop awareness-raising groups in the 1960s and 1970s, as did women in the U.S. and elsewhere. They did not learn how to break taboos regarding their bodies and they rarely discussed such matters as menstruation, abortion, or sex in public. Part of the reason is that women do not feel themselves to be the full owners of their bodies. As Bożena Chołuj, professor at Viadrina University, says, "The lower part of the body belongs to a priest, politician, doctor, and husband." When American feminist Ann Snitow came to Poland in the beginning of 1990s to meet with the few existing feminist groups, she expressed her solidarity with their struggle for legal abortion by offering them Manual Vacuum Aspiration equipment, which American women had been using for self-induced abortions since the 1960s. Polish feminists were shocked by the idea of self-inducing abortion; none would dare to do it to herself or to another woman, and none even believed herself capable of doing such a thing. This example illustrates the significant cultural differences between Poland and other settings.

Abortion without a public face

As has already been stated few women participated in the abortion debates, and there were none who would give a human face to the issue in public; the society only heard about anonymous, unidentified, and unknown women who suffered as a result of the restrictions. No woman would put her name to a statement that she had had an abortion, what it meant for her, and why she wanted to have this right preserved. Silence around abortion as a personal experience is one of the most significant barriers in the struggle for legal abortion. In 2001 the Federation for Women and Family Planning organized an exhibition in which one of the posters asked the key question: "When will Polish women break the silence surrounding abortion?" Other campaigns were planned to convince well-known women to speak out about their experiences with abortion, which is what women from many countries did in the 1970s. When famous women, including Catherine Deneuve and Simone de Beauvoir in France and Romy Schneider and Alice Schweitzer in Germany, said in public, "I had an abortion," it shifted the whole discussion towards liberalization. However, no well-known

Polish woman has yet been convinced to do the same, although one did imply she would if others would join her.

When Polish women speak about abortion, they never speak about themselves, only others. They don't dare admit to the experience because of the shame and guilt associated with it. Having an abortion has been seen as a failure, loss, or final resort for women who are out of control, and is never associated with women who are successful, well off, and in control of their lives. Janet Hadley, British activist, writer, and health journalist, refers to this phenomenon as the "awfulization" of abortion: by alienating abortion from women's life, and by making it always the extreme and tragic experience of "others not myself," women indirectly collude with the view that the legal right to choose is a bad thing. Again we can see that once abortion is defined in moral terms, as a bad deed, it becomes much harder to assertively and successfully argue against anti-choice campaigns referring to the right to life. Ignoring the fact that abortion is a common experience of many women of the world — that our grandmothers, mothers, ourselves, our colleagues had abortions and many more will have them in the future — distorts the reality of women's lives. It turned out to be impossible to defend the right to abortion based only on the experience of a few unidentified and marginalized women.

In other words, Polish women do not speak about the right to abortion because they do not know how to convince others or themselves that abortion is a common and legitimate experience, an important social and political issue, and that the right to decide is a fundamental women's right. They also do not acknowledge that politicians have the responsibility to guarantee women the rights they need. Given that they have not convinced themselves, how can they convince others?

Conclusion

There are a number of reasons why the anti-abortion law was introduced in Poland. Radical conservatives used a historical moment of political transformation of the state to introduce abortion debates into the political agenda. This atmosphere of political change and transition from the communist regime to Democracy enabled the Church to present liberal abortion laws as a remnant of "godless" Communism. The engagement of the powerful Roman

Catholic Church and the personal involvement of the Pope played a key role in pressuring politicians to criminalize abortion, and in disarming the opposition. The society was completely unprepared to confront anti-choice rhetoric.

Cultural factors also played an important role in this process. While the society was against restricting abortion, the fact that the majority also view abortion as morally evil was a paradox that inhibited greater and open involvement in the struggle against restrictions. The authority of the Church and the Pope strengthened such attitudes. Silent disobedience to Church doctrine meant that abortions were driven underground.

The historic stereotype of the Mother Pole, which makes women responsible for preserving the society by sacrificing their personal interests for others, is characteristic of the Polish patriarchy. A very weak women's movement, unable to effectively oppose powerful anti-choice actors, impeded more effective resistance.

The overwhelming victory of right-wing forces in Poland in 2005 raises serious concerns that the situation regarding reproductive rights might deteriorate even more in coming years. In the long run, the growing secularism and individualism in the society as the result of modernization and integration with the European Union may change the political climate around these issues and eventually lead to legal changes.

Population	38.2 mln.
Women in reproductive age (15-49)	9.98 mln.
Women (men) with high education	11% (6%)
Population living in urban (rural) area	61.6% (38,4%)
Maternal Mortality	13 per 100,000 live births*
Child Mortality	7 per 1,000 live births*
Fertility Rate	1.22
Religion	89.8% Roman Catholic

Sources:
Unpublished Government Report on Family Planning, Warsaw 2005, General Statistical Office data (2003)
*UN Human Development Report (2006). Retrieved May 28, 2007, from http://hdr.undp.org/hdr2006/

South Africa

Constitutional Authority and its Limitations: The Politics of Sexuality in South Africa

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"While the newly enfranchised have much to gain by supporting their government, they also have much to lose." Adebe Zegeye (2001)

A history of the future: Constitutional rights

South Africa's Constitutional Court is housed in an architecturally innovative complex on Constitution Hill, a 100-acre site in central Johannesburg. The site is adjacent to Hillbrow, a neighborhood of high-rise apartment buildings into which are crowded thousands of migrants from across the country and the continent. This is one of the country's most densely populated, cosmopolitan and severely blighted urban areas. From its position atop Constitution Hill, the Court offers views of Hillbrow's high-rises and the distant northern suburbs where the established white elite and increasing numbers of newly affluent non-white South Africans live. Thus, while the light-filled, colorful and contemporary Constitutional Court buildings reflect the progressive and optimistic vision of post-apartheid South Africa the location is a reminder of the deeply entrenched inequalities that continue to define the rights of the majority of people in the country and the continent.

From the late 1800s to 1983 Constitution Hill was the location of Johannesburg's central prison, the remains of which now lie in the shadow of the new court buildings. Former prison buildings include a fort built by the Boers (descendents of Dutch settlers) in the late 1800s to defend themselves against the thousands of men and women who arrived following the discovery of the area's expansive gold deposits. Following the British victories in the Boer Wars and the colonization of the Boer republics of Transvaal and the Orange Free State in the early 1900s, the fort became a prison. Until separate native (black African) and women's jails were completed the fort only housed white male prisoners. Prisoners and non-prisoners diagnosed with venereal infections were detained in a separate facility on the site. Bricks from some of the prison buildings were incorporated into the new Constitutional Court buildings, literally investing the complex with the histories of prior judicial systems. The remaining prison buildings have been, or soon will be, turned into museums, shops, restaurants, and government or NGO offices. The former woman's jail, for example, is now home to the country's Commission on Gender Equality.

Among the thousands of political activists who did time in the prison were Nelson Mandela, Winnie Mandela, Mahatma Gandhi, Albert Luthuli, Fatima Meer, and Joe Slovo. However, unlike the prison on Robben Island, which only held political prisoners, the Johannesburg central prison mostly housed "common criminals." A large percentage of inmates were guilty of transgressing apartheid laws limiting movement, affiliation, commerce, and sexuality such as "pass" offenders (Black Africans without permission to be in the city's white areas), curfew breakers, women who illegally brewed beer, and men and women arrested for prostitution, homosexual behavior, or for having sex with someone of a different race.

The Constitutional Court buildings alternately integrate and contrast old and new structures thus signaling both a break with apartheid-era injustices as well as a confrontation with their persistent legacy. The Court reflects this as it strives to establish new precedents out of the country's deep fractures. The competing discursive claims and worsening social and material disparities that define sexuality and gender systems frequently renew these fractures. The distances between constitutional principles and the norms of the majority are especially wide in these cases.

The South African constitution invites contradictions. A prime example is the tension be-tween the rights to "freedom and security of the person" and those protecting "cultural, re-ligious and linguistic communities." The former include the right to "bodily integrity," such as the right "to make decisions concerning reproduction," while the latter guarantee the right "to enjoy one's culture and religion" and "to form, join, and maintain cultural, religious, and linguistic associations and other organs of civil society." Political, religious and commu-nity leaders appeal to these rights in debates about abortion, traditional circumcision rites, virginity testing, and medical treatment for persons living with HIV/AIDS. Some of these debates have already reached the country's highest courts and many others are working their way up the judicial hierarchy.

A second difficulty with the constitution is the remedies it suggests for past injustices. The discussion of property rights, for example, assures redress for persons or communities "whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices" yet suggests that tenure or compensation will only be "to the extent provided by an Act of Parliament." The same section explicitly excludes land tenure claims prior to June 19, 1913 thereby protecting unjust ownership rights to lands that were illegitimately seized prior to that date. Since land ownership by way of inheritance is often gender based, these sections of the constitution are of particular concern to the country's women's movement.

The ambiguity in sections of the constitution is a legacy of the drafting process, which con-sisted of submissions by ordinary citizens, civil society groups, and political parties within and outside of the Constitutional Assembly. The political landscape changed dramatically in the years leading up to South Africa's first democratic elections; coalitions formed in the lib-eration struggle rapidly reorganized into highly-motivated interest groups, such as the cross-party Women's League and the National Coalition for Gay and Lesbian Equity, that made the development of the constitution their primary concern (Ballard et al., 2006). Although these groups played extra-parliamentary roles, their long-standing alliances with political representatives, many of whom were resistance leaders prior to entering parliament, ensured a considerable level of influence in the Constitutional Assembly.

Thus, even though Nelson Mandela's African National Congress (ANC) won the first demo-cratic elections in 1994, it could not dominate constitutional talks but had to negotiate a

document that would embrace competing visions. There were three major sets of challenging political demands: the National Party, which ruled in the apartheid era, emphasized group rights and protection of racial and cultural minorities; the predominantly Zulu Inkatha Freedom Party called for a federalist structure that would guarantee regional autonomy in its home province, KwaZulu-Natal; and right-wing groups wanted a *Volkstaat* (homeland) for the most conservative segment of the Afrikaner population. These demands were softened in the negotiation process by the inclusion of protections — like those afforded cultural, linguistic, and religious groups — resulting in a constitutional flexibility that, for Zegeye (2001), registers a commitment to a democratic political system willing to embrace multiple identities. The pull between the central government and racial, cultural, linguistic, ethnic, and ideological minorities has been kept in check up to this point by the ANC's national popularity. Nevertheless, divisions between these groups, including hints of nationalist desires by some, are hard to ignore.

The vague wording in sections of the constitution was also strategic; rather than jeopardizing the drafting process by debating contentious moral issues (such as abortion), the parties sought to ensure themselves sufficient leverage to influence interpretations and application of constitutional principles in the legislative and judiciary branches of government (Hassim, 2006a). A two-thirds legislative majority and support from each of the country's nine provincial governments are required to amend the constitution, which encourages cooperative and coalitional politics while offering an important level of protection for minorities.

Despite its vagueness in places, the constitution unequivocally affirms human and citizenship rights. The values expressed in the opening paragraphs of the document include: "human dignity, the achievement of equality, and the advancement of human rights and freedoms," "non-racialism and non-sexism," and "a common South African citizenship." These principles encourage a nation of equal citizens with rights whose patriotic attachment is to shared political practices and values rather than to narrow nationalist agendas (Zegeye, 2001). The terms of citizenship are systematically elaborated in the 33 sections of the "Bill of Rights" — the heart of the document and the section used to justify claims that South Africa has the most progressive constitution in the world.

While all rights affect sexuality and gender rights, the following have featured significantly in sexuality-related court rulings, legislation, and advocacy campaigns:

1. *Right to equality* (section 9) protects against discrimination on the grounds of "race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth."
2. *Inherent dignity* (section 10) and the *right* to *life* (section 11) are absolute rights.
3. *Right to bodily and psychological integrity* (section 12) includes the right "to make decisions concerning reproduction," "to security and control over the body," and, "not to be subject to medical or scientific experiments without … informed consent."
4. *Privacy rights* (section 14) extend to person, home, property and communications.
5. *Freedom of expression* (section 16) is guaranteed for the press and other media, information and ideas, artistic creativity, and academic freedom and freedom of scientific research. It does not extend to the "advocacy of hatred that is based on race, ethnicity, gender, or religion."
6. *Right to choose one's trade, occupation or profession* (section 22).
7. *Right to health care* (section 27) includes access to "health-care services, including reproductive health care."
8. *Children's rights* (section 28) include access to "basic nutrition, shelter, basic health-care services and social services," and protection from "maltreatment, neglect, abuse or degradation . . . [and] exploitative labor practices."
9. *Education* (section 29) in one or more of the country's 11 official languages, taking into account "equity," "practicability," and "the need to redress the results of past racially discriminatory laws and practices."
10. *Right to access of information* (section 32) held by the state and any information "that is held by another person and that is required for the exercise or protection of any rights."
11. *Language, cultural, and religious rights* (sections 30 and 31).
12. *The rights of the arrested, detained, and accused persons* (section 35) are among the most extensive and detailed and include rights to a fair trial, human dignity, and, "at state expense," provision of "adequate accommodation, nutrition, reading material, and medical treatment."

On the basis of these rights, the Constitutional Court has handed down judgments in a number of landmark cases. The first of these, State v. Makwanyane, concerned the constitu-

tionality of the death penalty. The death penalty is a potent metaphor for the brutal racism of the apartheid-era legal system, which held murder, rape, aggravated robbery and housebreaking, and treason to be capital crimes. The sentence was often handed down — 537 people were hanged between 1985 and mid-1988, a disproportionate number of who were black Africans (Amnesty International, 1989; Devenish, 1990). This disparity is clear in the proportions of white and black men executed following their convictions for raping women of another race. Between 1947 and 1966, for instance, none of the 288 white people convicted of raping black people received the death penalty, yet 122 of the 844 Black Africans convicted of raping whites were hanged (Rule and Mncwango, 2006). In State v. Makwanyane the Court's unanimous ruling that the death penalty is unconstitutional was the clearest confirmation possible that the racist South African police state was officially over. Although not explicitly concerned with sexuality, the limit this decision places on the state's power over the bodies of its citizens provides a crucial foundation for the protection of the rights to bodily integrity, dignity, and life, each of which is integral to gender and sexual rights.

No official executions were performed in the Johannesburg central prison — they took place north of Johannesburg in the central prison in Pretoria, the country's administrative capital. But many other forms of violence occurred at the Johannesburg central prison, much of which, as former inmates attest, was explicitly sexual or clearly sexualized. Black male prisoners, for instance, were frequently required to do the *tauza*, a naked "dance" designed to show guards they had nothing concealed in their anuses. Women were subject to similar humiliations as recorded by anti-apartheid activist Fatima Meer who writes of seeing naked black African women having their vaginas searched for contraband (Gevisser, 2004). During her incarceration following the 1976 student uprising, Winnie Mandela organized a protest against rules denying women prisoners the right to wear underwear or to use sanitary napkins. Other accounts of life in the prison tell of the rape of both men and women by prison workers and fellow inmates. To these must be added the testimony given to the country's Truth and Reconciliation Commission in the late 1990s — survivors, victims' families, and perpetrators told of how sexual violence was used to intimidate, torture, humiliate, and kill anti-apartheid activists in prisons and other detention facilities across the country.

The manipulation of sexuality for the purposes of social control did not only occur in these facilities. As in the colonial period, sexual control pervaded the apartheid system. The gov-

ernment's Afrikaner majority, descendants of early Dutch and Huguenot settlers, applied a deep and rigid Calvinist morality to the colonial system it inherited. This moral code, like the policy of white supremacy, was justified by idiosyncratic interpretations of selected biblical passages. This mix of religious and imperialist morality channeled the white minority's anxieties (and fantasies) about "rapacious" black sexuality into passionate support for the apartheid system. The Prohibition of Mixed Marriages Act and the Immorality Act were intended to protect and preserve the "purity" of the white race and together formed one of the four legislative pillars of the apartheid system. The other key pieces of apartheid legislation were the Population Register, which defined the racial-classification system, and the Group Areas Act and the Reservation of Separate Amenities Act, which together segregated the entire country and its institutions along racial lines, directing where citizens could live, work, travel, go to school, engage in commerce, receive medical care, be imprisoned, be entertained, participate in or watch sports, and so forth.

The racial geography forced black men and women seeking work to migrate to the predominantly white urban centers, thereby continuing the migratory labor system established by the British colonial administrators to support the country's industrial sector. As a result, millions of black men spent the majority of their adult lives housed in all-male hostels adjacent to gold mines or factories, while women remained in the rural areas, or lived in townships on the outskirts of cities or in small rooms on their employers' properties working as cooks, nannies, and cleaners. The impact of this labor system on black families, and the sexual economies it promoted, are immeasurable.

Legislation governed almost every other sexual domain. Draconian censorship laws ensured that even the mildest sexual content was removed from all forms of media. Sex work and pornography were banned and state propaganda equated left-wing politics with sexual perversion in order to vilify individual activists and entire organizations. Homosexuality was criminalized for both men and women with sex between an adult and person of the same sex who was 19 years or younger being a separate statutory offence. The age of consent for heterosexuals was 16.

In stark contrast to its militant control of most aspects of sexuality, the apartheid government championed the privacy and patriarchal authority of the domestic sphere, showing little concern for sexual violence against women and children unless a black person perpetrated it against a white person. With the certification of the constitution in 2006, this separation between public and private gave way to a regime of sexual regulation that is now, first and foremost, a matter of rights and responsibilities. The gender and sexual rights articulated in the constitution are complemented by the constitutional rights to freedom of expression and assembly, providing a network of intersecting rights that has enabled legislators and judges to defend gender and sexual rights against competing moral claims from religious, cultural, political or other authorities. The Constitutional Court has both provoked and reinforced this trend in the majority of its rulings. The establishment of a regime of sexuality based on citizenship rights has not resulted in gender equity, but it has transformed sex into "a sphere — perhaps even pre-eminently the sphere — within which newfound freedoms are vigorously asserted," (Posel, p. 55).

Since 1995, individuals, civil society groups, and state institutions have successfully used the constitution to argue for sexual and gender rights. The realization of these rights in the lives of most citizens is hampered, however, by the country's extraordinarily high rates of gender-based violence and its widespread AIDS epidemic. It is estimated that one rape occurs every 26 seconds in South Africa, and between 1994 and 2002 the incidents of child rape increased by 64 percent, with a total of 31,780 cases reported in the 18 months between January 2000 and July 2001 (*Drum*, November 15, 2001, in Posel, 2004). The HIV prevalence rate is estimated at 11 percent, meaning that approximately 5.5 million of the country's 45 million people are living with HIV/AIDS. Women account for more than half of the cases (Quin, 2007). Gender-based violence and AIDS are used as platforms for bitter disputes over the legacies of the racist colonial and apartheid systems and political and community leaders frequently blame their political foes for the situation. Members of the ANC government, including President Thabo Mbeki, have disputed the reported prevalence rates, accusing some journalists, activists, and community leaders who have taken up the issue of inflating them. They took these attacks a step further, suggesting that their critics are "still trapped in the multiple ghettos of the apartheid imagination," an image borrowed from Constitutional Court Justice Albie Sachs, who was describing the challenge of building a post-apartheid society.

The limits of freedom: Gender-based violence and commercial sex work

The shift in emphasis from privacy to rights has significantly increased public debate regarding sexual violence. The Constitutional Court first addressed the issue in state v. Baloyi in 1999, which determined the constitutionality of the 1993 Prevention of Family Violence Act. Justice Sachs argued that the "hidden and repetitive" nature of domestic violence gave the state the right to act proactively as it did when it passed the law. The gender-specific quality of such violence, he said, "reflects and reinforces patriarchal domination, challenges the non-sexist foundations of the constitution and violates the right to equality." The state's potential (and potentially troubling) reach was further elaborated in Carmichele v. Minister of Safety and Security in 2001. Carmichele sued the minister for damages resulting from a brutal attack on her by a man released from custody despite the fact that he was awaiting trial for attempted rape. In their unanimous decision supporting the applicant's case, the justices held that the constitution obliges the state to prevent gender-based discrimination, protect the dignity, freedom, and security of women, and ensure that women are free of the threat of sexual violence.

To date, none of the obligations listed in Carmichele v. Minister of Safety and Security have been successfully fulfilled. This is not for lack of legislative action, however. Since the country's 1995 ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a slew of policy and legislative initiative regarding sexual violence has come before parliament. In 1988 parliament passed the Domestic Violence Act, regarded as one of the most progressive in the world. The act expands the definition of domestic violence and provides for legal protection orders in any domestic relationship (Cooper et al., 2004). In 2002 the government approved the provision of HIV post-exposure prophylaxis to rape survivors through the public-sector health services, and in 2004 it initiated a review of sexual assault legislation in order to amend the definition of rape and to enforce heavier sentences for convicted rapists. Critics have justifiably argued that without enforcement or widespread access to resources these initiatives are pointless.

Gender-based violence is one of the greatest social crises facing the country, for in addition to the extreme suffering it causes, in and of itself, it also fuels other crises, most notably the

AIDS epidemic. Violence against women and girls makes it impossible for them to assume the rights and responsibilities of citizenship, undermining the constitutional recognition of women's equality (Bentley and Brookes, 2005). Practically every organization in the country committed to gender and sexual rights has, like the Constitutional Court, recognized the fundamental harm gender-based violence does to democratic principles. But these condemnations only underscore the fact that "hortatory conviction" has limitations, as the statistics demonstrate (Bennett, 2005).

The Law Reform Commission estimates there are 1.7 million rapes per year but on average only 54,000 rape survivors report the crime to the police. Even with this under-reporting, half of all cases before South African courts are for rape (National Prosecuting Authority in Smith, 2004). According to South African Police Service crime statistics on reported rapes there were 113.7 rapes reported per 100,000 of the population in 2003 to 2004. In 1994 to 1995, the rate was 115.3 per 100,000 and in the intervening years the rate has gone as high as 126.7 per 100,000 (1996-1997), with the average over the 10 years being 107.96 per 100,000. In other words, there has been no reduction in reported rapes over the first constitutional decade. Rather, the number of reports has increased by 17.8 percent during that period.

In a study of coercive sex among young women aged 12-17, researchers with the AIDS prevention project Love Life (2000, p. 19) found that 39 percent of respondents said they had been forced to have sex. Thirty-three percent said they were afraid of saying no to sex and 55 percent agreed with the statement, "There are times I don't want to have sex but I do because my boyfriend insists on having sex." As these results indicate, many intimate relationships are characterized by violence. Results from a 2003 survey by South Africa's Human Sciences Research Council (HSRC) reveal that nearly 20 percent of all South Africans have experienced violent physical assault in their domestic relationships, either as perpetrators or victims, with women twice as likely as men to be the victims (Dawes, 2004).

In many cases, domestic violence becomes lethal. Vetten (1996) estimates that in the province of Gauteng, where Johannesburg is located, every six days a woman is murdered by her intimate partner. Using data from a sample of 25 mortuaries across the country, Matthews et al. (2004) estimate that 50.3 percent of female homicides in 1999 were committed by the

victim's intimate partner. Nationally, an average of one woman is killed every six hours by her current or ex-husband or boyfriend, same-sex partner, or current, rejected, or would-be lover. The rate of reported murders in South Africa has declined from 66.9 per 100,000 in 1994-1995 to 42.7 per 100,000 in 2003-2004 (23.7% overall reduction), but with an average of 50 murders per day, South Africa still has the second highest murder rate in the world (McGreal, 2007).

The level of violent crime in South Africa has inflamed national debate on a broad range of concerns. When in 2004 the journalist and rape survivor Charlene Smith described rape as "a way of life" in South Africa, President Mbeki publicly vilified her. In an article written for the ANC's website, the president accused Smith of portraying "our cultures, traditions and religions as Africans [in ways that] inherently make every African man a potential rapist . . . [a] view which defines the African people as barbaric savages." He said the panic regarding crime in South Africa confirmed, "the psychological residue of apartheid has produced a psychosis among some of us such that, to this day, they do not believe that our non-racial democracy will survive and succeed," (quoted by BBC, 2004, May 10). In an interview conducted by the South African Broadcasting Corporation in early 2007, President Mbeki again played down reports of high levels of fear about crime. He was criticized for these statements shortly afterwards when the African Union presented him with a report on good governance in which it warned that crime, particularly against women and children, was undermining South Africa's democracy (McGreal, 2007). In his most recent State of the Nation speech, delivered on February 11, 2007, Mbeki cautiously acknowledged the country's crime problem and outlined a number of new initiatives to deal with sexual offences, including funding for more courts.

Given the Constitutional Court's position on gender-based violence and its assertions concerning government's responsibility in the matter, the judgment handed down in State v. Jordan (2002) is surprising. The case addressed the constitutionality of laws criminalizing sex work, which the justices unanimously determined did not infringe on the rights to human dignity and economic activity. They also concluded that even if the laws did limit the right to privacy, such limitation was "justifiable." A minority of the justices argued that because the law considers the patrons of sex workers to be accomplices rather than equally culpa-

ble it "reinforces sexual double standards and perpetuates gender stereotypes in a manner impermissible in a society committed to advancing gender equality." The implied remedy in this argument is the increased criminalization of sex work. At various points in their opinions the justices emphasized that the criminal status of sex work is determined by the legislature, suggesting that the court would look favorably on decriminalization but would require the legislature to initiate the process.

Advocacy groups, like the Point Road Women's Association in Durban and the Cape Town-based Sex Worker Education and Advocacy Taskforce (SWEAT), have argued that criminalizing sex work increases women's vulnerabilities and they are basing their current campaigns on the public-health benefits of legalization. There are historical precedents in South Africa for public-health approaches to the issue. One of the most notable is the Cape parliament's colonial-era 1885 Contagious Diseases Act, which made provision for the establishment of disease surveillance mechanisms in certain towns, including the registration of sex workers and compulsory medical examinations. Sex work is currently criminalized under the 1957 Sexual Offences Act. Discussions of the public benefits of decriminalization have resurfaced repeatedly over the past 60 years, particularly in light of the fact that the sex-work industry continued both within the country and in neighboring states (known as the "pleasure periphery"). Given the racist nature of the public-health system, and the fact that the majority of sex workers were black and their clients were white, these discussions were closely attached to the state's interest in population control. For example, one Cape Town City Council member suggested that if men had access to state brothels, birth rates in the area would drop (Wojcicki, 2003).

Basing legalization on pubic health arguments is risky, as implied by Jayne Arnott, SWEAT Director, and Althea Macquene, SWEAT Advocacy and Lobbying Coordinator, in their 2006 submission to the South African Law Commission's Project on the Sexual Offences Act. In the section on sex work and HIV/AIDS Arnott and Macquene describe the abuse of sex workers resulting from "invasive interventions by researchers and pilot program related to HIV/AIDS," asserting that sex workers are not protected by the public-health system but actually need protection from it. They report cases of researchers taking the police with them to find sex workers on the streets at night and criticize the almost exclusive concentra-

tion on street-based sex workers, which undoubtedly skews the research data. Their biggest concern is that "these interventions, particularly the research, [do] not seem to be leaving anything behind in terms of assistance." From this report it would appear that some public-health researchers are reinforcing the stigma imposed on sex workers, thereby reinforcing criminalization rather than helping to remove it.

Other gender-rights issues have overwhelmed advocacy for the rights of sex workers. Only a few of the country's women's rights groups have made sex-worker rights one of their core concerns, and the Commission on Gender Equality's 1998 position paper advocating for legalization on the basis of the constitution's human rights and employment rights clauses failed to provide the momentum required to move the issue to the center of the political stage. When viewed with an understanding of how the women's movement has developed since the certification of the constitution, however, these responses are not as inconsistent as they may at first appear — rather, they are symptomatic of broad trends in the relationship between civil society and the government as opposed to being a sign of a specific constituency's commitment to a particular concern.[1]

The Women's Charter for Effective Equality, drawn up by the Women's National Coalition and approved at its national conference on February 27, 1994, calls for the decriminalization of sex work and the protection of sex workers' health and safety. If used to interpret the Bill of Rights, the Charter's detailed and precise rights claims will ensure a robust women's-rights agenda. However, a long-term view of the South African women's movement suggests that apart from the period in the early 1990s, when the Women's National Coalition was in operation, the movement is relatively weak, favoring "inclusive" rather than "transformative" politics (Hassim, 2006b). The emphasis on inclusion has ensured great success with women's enfranchisement, parliamentary representation, and changes in electoral systems and quotas. On the other hand this strategy has stunted initiatives in support of structural transformations, such as social movements of the poor.

[1] For further reports on sex workers as targets of HIV/AIDS policies, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics in Brazil: A case study, pp. 37-39; Ramasubban, R., Culture, politics, and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 98-99, 107, 114-118; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 292, 299-302.

The gains from the "inclusive" strategy were substantial and rapid. More than one million more women than men registered to vote in the 1999 elections, and 29.8 percent of the seats in the national legislature went to women, 27 percent more than in the previous election (Vincent, 1999). The ANC imposed on itself a minimum one-third quota of women candidates on the national list and President Mbeki has committed himself to having women hold at least half of the cabinet posts in his government. The ANC has also distinguished itself from other parties by articulating a women's platform. It supports "legal guarantees of women's rights, free health care for pregnant women and for children, the establishment of special courts to hear cases of abuse against women and children, safeguards for the rights of survivors of abuse, provision of victims of abuse with shelter and counseling, and full equality for lesbian and gay people," (Vincent, 1999, p. 32).

These accomplishments notwithstanding, the costs of the "inclusive" strategy have been substantial. Most notable is the fragmentation and stratification of women's civil society organizations post-1994. NGOs devoted to the implementation and elaboration of the rights-based democratic framework — like the Gender Advocacy Program and the Gender Research Project at the Center for Applied Legal Studies — have been strengthened, but the movement has been weakened overall by the shift of many of its top leaders to state and bureaucratic positions and a reduction of oppositional politics concerning women's issues (Hassim, 2006a). The concentration on policy has resulted in an institutionalization of interests and the depoliticization of key issues, most critically the racial and gendered biases in the economy. The strong faith in state policies has resulted in a neglect of everyday practices and social norms, the kinds of "in-depth, micro-discussions of sexuality, gender, and culture" that would, in the words of Bennett lead to the "macro-question" at the heart of gender-based violence: "Why do they do this to us — they are our brothers, fathers, lovers, uncles, husbands, neighbors, co-workers, *amaqabane* [comrades], they are our friends?" (Bennett, 2005, pp. 28-29). But neither legal nor policy discussions are likely to address questions concerning the ontology of gender-based violence and will, therefore, produce a limited set of responses to the problem.

This situation has enabled party allegiances to trump the kinds of collective action required to provoke structural change, which is sustained by party leaders with sufficient authority to

undermine issue-specific or candidate-specific voting patterns or election platforms (Vincent, 1999). Consequently, social movements focused on practical needs — like electricity, water, housing and employment — seldom link these concerns to women's rights. To illustrate the fractures resulting from party allegiances, Hassim (2006b) describes one of the few recent examples of collective action in defense of women's economic interests. A few years ago the New Women's Movement (NWM), which was formed in 1994 to represent the interests of poor women, mobilized women activists to oppose cuts in state maintenance grants proposed by the Lund Committee on Child and Family Support. The Committee was convened to recommend policies based on the government's White Paper on Social Welfare, which explicitly prioritized poverty reduction. The NWM's allies in the campaign included Black Sash, a sophisticated, multi-racial, women-led, activist NGO that has been in existence for 50 years and has excellent social justice credentials, including a long-standing collaboration with the ANC Women's League. After extensive, divisive debate, the ANC Women's League Western Cape branch asserted that the NWM and Black Sash "represented the interests of relatively privileged colored women" (Hassim, 2006b, pp. 356) and openly supported Geraldine Fraser-Moleketi, the Minister of Welfare who was responsible for implementing the Lund Committee's recommendations. The episode deepened fractures in the women's movement along race, class, and political party lines.

The ANC's inconsistent position on social welfare programs is greatly influenced by the conservative force of neoliberal economic policies, which guides the country's national and international economic policies. Social justice activists actively criticize these policies and lament their distortion of the government's commitment to progressive economic policies in the 1990s. Privileged South Africans and government, industry, and economic leaders in the global North, on the other hand, actively support them. Northern states have rewarded South Africa for its peaceful transition to a post-apartheid democratic state and its commitment to neoliberal policies by granting it expansive moral authority and helping to bring it into influential international forums. South African representatives have been appointed to numerous global and transnational bodies, including the board of governors of the IMF and World Bank, Non-Aligned Movement, UN Conference on Trade and Development, Organization of African Unity, Southern African Development Community, and World Commission on Dams. These memberships provide potentially critical forums for the pursuit of

progressive policies globally and the promulgation of liberation narratives from all manner of "apartheids." The rhetoric used by South African delegates has often been progressive while their actions have frequently tended toward liberal and even conservative positions.

As Mbeki noted in his opening comments at the 2002 United Nations World Summit on Sustainable Development in Johannesburg: "We have converged . . . to confront the social behavior that has . . . produced and entrenches a global system of apartheid. The suffering of the billions who are the victims of this system calls for the same response that drew the peoples of the world into the struggle for the defeat of apartheid in this country." However, given the economic policies Mbeki has sponsored in South Africa and internationally, especially under the New Partnership for African Development (NEPAD)[2] initiative, it is unclear what he actually means by "global apartheid" or how he intends to redress it. NEPAD has offered half-hearted critiques of structural adjustment programs, calling them a "partial solution." It has critiqued what it terms "the inadequate attention given to social services" but has both tacitly and directly supported privatization initiatives, the introduction of user fees, and other policies that have depleted social services. NEPAD has also encouraged public-private sector partnership capacity-building programs through the African Development Bank and other regional development institutions, to assist national and sub-national governments in structuring and regulating transactions in the provision of infrastructure and social services. Until April 2002, no trade union, civil society, church, women's or youth organization, political party, parliamentary group, or other potentially democratic or progressive forces in Africa were consulted and virtually every major African civil society network and organization that analyzed NEPAD attacked the plan's process, form, and content (Bond, 2004). CODESRIA, the Council for the Development of Social Science Research in Africa, and the Africa branch of the Third World Network, have concluded that NEPAD has a neoliberal economic policy framework. This framework, they charge, repeats the structural adjustment policy packages of the preceding two decades and overlooks the disastrous effects of

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[2] The New Partnership for Africa's Development (NEPAD) describes itself as "a vision and strategic framework for Africa's renewal" (www.nepad.org). The 37th Summit of the Organization of African Unity (OAU), in July 2001, formally adopted the NEPAD strategic framework for developing an integrated socio-economic development framework for Africa. President Mbeki and his counterparts in Algeria, Egypt, Nigeria, and Senegal, were given the mandate to develop the framework. NEPAD's key objectives are to: eradicate poverty; place African countries, both individually and collectively, on a path of sustainable growth and development; halt the marginalization of Africa in the globalization process and enhance its full and beneficial integration into the global economy; and accelerate the empowerment of women. Bond (2004, p. 103) considers NEPAD a continuation of the Washington Consensus' structural adjustment programs, which he describes as "a multifaceted tragedy."

those policies.[3] It has also excluded the African people from the conception, design, and formulation of the partnership, and has adopted social and economic measures that have contributed to the marginalization of women.

Marriage: New traditionalists and old traditions

The issues discussed so far confirm Posel's (2004, p. 60) observation that, "The constitution has created the spaces for moral and cultural alternatives in the midst of — rather than displacing — the taboos of old." Discomfort with sexuality has not been reduced; rather it has increased and is often expressed with great anger. As Posel implies, sex is indeed far more visible than would have been possible a little over a decade ago. Yet this newfound openness has ardent detractors. Conservative groups, such as Doctors for Life International, Christian Lawyers, Christians for Truth, United Christian Action, Frontline Fellowship, and the Marriage Alliance, have strongly opposed legislation liberalizing sexuality issues. These groups have formed close ties with conservative political parties, particularly the African Christian Democratic Party (ACDP), which was established by the Pentecostal minister, Reverend Dr. Meshoe. ACDP and the South African Pentecostal movement are allied with U.S.-based Pentecostal organizations. Reverend Meshoe, for example, attended the Shekinah Bible Institute in Kingsport, Tennessee, was awarded an Honorary Doctorate by Bethel Christian College in the U.S., and serves as an associate member of that College's Board of Regents.

Steve Swart, one of four ACDP members of parliament, lectures extensively on Pentecostal positions concerning policy and law and writes political analyses for conservative organizations. In a piece posted on the website of Frontline Fellowship, one of the most aggressive conservative organizations in the country, Swart argues that South Africa's "moral degeneracy" is the consequence of the "secular humanist values" enshrined in the constitution, which he likens to France's Declaration of the Rights of Man. While the French document privileges "moral and intellectual relativism," the American Bill of Rights declares, "All men are endowed by their Creator with certain inalienable rights." The absence of a reference to the "Creator" in the South Africa Constitution is "evidence" of the state's secular humanist

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[3] For an overview and analysis of these policies, see also in this publication: de Camargo, K., & Mattos, R., Looking for sex in all the wrong places: The silencing of sexuality in the World Bank's public discourse.

leanings and general anti-Christian bias. As further "evidence" of this "bias," he cites a re-
quirement of the 1996 South African Schools Act that home-schooled children be assessed
at their nearest public school and be instructed about multiple faiths. A third sign of this
"anti-Christian agenda" is the lack of a provision supporting religious freedom in the 1999
Broadcasting Act since the absence of such a clause makes it easier for broadcasters not to
include Christian programming on television and radio stations. The ACDP and its allies
have also criticized the 1999 Education Laws Amendment Act because it permits the inter-
national reproductive health and rights organization Planned Parenthood to train the coun-
try's life-skills teachers, teaches tolerance for homosexuality and promotes condom use. The
Alteration of Sex Description and Sex Status Act (2003), which permits transgender people
to alter their sex description in the National Population Register, is considered by ACDP
loyalists to be an outgrowth of atheist and evolutionary concepts. They have also criticized
the National Gambling Act (1996) and the Lotteries Act (1997) as immoral, and, like their
conservative partners in the United States, have opposed the limits on firearm ownership set
out in the Firearms Control Act (2000).

The Constitutional Court's rulings on sexuality have usually further outraged conservative
activists. In Case v. Minister of Safety and Security (1995), for example, the majority deter-
mined that anti-pornography statutes infringe on the right to personal privacy. A minority
added that the prohibition also infringes on the right to freedom of expression. While the
judgment was a defeat for the conservative lobby, it claimed victory nonetheless because the
court affirmed the illegality of child pornography. But the greatest opposition has been to
rulings concerning gay and lesbian rights.

The Court's repeated assertions that gays and lesbians are entitled to all the rights and re-
sponsibilities of citizenship, have received considerable attention nationally and internation-
ally. In National Coalition for Gay and Lesbian Equality v. Minister of Justice (1998), the
court struck down the criminal prohibition on sodomy between consenting adult men be-
cause "this intrusion on the innermost sphere of human life violates the constitutional right
to privacy." And in National Coalition for Gay and Lesbian Equality v. Minister of Home Af-
fairs (1999), the court declared a section of the Alien Control Act of 1991 unconstitutional
because it omits to give partners in same-sex life partnerships the benefits it extends to

spouses. This ruling effectively made it possible for South Africa's gay and lesbian citizens to sponsor applications for permanent residency made by their alien same-sex partners.

By drawing attention to the term "spouse" in this immigration case, the court alluded to problems with the definition of marriage in the country's common law, an issue it took up directly in the 2005 case, Minister of Home Affairs and Another v. Fourie and Another (Doctors For Life International and Others, Amicus Curiae), which concerned the marriage rights of same-sex couples. The court found the common law definition of marriage inconsistent with the constitution and invalid because it does not permit same-sex couples to enjoy the status, benefits, and responsibilities it accords to heterosexual couples. Combined with a 2002 ruling that gay couples in "permanent same-sex" relationships could adopt children and a 2003 ruling in favor of a case brought by Judge Kathy Satchwell arguing that her lesbian partner should have the same benefits as the married partners of other judges, the court has extended an array of domestic rights to gays and lesbians. Before these judicial advances, some private sector businesses had allowed permanent unmarried partners (including same-sex partners) to be listed as beneficiaries on medical insurance and retirement plans. The court's rulings made these benefits a right of citizenship not just employment.

As observed by Isaack (2006, p. 55), "constitutional challenges on the basis of sexual orientation resulted in the development of an impressive equality jurisprudence" and are a remarkable departure from the way things were under apartheid. Gay and lesbian rights activists who lived through the apartheid years are still "struck with awe at the quantum leap from the antediluvian criminalization of homosexuality under apartheid, to the full citizenship of gays and lesbians under the government of the African National Congress," (Kraak, 2005, p. 119). The apparent lack of a "historically explicable discourse linking the past to the present" gives this shift the appearance of a "miracle" (ibid). Yet tracing such a genealogy is important — evidence of such links helps anchor rights in the country's historical fabric, enables activists to combat traditionalist arguments that non-heterosexual sexualities are "un-African," and contributes to a deeper global understanding of how sex rights may be advanced. Researchers and activists have examined a number of distinct as well as overlapping ideological, historical, and cultural precedents for the current blossoming of LGBT rights in South Africa.

Journalist Mark Gevisser (2000, p. 118) argues, "The ANC elite has a utopian social progressive ideology, influenced largely by the social-democratic movements in the countries that supported its struggle: Sweden, Holland, Britain, Canada, Australia . . . [and while in exile] South African leaders came to understand and accept — and in the case of women, benefit from — the sexual liberation movement." This ideological base is evident in the histories of suffering of homosexuals under apartheid and the solidarity some gay and lesbian leaders demonstrated with the anti-apartheid struggle. Suffering and solidarity justify claims to the benefits of liberation, as Anglican Archbishop Desmond Tutu argues in a letter he sent to the Constitutional Assembly in June 1995 urging it to include the sexual-orientation clause in the final draft of the constitution. "The apartheid regime enacted laws upon the religious convictions of a minority of the country's population," he argues, and these "laws... denied gay and lesbian people their basic human rights and reduced them to social outcasts and criminals in their land of birth." Tutu and his successor, Njongonkulu Ndungane, have reiterated this argument to the African Anglican church, which, in the words of Lagos Archbishop Peter Akinola, considers homosexuality "unnatural," "unscriptural," and "satanic" (Harrison & Seakamela, 2006).

Other attempts to claim the mantle of historical oppression include investigations of the colonial history of the country, which has brought to the fore evidence of the early persecution of "sodomites" by colonial administrators. These cases also confirm the existence of same-sex practices among the country's indigenous populations. One such case is documented in the narrative film, *Proteus* (Lewis & Greyson, p. 2004), which portrays a long-term sexual and romantic relationship between a Dutch sailor and an indigenous man during their imprisonment on Robben Island in the eighteenth-century. The connection to imprisonment on Robben Island, centuries before it was used to house anti-apartheid political activists, has a symbolic resonance within the post-apartheid national narrative.

Evidence of same-sex behavior among indigenous groups both before and after the colonial period has been used by activists and scholars to rebut claims of a "foreign action imposed on Africa," in the words of the Islamic leader Sheikh Sharif Ahmed following the passing of the gay marriage bill (Macanda, 2006). Such evidence also contradicts declarations by some activists that black culture is inherently homophobic. "I would argue that it is not homosexu-

ality that is un-African [but] homophobia and exclusion that contravenes African values and systems of belief," says Isaacks (2006, p. 57). "In the pre-colonial African society, lesbian, gay, and inter-sexed people were culturally accommodated through various practices that were certainly more affirming than any contemporary European practices."

One of the best examples of the rhetorical harnessing of sexual rights to the country's core national narrative is found in Justice Sachs' opinion in the 2005 case, Minister of Home Affairs and Another v. Fourie and Another (Doctors For Life International and Others, Amicus Curiae). "The right [of same-sex couples] to get married represent[s] a major symbolic milestone in their long walk to equality and dignity," Sachs writes. The phrasing echoes the title of Nelson Mandela's autobiography, *Long Walk to Freedom*, a "sacred" metaphor in the country's liberation story.

Equating homophobia with apartheid has had some noticeable international impacts. For example, when the Supreme Judicial Court in the U.S. state of Massachusetts affirmed the right of same-sex couples to marry rather than be satisfied with the "unconstitutional, inferior, and discriminatory status" of civil unions, the Court was presided over by Chief Justice Margaret H. Marshall, a former South African anti-apartheid activist. In her opinion, Justice Marshall referenced apartheid injustices as justification for her support of the rights of all minorities.

The posture of the justices in the Constitutional Court's first decade has been, in the words of Gevisser (2004, p. 511), "activist and evangelical, they want to be of the people, with the people, and in the people." Justice Sachs, whose opinions often touch on his understanding of the fundamental aspirations and responsibilities of the country, perhaps best fits this description. A champion of the "indivisibility" of rights, he notes in his opinion in National Coalition for Gay and Lesbian Equality v. Minister of Justice (1998) that "human rights are better approached and defended in an integrated rather than dislocated fashion," and that "inequality is established not simply through group-based differential treatment, but through differentiation which perpetuates disadvantage [and] leads to the scarring of the sense of dignity and self-worth associated with membership of the group…" In his opinion for Minister of Home Affairs and Another v. Fourie and Another (Doctors For Life International and Others, Amicus Curiae) (2005) he declares, "Our Constitution represents a radical rupture

with the past based on intolerance and exclusion, and the movement forward to the acceptance of the need to develop a society based on equality and respect by all, for all." The need, he continues, is "to affirm the character of our society as one based on tolerance and mutual respect… [T]he test of this tolerance is not how one finds space for people with whom, and practices with which, one feels comfortable, but how one accommodates the expression of what is discomforting."

The justices' personal experiences with the apartheid system may well have informed the direction and tone of their opinions. Chief Justice Pius Langa, for example, was an active ANC member during the years in which it was a banned organization. At age 15 Deputy Chief Justice Dikgang Moseneke was sent to Robben Island to serve a 10-year sentence. And when in exile in Mozambique, Justice Albie Sachs lost an arm and eye when a bomb planted in his car by South African agents exploded.

To some extent every South African is able to draw on his or her first-hand experience of apartheid, for regardless of political affiliation or beliefs one's entire sense of selfhood, citizenship, and social position was governed by racial inequality. A few benefited from the system and the majority was harmed by it. Neither the beneficiaries nor the victims were unaware of the role racial inequality played in determining their fates — daily life provided numerous reminders of the official mechanisms designed to maintain the symbolic and material privileges of whites, such as riding segregated buses or trains, using different entrances to buildings, or drinking from different public water fountains. But widespread experience with intolerance and exclusion has not necessarily guaranteed the remedy Justice Sachs seeks. The "radical rupture" between past "intolerance and exclusion" and future "equality and respect" is overshadowed by the "radical rupture" between constitutional vision and the realities of South Africans' daily lives.

The disjuncture between national idealism and everyday belief is documented in the Human Sciences Research Council's (HSRC) survey, South African Social Attitudes: Changing Times, Diverse Voices (Pillay, Roberts, & Rule, 2006). Of the almost 5,000 adults aged 16 and older included in the survey, the majority support capital punishment, with 75 percent either "strongly agreeing" or "agreeing" that the death sentence is an appropriate punishment

for someone convicted of murder. Given this overwhelming support for capital punishment, it is not surprising that several minority political parties include the re-introduction of the death penalty in their platforms. Of the four sexuality-related moral issues included in the survey, premarital sex received the least "traditionalist" or "authoritarian" scores overall, with more than half of the respondents (51%) considering premarital sexual relations between a man and a woman "always wrong," while only 22 percent consider it "not wrong at all." It is uphill from there, however, with "traditionalist" rankings increasing for defect-related abortions, income-related abortions and, highest of all, same-sex sexual relations.

Only 21 percent of respondents considered birth defect-related abortions "not wrong at all," with 56 percent considering them "always wrong." Opposition is particularly high to "economic hardship" abortions, with 74 percent of black Africans viewing abortion for this reason as "always wrong," an opinion held by 59 percent of Indians and 57 percent of whites. The ANC and the Democratic Alliance (DA), one of the stronger opposition parties in the South African parliament, both officially support the liberalization of abortion policies, but recent debates suggest deep divisions exist within the parties and could result in a shift in thinking. Representatives of the ACDP strongly oppose abortion and have claimed that many politicians are actually against abortion in principle but voted for the Termination of Pregnancy Act because it was the "politically correct" thing to do (Mkhize, 2004).

The opinion that same-sex adult sexual relationships are "always wrong" is highest among black Africans at 81 percent, while 64 percent of coloreds, 70 percent of whites and 76 percent of Indians hold this opinion. Politicians are polarized on the issue. In response to the Civil Union Bill extending marriage rights to same-sex couples, Jo-Anne Downs, deputy president of the ACDP, said, "South Africa is out of step with the world." ANC spokesman, Smuts Ngonyama, acknowledged that the proposed law may be "too progressive" for the country and the region but "someone has to show the way and shape the thinking of the continent. We have to keep up globally; we just need to educate our people" (*Afrol News*, 2006, November 16).

The ANC's members were known to be deeply divided on the bill but were pressured by party whips to vote for it (ibid). The internal schism emerged in comments made by ANC

member, former deputy president, and potential presidential candidate, Jacob Zuma. In a public speech at Heritage Day celebrations in KwaDukuza, historic capitol of the Zulu Kingdom, Zuma said, "When I was growing up an *ungquingili* [sodomite] would not have stood in front of me. I would have knocked him down." He went on to declare, just weeks before the final vote on the marriage bill, that same-sex marriages are "a disgrace to the nation and to God," (*Mail and Guardian*, 2006, September 26). Zuma later apologized for his statements but was probably well aware that he had already strengthened his bonds with the cultural traditionalist constituencies that will be among his strongest supporters should he run for the presidency.

The HSRC report dealing with moral issues describes public opinion in South Africa as largely "traditionalist," adhering to conservative or conventional moral values and beliefs regarding sex, reproduction, and punishment. These positions are derived in large part from religious beliefs, with close to 80 percent of the population claiming affiliation with one Christian sect or another and four to six percent identifying as either Hindu or Muslim (Statistics South Africa, 2007). Religious institutions wield considerable political influence and the ANC government has attempted to maintain the ties it established with churches during the liberation struggle by collaborating on various health and social welfare programs (Rule & Mncwango, 2004). The strain placed on this alliance by the ANC's decision to initiate an armed struggle against the apartheid regime was tempered by the formation of coalition groups that provided grounds for the struggle beyond the ANC's. It remains to be seen how the party's current progressive social policies will be mediated so that moral disagreements do not come to dominate the relationship between church and state. Such disputes will likely register strongly with many of the country's citizens and would significantly impact sexuality politics.[4]

Once considered President Mbeki's clear successor, Zuma is now largely excluded from the ANC's inner circle. He has been implicated in corruption scandals and accused of rape. He was acquitted of the rape charge and the corruption cases were dismissed because of legal technicalities. While these travails have cost him support among some political elit-

[4] For more on the advocacy activities and positions of the Catholic Church and other conservative religious forces in global and local sexuality politics and rights, see also in this publication: Girard, F. Negotiating sexual rights and sexual orientation at the UN; Bahgat, H., & Afifi, W., Sexuality politics in Egypt; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive rights policies in Peru: Unveiling false paradoxes; Nowicka, W., The struggle for abortion rights in Poland.

es, they have provided a platform from which he espouses his particular interweaving of populist liberation rhetoric and traditionalist moral principles held by many in the ANC's lower ranks. His avuncular and leftist-sounding declarations have also increased his support among members of the Committee of South African Trade Unions (COSATU), one of the country's strongest civil society groups whose members have justifiably felt abandoned by the ANC's neoliberal policies.

When still deputy president, Zuma led the country's Moral Regeneration Movement, an initiative of Nelson Mandela in response to requests from some of the country's religious leaders for a greater role in the construction of a post-apartheid society. According to the president's official website (http://www.thepresidency.gov.za), the Moral Regeneration Movement is designed to promote "human rights, ethical behavior, and the values enshrined in the constitution." But as its name suggests, the movement proved vulnerable to reactionary conceptions of rights, ethics, and values. Zuma exploited this in speeches that called for disciplinary and punitive remedies for the country's moral degeneration. His appeal to personal responsibility and harsh discipline tapped into a widespread hunger for familiar formulas that favored normative behaviors and traditional values to combat social crises. Zuma's own moral crises appear to have enhanced his stature and he is welcomed with rapturous applause and praise by traditionalists, including conservative Christian Zulus. South Africa is home to a number of nativistic and millenarian Christian sects that emerged in the late nineteenth and early twentieth centuries as part of the "African Reformation" and Zuma is very familiar with their beliefs and conventions (Vilakazi et al., 1986). In his speeches he echoes the "Africanist" churches' combination of indigenous and Christian theologies, which rekindle dreams of an African cultural renaissance while affirming anti-modernist commitments to essential, timeless, and stable moral beliefs and practices.

Appeals to "African-ness" are not new and certainly are not exclusive to conservative religious groups. As an adjective, "African" is applied to tourist experiences, architectural styles, and systems of justice, and although impossible to reconcile, it helps to legitimize the idea of a specifically "African" way of being, believing, and behaving. The cultivation of "African-ness" is very much a part of the country's current nationalist discourse and is used to provide the state with a rationale for its leadership role in Africa as a whole, a project President Mbeki

refers to as "the African Renaissance" (Mbeki, 2002), which suggests a confusing reformation of an African spirit damaged by colonialism and imperialism as well as the construction of a new African future. The ability to claim the "Africanist" mantle is a reward potentially as powerful as claiming victory against apartheid. And many have staked their "Africanist" claims, including the Constitutional Court, which selected as its logo a tree sheltering people to honor the African "tradition of justice under a tree." According to Justice Sachs (in Doctors for Life International v. The Speaker of the National Assembly and Others, 2006), this image has "ancient origins" that pass through the country's "rich culture of *imbizo*, *lekgotla*, *bosberaad*, and *indaba*," each a form of community gathering and collective deliberation practiced by one or more of the country's ethnic, cultural, or tribal groups. A fine line exists between views of culture as products of history, place, politics and the actions of individuals to "form and change their cultural environments through accepting or resisting the norms with which they live," (Jolly in Manjoo, 2005), and attempts to cultivate nationalist projects in the ideological soils of "traditionalism" and "naturalism," in short, "essentialism." Symbols like those used by the court walk this fine line.

According to the HSRC survey, moral traditionalism is most intense among "black South Africans, married people, people with low incomes, people who have not completed high school, and regular attendees of religious meetings" (Rule & Mncwango, 2004, p. 272). The distribution of support for the death contradicts this trend, however, and suggests a situation more complex than is possible to capture even in disaggregated survey data. South Africa's youth, who are as vibrant and potentially unorthodox as any in the world, are not represented in the survey. It is yet to be seen what the "democracy generation" (children born after 1992) will do in this era of rights.

Notions of "traditionalism" are further complicated by the fact that, despite their conservative opinions, the majority of the population votes for the "liberal" ANC, which has captured 60 to 70 percent of the votes in all three national elections. This suggests a number of possibilities: other incentives are holding voters' moral concerns in check; voters are more tolerant of diversity than their moral beliefs suggest; or moral debates have yet to assume the political center stage. The Gender Commission's study of how rural women approached the 1999 elections provides some support for the first of these three options. Respondents

emphasized jobs, education, running water, housing, and the belief that "by voting my family will see change . . . my vote will bring food at home" (Vincent, 1999, p. 34). Whether this will remain the case, as disillusionment with economic progress deepens and politicians begin to appreciate the power of moral debates to mobilize the population, is a significant concern. As Rule and Mncwango (2006, p. 273) caution, there is clearly deep tension between the South African government's conspicuous attempts "to lead rather than follow public opinion in relation to moral values . . . [and citizens'] dilemmas about whether to follow their beliefs and consciences or whether to abandon these in favor of the state's enshrined constitutional values."

There is also a caution in this for those among the "progressive elite" who pursue policy and jurisprudence while neglecting the material needs and desires of the majority of voters. The impact of the government's neoliberal response to globalization can only underscore this caution. Mbeki in particular has favored neoliberal policies in exchange for capital's acceptance of black economic empowerment and some affirmative action. As Ballard et al. (2006) note, the primary beneficiaries of these policies are black entrepreneurs as indicated by the increase in the black African proportion of the country's richest income bracket from nine percent in 1991 to 22 percent in 1996. On the other hand, the country's Gini coefficient (a measure of inequality) continues to rise. The consequences of this increasing inequality are severe. Unemployment is 36 percent for the overall population and 52 percent for black African women. Poverty is between 45 and 55 percent and about 10 percent of Black Africans are malnourished. Twenty-five percent of black African children are developmentally stunted. Given these conditions, it is not surprising that public trust in the government is eroding — a recent poll indicated that 63 percent of South Africans think their leaders are dishonest (McGreal, 2007).

Many South Africans have distanced themselves from the political and labor organizations they formerly supported and are turning to the rapidly growing number of evangelical and Pentecostal churches established with spiritual, intellectual, and financial help from the evangelical right in the United States. As Gevisser (1997, p. 26) observed just a few years after the first democratic elections: "The further away from the moment of liberation we get, the easier it will be for religious conservatives to mobilize South Africans around their

agendas — agendas that are America's most noxious export." Economic hardship and crime-induced fear provide fertile ground for such shifts in allegiance.

The Constitutional Court justices are clearly cognizant of the fact that "citizens are confronted with a set of human rights entitling them and their fellow countrymen and women to engage in practices that are contrary to their upbringing, socialization, and religious beliefs," (Gevisser, 1997, p. 273). In his opinion for Minister of Home Affairs and Another v. Fourie and Another (Doctors For Life International and Others, Amicus Curiae) in 2005, Justice Sachs acknowledges the volatile relationship between secular and sacred: "Judges would be placed in an intolerable situation if they were called upon to construe religious texts and take sides on issues that have caused deep schisms within religious bodies . . . The function of the Court is to recognize the sphere which each [secular and sacred] inhabits, not to force the one into the sphere of the other."

In the same opinion he admits that, by itself, the law can do little to eliminate stereotyping and prejudice; the law, he said, "serves as a great teacher, establishes public norms that become assimilated into daily life, and protects vulnerable people from unjust marginalization and abuse." In other words, from its perch on Constitution Hill, the Constitutional Court may witness the struggle for justice but finds that it can do little more than suggest remedies to redress the lack of food, housing, health, and security.

A useful place to test Sachs' optimism is at the point where "cultural rights," such as those governing marriage and property, confront other rights. This is a realm of deep concern in South Africa where many citizens identify as members of distinct religious/cultural communities whose "customs" were codified into law by colonial, and later white governments. The Constitutional Court has attempted to treat customs in a manner sensitive to both individual and collective rights. However, in the 2004 cases Bhe and Others v. The Magistrate, Khayelitsha and Others, Shibi v. Sithole and Others, and South African Human Rights Commission and Another v. President of the Republic of South Africa, the Court seems inclined to nudge "traditions" in the direction of liberal and individualist conceptions of equality. If this were successful, social and legal conventions would be significantly altered.

These cases concerned the rule of male inheritance in the African customary law of succession. Writing for the majority, District Court Judge Langa argues that the customary rule of male primogeniture unfairly discriminates against women and illegitimate children because it prevents them from inheriting their fathers' estates. He further notes that the section of the Black Administrative Act of 1927 applied in such inheritance cases is an "anachronistic piece of legislation which ossified 'official' customary law and caused egregious violations of the rights of black African persons … [since under the law] the estates of black people are treated differently from the estates of white people." The "unconstitutionality" of the law does not undo the custom, however, so going forward the judge expresses the desire "for courts to develop new rules of African customary law to reflect the living customary law and bring customary law in line with the constitution." In other words, customary law is unjust because it does not provide the same relief as "white" law. The way to resolve this problem is to rewrite customary law so that it is in line with the constitution or, put another way, to make the constitution the new custom.

Opinions vary widely on the implications of these judgments and the overall relationship between "traditional culture" and the constitution. Feminist constitutionalists, such as Sibongile Ndashe (2005) of the Women's Legal Center, are firm in their position that group rights cannot be exercised in a manner inconsistent with the constitution, and that the right to culture, although provided for in the constitution, is subordinate to other rights. Others have deliberately critiqued traditional marriage practices in order to underscore the need to "change mindset and behavior." Lungiswa Memela (2005) of the Western Cape Network on Violence Against Women, lists her concerns with Xhosa marriage conventions: "*Lobola* (bride price) confirms that women are the property of men; the term *umakoti* (newlywed woman) has no counterpart for men, and the newly married woman is forced to become 'a totally new person.'"

Some scholars champion efforts to harmonize the relationship between the constitutional protection of equality and marriage customs. Likhapa Mbatha (2005), head of the Gender Research Program at the University of Witwatersrand's Center for Applied Legal Studies, argues that the Recognition of Customary Marriage Act respects the differences in South African society while improving African women's legal status within customary marriages and permitting women the right to choose between marriage conventions. A final group ad-

vocates plural marriage laws as the only way to fulfill the state's cultural rights obligations. As Bafana Khumalo, theologian and Deputy Chairperson of the Commission on Gender Equality, notes, this is not to condone the existing manner in which (colonially corrupted) customary law with regard to women is enacted, nor is it a refusal to change and adapt custom. Rather, it is to honor the questions African scholars have raised concerning the very definitions and parameters of Eurocentric epistemologies responsible for devaluing indigenous knowledge and foreclosing any possibility of alternate systems of agency for women. Nkosi SP Holomisa, ANC member of parliament and president of the Congress of Traditional Leaders of South Africa, echoes this point with his rejection of the tendency among human-rights activists to regard African culture and customs as inherently undemocratic, oppressive, and discriminatory against women and children. As evidence to the contrary he points to the "armory of penalties" in customary law to which women and children can appeal in order to redress wrongs.

Returning to the issue of gender-based violence, which fuels much of the debate regarding gender "traditions," Bennett (2005, p. 25) deftly reframes the focus on "tradition" in order to move beyond the polarizing claims that dismissing cultural change as "Westernization" is a way of legitimizing the ongoing oppression of women, and that "traditional culture" will free African identities, societies, and futures from Northern dominance. She responds to observations by University of Western Cape Psychology Professor Kopano Ratele that the violent history of South Africa and its institutions requires that we stop talking about men who are "mad" and start talking instead about the "madness" of the society. Discussion of gender-based violence should begin therefore "not with the fiction that life is by and large 'normal' . . . but with the notion that . . . there is a mad something (with a long and complex history) pervasive in our gendered homes, streets, institutions, and communities." In other words, discussions of gender-based violence that are purportedly about culture are actually about "South African 'normals' . . . [and] efforts to move beyond 'normality,'" (Bennett, 2005, p. 33).

The newly enfranchised? Second-generation rights for mothers and children

Some social critics view the contradictory politics of everyday life in South Africa as confirmation that human-rights approaches cannot alone deliver social justice (Bond, 2004;

Neocosmos, 2004; Terreblanche, 2002; Hart, 2002). In particular, human rights provide little leverage against the ANC's neoliberal policies because they can be used to justify individual and group self-interest. Neocosmos (2004) argues that within liberal political systems rights are manifest as "special interests" each of which aims to be incorporated into the management structures of the state. In South Africa social debate is so conditioned by state fetishism and "the apparently evident 'common sense' notion that the post-apartheid state can 'deliver' everything from jobs to empowerment, from development to human rights, from peace in Africa to a cure for HIV/AIDS," that instead of engaging with fundamental social questions "the focus is on management rather than on politics," (Neocosmos, 2004, p. 161). The state becomes the source of rights for the formerly "rights-less" rather than viewing rights as imminent in the practices of its citizens.

The quintessential example of this administration of rights is how national and transnational groups respond to the images they generate of oppressed African women. By virtue of their suffering, African women are considered virtually unable to act politically, requiring that some external body — the judiciary, health system, NGOs, or states — act on their behalf. For Neocosmos (2005, p. 168), "the simple fact that the state (or other) power is expected to decide on one's behalf, and that this is systematically internalized in the process of identity formation, is arguably what lies at the root of issues of powerlessness as disparate as those of HIV/AIDS, the alienation of youth from society, and the absence of people-centered development." Thus, using human rights to remove citizens from oppressive "traditions," norms, conventions, and histories eliminates their ability to act politically within such "traditions" to provoke the fundamental changes that would truly ensure that the "rights-less" attain their rights. Without placing rights in such a dialectic, citizenship is "simply reduced to the possession of state documents which entitle the majority to engage in politics at most once every five years or so," (Neocosmos, 2005, p. 168).

"Democracy did not go into a deep sleep after elections, only to be kissed back to short spells of life every five years," said Justice Sachs in his concurring judgment in Doctors for Life International v. The Speaker of the National Assembly and Others (2006). This case dealt with the government's constitutional obligation to facilitate public involvement in the making of laws. Doctors for Life International claimed that parliament failed to fulfill this obligation

when it passed four health-related bills: The Sterilization Amendment Bill, which would permit a legal guardian to consent to the sterilization of persons under the age of 18 years who are considered incompetent to give such consent on their own by virtue of their mental disability; The Traditional Health Practitioners Bill, which formally recognizes and regulates the country's traditional healers; The Choice on Termination of Pregnancy Amendment Bill, which clarified where, and by whom, abortions could be performed; and The Dental Technicians Amendment Bill, which recognizes and regulates informally-trained dental health workers.

In support of Doctors for Life International, the Court found unanimously that in the case of the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment, certain provincial governments had indeed failed to provide adequate accommodations for comment given the high level of public interest in the issues. As a result of this failure, the Court invalidated the bills but suspended the order for 18 months so that parliament has time to enact the bills afresh and in accordance with the constitution. Since the other two bills had not generated great public interest, the Court considered the government to have met its obligations in those instances.

Although it is confined to addressing only the few elements of the 2004 Amendment Act no. 38 and not the 1996 act that legalized abortion, this case was a clear challenge by conservative groups to the legalizing of abortion. The ruling makes it possible for abortion foes to use a technicality to re-open debate on the issue and possibly exploit dissent within the ANC and among other parliamentarians (Ndashe, 2006). A less obvious aspect of the case is the implied connection between traditional health practices and reproductive rights. The link, as expressed in Doctors for Life International's literature,[5] is a complex amalgam of religious and scientific thinking.

The organization is committed to three principles — sanctity of life, sound science, and a basic Christian ethic in the medical profession — which it applies to all issues on its agenda, including pornography, homosexuality, prostitution, cloning, abortion, egg and sperm donation, euthanasia, sexual addiction, and traditional healers. Thus, in the case of abortion: "The termination of people who the government considers less than human, 'unwanted,' and

[5] www.doctorsforlifeinternational.com.

a 'burden to society' is egregiously wrong and against God's holy commandments;" "Scientific research clearly defines the beginning of life at conception [since] each cell . . . has sufficient information in its DNA structure to produce a complete human being;" and, the government "forces doctors to, against their conscience and beliefs, take part in performing abortions." It should be noted that the Choice on Termination of Pregnancy Bill does accommodate "conscientious objectors" as long as women requesting abortion are referred to a practitioner who will accommodate their request.

In the case of traditional healers, the literature states that: "Traditional healers (at least African traditional healers) are priests of the religious system of African Traditional Religion (ATR), and function as such;" "…any form of medicine that is not based on empiric truth is potentially (and ultimately) harmful to patients in need;" and, "Doctors for Life (South Africa) would like to affirm our commitment to promoting holistic health . . . in a morally accountable way," implying, of course, that this would not occur with traditional healers.

As one digs deeper into the arguments made by this and similar right-wing organizations, the distinctions that generally hold between morality, science, politics, culture, and ethics become increasingly unclear and discordant, and the debate more fundamentalist in tone. The situation is further complicated by the fact that political expediency can make allies of groups that have bitterly opposed each other. So while they disagree on medical treatment, Doctors for Life International and some "African traditionalists" find common ground in their positions on sexuality and reproductive-health issues. Both consider abortion to be murder, criticize the government for not consulting them when developing the Choice on Termination of Pregnancy Act and its amendments, and believe they should be able to counsel women wishing to have abortions (Rakhudu et al., 2006). Anti-abortion groups have attempted to strengthen connections with conservative black African organizations by describing the abortion laws as "an attempt to eliminate black people" and likely to have consequences that would "eclipse the horrors of apartheid," (Gevisser, 1997, p. 26). U.S. anti-abortion groups, such as the Center for Bio-Ethical Reform in Lake Forest, California, have introduced the concept of "pre-natal justice" into these debates, enabling South African anti-abortion groups to develop a unifying justice framework for the many elements on their agendas.

These fundamentalist debates are especially harsh with respect to HIV/AIDS, with each side making claims about the absolute success of their approach compared to the failure of those of their opponents. A prime example is the claim by the Minister of Health, Manto Tshabalala-Msimang, that anti-retroviral medicines are poisonous for Africans and a diet of African potatoes, garlic, olive oil and so forth will more effectively control the disease.

A second point to underscore in Doctors for Life International v. The Speaker of the National Assembly and Others (2006) is the fact that Doctors for Life International decided to work within the judicial system. In doing so, it took advantage of a constitutional technicality to reopen debate on abortion and traditional medicine. Although the ruling cannot be said to undermine the constitutional protection of abortion (which was determined by the legislature and has not been challenged yet in a manner that would bring it before the court), it does demonstrate that the Court and, by extension, constitutionally enshrined rights, cannot substitute for social action in settling dissent. Justice Ngcobo touches on this point in the majority opinion in the case: "The representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive. General elections, the foundation of representative democracy, would be meaningless without massive participation by the voters . . . [Participation] acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like South Africa where great disparities of wealth and influence exist.

Neocosmos (2004) notes that "equality of rights is simply impossible in an unequal society," and that the reality in South Africa, as in all liberal democracies, is that no matter the mechanisms for participation, because of the costs, lack of knowledge, and access to the full range of resources of bourgeois society, the struggle for rights has been taken out of popular control and moved to the technical realm of the judicial system. Rights are "guaranteed" by the state and its beneficiaries are the already privileged class. Abortion, same-sex practices, sexual health, the rights and responsibilities of desire, sexuality, and knowledge are simply not available to all.

In her discussion of the South African women's movement, Hassim (2006, pp. 355-356) reminds us that by collaborating with the state women have realized a number of crucial legislative and policy gains, one of the most important being the legalizing of abortion. Like feminists elsewhere, South African feminists employed the more acceptable terms of health rather than bodily integrity in their campaign for a termination of pregnancy law. "Even so, it was only the ANC's strong support for the Termination of Pregnancy Act and its refusal to allow its members of parliament a free vote that made possible the passage of the legislation in 1996." This emphasis on women's health helps explain the strategic use of health arguments by anti-abortion groups and does indeed point to a weakness in the current status of the law.

The introduction of legislation to legalize abortion in South Africa was the culmination of a two-year policy process, and an even longer period of lobbying and political maneuvering by activists. In 1994 the Ad Hoc Committee on Abortion and Sterilization was convened to examine the existing abortion law, the Abortion and Sterilization Act of 1975. After almost a year of work, which included oral and written testimony from interested parties, the committee recommended that the 1975 Act be repealed, and that abortion and sterilization be regarded as separate issues.

Initially the committee recommended that the Choice on Termination of Pregnancy Act should allow abortion on demand for women up to 12 weeks of pregnancy and under restricted conditions between 14 and 24 weeks. In the final bill, the upper limit of 24 weeks was cut to 20 — termination after this is allowed only if the woman's life is in danger or if there is severe malformation of the fetus. Grounds for abortion in the second trimester are: risk to the mental or physical health of the women; substantial risk of serious mental or physical fetal abnormalities; pregnancy resulting from rape, incest, or sexual abuse, and where the social and economic status of the woman would be severely affected if the pregnancy continues.

All information on terminations is confidential, but medical facilities or practitioners are required to report the procedure to the South African Department of Health. Abortion services are supposedly available in the public sector at designated facilities and privately either through gynecologists or agencies, such as Marie Stopes International, which now has 15 centers in six of the country's nine provinces. The state is obligated to provide or facili-

tate pre- and post-abortion counseling for women seeking or having an abortion, and while women and girls are not required to obtain the consent of either their husbands, partners, or parents, minors are advised (but not required) to discuss their choice with their next of kin. Despite such clear legal rights and guidelines, abortion is extremely contentious and there is a large gap between legislation and practice. This is especially true for poorer women seeking to terminate a pregnancy through public health-care facilities, which are hampered by inadequate resources and poor infrastructure.

While procedures such as dilation and curettage (D and C) are a compulsory part of medical training for doctors, and RU-486 (mifepristone or "the abortion pill") was approved by the South African Medicines Control Council in 2001, access is curtailed by lack of resources and the opposition of many health-care workers to the procedure. A 1999 survey of all 292 facilities designated to provide these services revealed that only 32 percent were functioning and 27 percent of those were in the private sector. Half of the induced abortions in that year took place in Gauteng province, home to only 19 percent of women of reproductive age (Dickson et al., 2003). Plans to expand access by permitting midwives to perform first trimester abortions did not prove very effective; by 2000, only 31 of 90 midwives trained to perform the procedure were providing the service (Potgieter, 2004).

The right to refuse to perform abortions because of religious or other beliefs is permitted unless it is necessary to save the life of the pregnant woman, although women's rights activists report that in some such cases, "conscientious objector" providers simply botch the termination. The law requires that health-care workers who refuse to perform a termination refer women to another medical worker who will. Medical workers convicted of hindering access in ways that contravene the law are liable to be fined or sentenced to up to 10 years in jail, a sentence that is equivalent to those applied to people who perform abortions outside the limits set by the act.

In 2000 researchers in South Africa's most populous province, KwaZulu Natal, found only 11 percent of community members and primary nurses supported the Choice on Termination of Pregnancy Act, which had come into force three years earlier. Only six percent of the nurses supported abortion on demand, although 56 percent supported abortion for pregnan-

cies resulting from rape or incest. A clear majority (61%) supported abortion if continuing the pregnancy would endanger the woman's health. In their report the researchers observed that an effective way of improving access to abortions would be to locate the facilities within reproductive-health services rather than as an isolated service (Harrison et al., 2000).

A 2002 study by the Global Health Council estimates that between 1995 and 2000, approximately 200,000 abortions were performed annually in South Africa yet data collected by the Department of Health in 2000 indicates that public facilities performed only about 50,000 abortions each year. The government itself has admitted that there is a need to facilitate access to abortion for women within the state sector. In its Report on the Implementation of the Choice on Termination of Pregnancy Act 1997–2004, the Department of Health acknowledges that the incidence of spontaneous miscarriages and illegally induced abortions has not changed since 1994, something it attributes to lack of public education and inadequate services in some areas. These figures confirm that access to official abortion services is extremely limited for the majority of the female population.

The anti-choice lobby is active in South Africa. Women's rights activists have reported incidents where anti-choice proponents, complete with graphic photographs and exhibits, gave talks to medical students. Similar presentations have been made to parliamentarians. Members of Pro-Life South Africa have also threatened to use violence to shut down abortion clinics, stating that the government has forced "people to become accessories to murder — by paying for abortions through their taxes" (Ruaridh, 1997). Such groups have mounted legal challenges to the legislation and have held demonstrations in cities and towns across the country. In response to challenges by the Christian Lawyers Association, however, the High Court found in 1998 that a fetus did not have a constitutional right to life in South Africa, and in May 2004, the Pretoria High Court dismissed an attempt to restrict provision of abortion services to minor girls.[6]

Lack of respect for sexual and reproductive health extends to state services. Contraception is problematic for many women. The most widely used form of contraception is the injection

[6] For further examples of fetal politics, see also in this publication: Vianna, A. R. B. & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 33; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 136-137; Nowicka, W., The struggle for abortion rights in Poland, pp. 179-181.

(depo provera), which has the advantage of being long lasting and so reducing the number of visits to a family-planning clinic. The use of intrauterine devices (IUDs) has been curtailed for fear of infection and also because of perceived difficulties in providing a safe and effective service. Diaphragms are not available through the public sector medical facilities, and for many women regular visits to a family-planning clinic may be difficult in terms of geography, financial or time resources, or the need to avoid stigma. All of these issues are compounded for HIV-positive women who must confront multiple stigmas that make it difficult for them to seek abortion and pregnancy-related care. There is very little support for HIV-positive women who wish to become pregnant (Nawaal, 2004).

In response to critiques of the failure of rights-based approaches to produce fundamental transformations, social activists in the country have pursued "second generation" socio-economic rights, like the right to housing, health care, and social security, as a means of extending "first generation" political rights — that is, freedom of speech, assembly, information and opinion (Mbali, 2005). Given the inextricable link between poverty and powerlessness, particularly for women and marginalized groups like gay men, lesbians, bisexuals, and transgendered persons, this approach has direct implications for gender and sexual rights. It is an approach where civil society may well lead the law, as has occurred with the struggle for access to HIV/AIDS treatment.

The AIDS epidemic has disturbed the order of things in South Africa and is an unavoidable issue for anyone working on sexual politics in the country. Although not explicitly addressed in the Doctors for Life International v. The Speaker of the National Assembly and Others (2006) case, Doctors for Life International uses the HIV/AIDS crisis as justification for its particular blend of religion, science, and ethics. The Traditional Health Practitioners Bill has provoked repeated conflicts over how best to address HIV/AIDS prevention and treatment within the country's constitutional framework. Politicians and civil-society groups have also used the crisis to argue in favor of their radically different approaches to women's sexualities. (Paradoxically, the unrelenting discussion of women's vulnerabilities only underscores the silence that defines the experiences of the majority of South African women.)

The ANC faltered in its response to AIDS from the very beginning despite the development of a well-reasoned and affordable plan as early as 1992 and the formation of the National AIDS

Committee of South Africa (NACOSA), which, following the 1994 elections, was declared a "Presidential Lead Project." The plan was not adequately implemented for reasons that included poor infrastructure, redundancy at the provincial level, the decision to locate NACOSA within the Department of Health rather than at an inter-sector level as recommended, and President Nelson Mandela's failure to provide the aggressive political leadership required.

The failure of the president's office to provide adequate leadership only intensified when Mbeki was elected and expounded the "denialist" position. In a letter circulated to international political leaders and organizations defending his decision to question the basic science of AIDS, he said, "We are now being asked to do precisely the same thing that the racist apartheid tyranny we opposed did, because, it is said, there exists a scientific view that is supported by the majority, against which dissent is prohibited," (in Shisana & Zungu-Dirwayi, 2003, p. 182). This evocation of apartheid's injustices combined with an appeal to basic rights — in this case the right to freedom of speech and thought — is one Mbeki has embraced repeatedly in order to construct arguments that fold progressive and reactionary discourses and positions into one.

In his arguments Mbeki focused on a particular understanding of the relationship between the epidemic and historical and economic antecedents. He claimed that poverty is a critical health risk for millions around the globe and is rooted in the vestiges of the imperial and colonial eras. He also suggested that global responsibility for the epidemic begins with an acknowledgement of "unacceptable disparities in wealth" within and between nations, a point he quoted from a World Health Organization (WHO) report in the speech he gave at the 2000 International AIDS Conference (Mbeki, 2000) in Durban. Certainly, the South African epidemic does follow social contours of inequity, political and economic disenfranchisement, gender oppression, and cultural and racial difference (Whiteside, 2001). Mbeki combined this analysis, however, with the "dissident" position that environmental factors, rather than HIV, are the cause of AIDS. Consequently, AIDS is not remedied by medicine but by political and social change, even perhaps, historical redemption. He also identified in the dominant AIDS discourse the same racist claims he felt underlay debates about rape in South Africa, namely that Africans are diseased, sexually depraved, and without moral sense.

When viewed from Mbeki's position, providing access to antiretroviral medications (ARVs) represents a turning away from the imperatives to address global inequities and oppressive racist histories in favor of the narrow and apolitical paradigms and institutions of Western biomedicine. Treatment activists have countered, however, that the struggle for access to ARVs may actually prove crucial to the transformation in the global systems of inequality. This position has been most vociferously argued by the Treatment Action Campaign (TAC), which was formed in late 1998 by Zackie Achmat, who was at the time head of the National Coalition for Gay and Lesbian Equality.

TAC has campaigned for access to free or affordable ARV treatment through the public-health system. Initially, TAC and the ANC government worked in partnership against the efforts of multinational drug companies to prevent access to cheap medications, but this partnership soon dissolved into a national struggle that left little room for activism on global trade policies. Indeed, the greatest disappointment of the South African AIDS movement has been the relinquishing of those initial confrontations with pharmaceutical companies and of participation in the activism that others in the global South, such as Brazil, India, and Thailand, had initiated. In the first years of the new ANC government, it appeared from legislative initiatives and diplomatic efforts, that South Africa would be in the vanguard of challenges by the 100 or so developing countries in the World Trade Organization (WTO) against TRIPS (Trade Related Aspects of Intellectual Property Rights, a WTO-administered treaty) and GATT (General Agreement on Tariffs and Trade), first through the exercise of compulsory licensing and parallel import mechanisms and then head-on in negotiations to re-think intellectual property agreements within the organization. With the largest national epidemic and the highest pharmaceutical prices in the world (South Africa comprises two percent of the global profits but only one percent of the global market) South Africa was perfectly positioned to challenge these regulations and agreements on humanitarian, ethical, and economic grounds (Bombach, 2001).

The Constitutional Court has engaged in some of its most important discussions of socio-economic rights in cases concerning AIDS. Minister of Health v. Treatment Action Campaign (2002) is the most prominent of these. Two years prior to hearing this case, however, the Court issued its judgment in Government of the RSA v. Grootboom (2000), which concerned the right to housing for the poor Western Cape community represented by Irene Grootboom.

The majority concluded, "Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programs implemented by the Executive." (Incidentally, the Afrikaans name "Grootboom" means "large tree," a reminder of the court's logo.)

In Minister of Health v. Treatment Action Campaign (2002), the court considered whether or not the state was required to make the AIDS drug Nevirapine available through all its clinics and hospitals. Nevirapine is a simple, cheap, and effective prophylactic against the transmission of HIV from mother to child. In its unanimous judgment the Court required government "to devise and implement within its available resources a comprehensive and coordinated program to realize progressively the rights of pregnant women and their newborn children to have access to health services to combat mother-to-child transmission of HIV."

Both cases arrived at the court following sustained community mobilization and grassroots activism that had not produced the desired results despite commitments from government officials. And even though the judgments were significant victories for the petitioners, the government's response was still inadequate. Grootboom and her neighbors have received some of the housing they require but not all. The government appealed the Court's decision in the TAC case and although the appeal was denied, it further delayed implementation of treatment. In 2003 the Department of Health threatened to revoke its approval of Nevirapine unless the manufacturer, Boehringer Ingelheim, provided additional data on its safety. Nevirapine is apparently readily available now; the government estimates that in 2004, 78.7 percent of pregnant HIV-positive women received the drug. These figures are contradicted, however, by a 2006 UNAIDS global report stating that only 14.6 percent of pregnant women in South Africa who need the drug are receiving it.

Over the past seven years, the government has initiated a number of programs to address the epidemic but the results have always been disappointing. In January 2000 it launched the South African National AIDS Council (SANAC) with then Deputy President Jacob Zuma as chair. This initiative was overshadowed, however, by the creation that same year of an advisory panel to review the scientific evidence on the cause of AIDS. In parallel with this review, the government initiated work on a comprehensive overall policy framework. The policy document, HIV/AIDS and STD: Strategic Plan for South Africa 2000-2005, was launched in

early 2000 and received lavish praise from many world leaders for being one of the best in the developing world. Not only did it elevate the fight against AIDS institutionally in government and state structures through SANAC, but it also sought to include civil society in partnerships to pool resources in the fight against AIDS. The implementation of the policy was woefully inadequate, however. Despite placing its overall policy within the paradigm of mainstream research, it continually undermined its own statements by communicating, intentionally or not, perceptions and convictions that contradicted its elaborate policy intentions.

This confusion has made South Africa ripe for the absorption of conservative initiatives and programs, primarily from the U.S. The Bush administration named South Africa as a PEP-FAR (President's Emergency Plan For AIDS Relief) recipient. The PEPFAR funding has supported six media campaigns with abstain-and-be-faithful messaging as well as two school and community-based life-skills education programs. These campaigns and programs emphasize abstinence and faithfulness and include projects designed by NGOs and faith-based organizations to promote the delay of sexual activity, abstinence, faithfulness, and "responsible" decision-making. In concert with the explicit and implicit reactionary pressure in the PEPFAR programs, several U.S.-based abstinence-promotion organizations worked in South Africa; Focus on the Family established an in-country office in 1992 and is selling its "No Apologies" curriculum nationwide, and The Silver Ring Thing, a Christian, abstinence-only-until-marriage program, has also made inroads. In the U.S., The Silver Ring Thing has faced multiple legal challenges to its misuse of federal funds to promote religion, and as a result, the U.S. Department of Health and Human Services has suspended funding to the organization.

In November 2003 the government declared that it would launch a large-scale rollout of free ARV treatment through the public-health system. The primary impetus for this plan was most likely political and diplomatic as it followed a declaration by provincial administrations controlled by opposition parties that they would disregard the directives of the Department of Health and start providing treatment through their own public-health systems. These statements were favorably received nationally and globally, suggesting that treatment access would be a key factor in the next round of national elections. In its subsequent election platform, the ANC asserted, "Every person has the right to achieve optimal health, and it is the responsibility of the state to provide the conditions to achieve this." In a less than veiled

reference to the nevirapine debates discussed earlier, the ANC platform prioritized "promotion of the survival, protection, and development of children and their mothers through a system of appropriate health-care delivery, health-personnel training and support, research, and a range of related programs."

The implementation of this plan was not smooth. Following the landslide victory of the ANC in late 2004, the plan stalled prompting a new court case by TAC seeking access to the implementation timetable. Awareness of the government's failures to address its poorer constituents is growing and there are indications that the grassroots movement now associates the unsuccessful approaches to AIDS with failures to deliver employment, adequate education services, and various other social needs. No doubt aware of this growing discontent, provincial governments have, for the most part, pushed ahead aggressively with the roll-out of ARV treatment. As of August 2006, close to 140,000 South Africans were receiving ARV treatments through the public sector, with an additional 110,000 accessing treatment through non-governmental programs (Abdullah, 2006). This is still less than half of the number projected to be on treatment by this point. Frustrated with the slow pace of progress, TAC members and supporters held protests in a number of cities across the country in late 2006 calling for the Minister of Health, Manto Tshabalala-Msimang, to resign.

Following these protests, TAC and the government entered into a period of rapprochement with Zuma's replacement, Deputy President Phumzile Mlambo-Ngcuka, playing a leading role. The Health Minister, Tshabalala-Msimang, is on long-term medical leave. TAC is currently focusing its activism internationally in support of efforts to prevent the drug company Novartis from shutting down or significantly limiting the production of low-cost generic drugs in India. Should Novartis succeed there will be a severe shortage of affordable AIDS medications, which would mean that millions would lose access to treatment.

The impact of the South African treatment rollout on public health could be substantial both within South Africa and globally. What this might mean for the health economy of the country and even globally or the impact it may have on the epidemiology of the region is not yet known. If successful, this program could also shift our understanding of the relationship between the state and the health of nations, particularly within middle-income countries.

These are the more obvious issues and they are already the focus of investigation by political scientists, sociologists and others.

The impacts that are less investigated because they have not been a major focus of attention in the research in South Africa up to this point (probably because they are viewed as tangential to the primary goal of providing medical treatment) are those that will affect the many and fast-changing local contexts of risk, infection and care. Epidemiologists are concerned with some aspects of the behavioral dimensions of risk but since they emphasize South Africa's experience as a "generalized" epidemic, they have sidelined many of the most interesting questions concerning the heterogeneity of sexual cultures, and how social dynamics of infection and treatment and the related concerns of violence and stigma are influenced by collective empowerment and community mobilization. The political critique of the epidemic in South Africa has been strong, particularly regarding the government's actions, but there are fewer of these studies than those that are conventionally biomedical and epidemiological in nature.

The AIDS epidemic in South Africa illustrates both the authority as well as the limitations of the constitutional process. The discourse on rights and citizenship legitimized by the constitution has proved effective in mobilizing individuals and groups around sexuality issues, brought many of the most disenfranchised of the citizens into the political process, and proved successful in some claims for political and normative rights. But rights in themselves are not a panacea for the complex historical and contemporary inequalities that shape South African society. The AIDS epidemic is sustained by entrenched material and ideological inequalities, and has been the lightning rod for debates that exceed the realm of rights. These debates have focused on how globalization has politicized "science" and "culture" (Potgieter, 2005). The Constitutional Court, and the entire judiciary for that matter, is as reluctant to rule in these matters, as it is to address issues of theology. Its positive rhetoric is of little value unless carried into action by the legislature or civil society, which it rarely is. And in their interpretation of the constitution, the judiciary and the legislature sometimes frustrate progressive forces seeking sexual rights. Underlying all of this is the inertia of social forces conditioned by the racist, sexist, and patriarchal regimes of religion, morality, traditionalism, and neoliberalism.

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Turkey

How Adultery Almost Derailed Turkey's Aspiration to Join the European Union

Pinar Ilkkaracan

Filmmor Women's Cooperative

Introduction

On September 14, 2004, hundreds of women marched in front of the Turkish parliament in Ankara chanting, "Our bodies and sexuality belong to ourselves." The march, organized by the Women's Platform for the Reform of the Turkish Penal Code from a Gender Perspective (referred to hereafter as the Women's Platform), took place at the height of a major political crisis between the Turkish government and the European Union triggered by an attempt of the religious conservative AKP (*Adalet ve Kalkinma Partisi*/Justice and Development Party) government to introduce a bill criminalizing adultery.[1] On the day of the march the government announced the withdrawal of the bill, and, only a few hours later, an announcement was made for an indefinite withdrawal of the draft of the Turkish Penal Code for further review. The Turkish Grand National Assembly passed the code on September 26, 2004, after

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[1] Until 1996 the Turkish Criminal Code made adultery a criminal offence and differentiated between men and women in the definition of adultery. While for women one sexual act with a man other than her husband was sufficient for conviction of adultery, a married man could not be convicted of adultery unless it was proved that he was living with a woman other than his wife. In 1996, Article 441 of the penal code regulating adultery by men, and in 1998, Article 440 of the penal code regulating adultery by women, were annulled by the Constitutional Court on the grounds that the differences violated Article 10 of the Turkish Constitution, which states that men and women must be equal before the law.

two weeks of intense discussions and political turmoil, and it came into effect on June 1, 2005 as Law No. 5237.

The withdrawal of the penal code draft, resulting from the controversy over the proposed adultery law, prompted the biggest crisis between the EU and Turkey since the start of the accession talks. During the national debate that ensued, AKP appeared to be split over the issue. While the Justice Minister declared that there was no need for a legal sanction on adultery, the Women's Minister defended criminalizing adultery, stating: "We cannot give up our own values just because we want to join the EU. Adultery is not considered a crime in many countries of the world. But just because this is the case … we cannot just accept it … we have to respect the values of Turkish society."[2]

As the debate continued, the markets fell drastically, threatening an economic disaster (certainly the first one in Turkey triggered by an issue concerning sexuality) only three years after Turkey's devastating economic crisis of 2001. Finally, after a meeting with EU Enlargement Commissioner Günter Verheugen in Brussels on September 23, 2004, Prime Minister Tayyib Erdoğan, a devout Muslim, announced his withdrawal of the proposal to criminalize adultery.

However, only a day later, he expressed anger about the situation to the press. Referring to the rally organized by the Women's Platform and its slogan, Our Bodies and Sexuality Belong to Ourselves, he said, "There were even those who marched to Ankara, carrying placards that do not suit the Turkish woman. I cannot applaud behavior that does not suit our moral values (*ahlak*) and traditions… A marginal group cannot represent the Turkish woman."[3]

Erdoğan's remarks, accusing hundreds of women representing more than 20 Turkish organizations of opposing moral values and traditions and betraying their "Turkish identity" by claiming ownership of their bodies, captured the essence of the debate that raged from 2002 to 2004, primarily between feminist groups and the religious conservative government during the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. The campaign, aiming at a comprehensive reform of the Turkish Penal Code, succeeded in

[2] (2004, August 28). Bakan Akşit: AB'ye gireceğiz diye değer yargılarımızdan vazgeçemeyiz (Minister Akşit: Just because we want to join the EU, we cannot give up our values). *Zaman*.
[3] (2003, September 25). Türk Kadınını, Marjinal Bir Kesim Temsil Edemez (A marginal group cannot represent the Turkish woman). *Zaman*.

reconstructing gender and sexuality in the legal context despite the religious conservative government's attempts to incorporate in the law a notion of "public morality," embedded in male-centric Muslim tradition, at the historic moment of Turkey's accession to the EU.

This paper will analyze the competing discourses on sexuality (in particular on honor and virginity), criminalization of youth sexual relations, and sexual orientation, which emerged as the most controversial issues during the penal code reform campaign. It draws on the author's personal experience as the initiator of the Women's Working Group on the Penal Code (WWGTPC) and the coordinator of Women for Women's Human Rights (WWHR) – NEW WAYS, which served as the coordinating secretariat for the campaign. The data analyzed include newspaper and magazine articles, reports, and e-mail exchanges on various issues related to the campaign among the women who were members of the *TCK_Kadin* Listserv (TPC_women in English, TPC being Turkish Penal Code), during the years 2003 and 2004. In addition, a series of nine semi-structured interviews were conducted with members of the Parliamentary Justice Commission that prepared the draft law, women MPs from both the government and opposition parties, including the Women's Minister, and board members of LGBT organizations in Istanbul and Ankara.

Background: From religious discourses to gendered national identities

The history of the modernization movement in Turkey dates back to the nineteenth-century Ottoman Empire. The defenders of modernization, from the reformists of the nineteenth-century to the Kemalists of the republican period, claimed that education and the liberation of women were pre-conditions for the achievement of modernity and thus sought to overcome traditional gender-role ideology in an attempt to align with contemporary values.[4] During the period between the "beneficial reforms," beginning in 1839, and the second constitutional period in 1908, these modernists particularly criticized arranged marriages, polygamy, and gender segregation, and advocated for women's free access to education and for relationships and marriages based on love. On the other hand, conservatives, including Islamists, have tried to limit the effects of modernization to the technical, administrative, and material domains, while building on the foundations of the past. They have constantly

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[4] Göle, N. (1993). *Modern Mahrem: Medeniyet ve Örtünme* (*The forbidden modern: Civilization and veiling*). Istanbul: Metis Yayınları. (First published in 1991).

emphasized the importance of the cultural and ethical legacies of Turkish society, and have maintained that gender relations must be regulated by *shari'a* (Islamic law) in order to preserve ethics and moral values. The conservatives have traditionally viewed reforms on gender relations as influenced by Western thought and as a threat to the prevailing cultural identity. Although the exact content of, and actors in, this tug-of-war between tradition and modernization have changed, it is striking that the role of women in society remains one of the main subjects of debate in Turkish society.

The founding of the Turkish Republic in 1923 was followed by the introduction of several reforms, including the abolition of *shari'a*, secularization of the state, and revolutionary changes for women.[5] In 1926, the Turkish Civil Code was introduced. Adapted from the Swiss Civil Code, it banned polygamy and granted women equal rights in matters of divorce and child custody. The civil code was an important victory over the advocates of *shari'a*.[6] However, as feminist political scientist Şirin Tekeli argues, women's rights as granted by Kemalists were strategically intended to destroy links to the Ottoman Empire and to strike at the foundations of religious hegemony.[7] Indeed, it seems that the official position of the new republic on the status of women was restricted to a secularist stance intended to reform the Islamic way of life, rather than to promote the actual liberation of women in everyday life. Thus, women were presented as the "emblem" of secularism and the new republic, just as the conservatives and Islamists used them as symbolic and literal "protectors" of family values and the social status quo.

Despite the apparently opposing views of modernists and Islamists on women's role in society, in fact, they competed zealously to construct a patriarchal ideal of female sexuality and to maintain and reconstruct mechanisms to control women's sexuality and bodies. The modernists attempted to confront the social anxieties triggered by women's participation in the public sphere through the construction of the modern Turkish woman, emancipated and

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[5] The reforms, which represented a political revolution, included the abolition of the sultanate and the caliphate, the adoption of Latin letters for the Turkish alphabet, and the encouragement of Western clothing for women and men. The ideological foundation of these reforms came to be known as Kemalism, also depicted as "the Kemalist revolution," since this all occurred under the leadership of Mustafa Kemal, who became the first elected president of the Turkish Republic and remained so until his death in 1938.

[6] Arat, Y. (1994). 1980'ler Türkiye'sinde Kadın Hareketi: Liberal Kemalizmin radikal uzantısı (Women's movement in Turkey in the 1980's: A radical extension of liberal Kemalism). In N. Arat (Ed.) *Türkiye'de Kadın Olgusu (The issue of women in Turkey)*, pp. 71-92. Istanbul: Say Yayınları.

[7] Tekeli, Ş. (1982). *Kadınlar ve siyasal toplumsal hayat (Women and socio-political life)*. Istanbul: Birikim Yayınları.

active in the founding of the new republic as mother, teacher, and political activist, yet also modest and chaste.

In her analysis of representations of women in the novels of Halide Adivar, an eminent female writer and political activist of the pre-republican period, Deniz Kandiyoti, concludes that the female characters in Adivar's novels represent a nationalist consensus on "the terms under which women could be accepted into public life in republican Turkey: as asexual and devoid of their essential femaleness."[8] Kandiyoti also notes that although the modernists took great pains to establish a new nationalist morality in which the equality of women could be justified as an integral part of pre-Islamic Turkic cultural mores, obviously this reassurance was not deemed sufficient. As claimed by Ziya Gökalp, the then leading ideologue of the Turkish nationalist movement, the principal virtue of Turkish woman is *iffet* (virtue, chastity).[9]

In her analysis of the Kemalist socialization of women, Durakbaşa observes that in the puritanical construction of women's morality in the new Turkish Republic, the concept of honor gained an emotional importance for both women and men. While opening a new space for themselves in the public domain, women were simultaneously held responsible for maintaining the highest moral standard of "harmless" interaction with men.[10] Accordingly, in order to claim this new public space, women had to master the complicated art of concealing their sexuality once again, this time with an invisible veil.

Yet, it seems that the founders of the modern republic did not quite trust women's capacity to fulfill their new citizenship obligation. Thus Islamic and customary laws, norms, and discourses were simply translated into a new language, subsumed under a notion of public morality constructed around values such as *namus* (honor), *ırz* (purity, honor), *iffet* (chastity), *haya* (shame), or *müstehcenlik* (obscenity). This new language was also entrenched in the 1926 Turkish Penal Code, adopted from Mussolini's Italy, as part of westernization efforts by the new republic. Not only was the 1926 Turkish Penal Code based on that of an extreme right-wing regime, it also incorporated several articles common to penal codes of Middle-

[8] Kandiyoti, D. (1998, Spring). Slave girls, temptresses and comrades: Images of women in the Turkish novel. *Feminist Issues*, 8.1, pp. 35-50.
[9] *Ibid*.
[10] Durakbaşa, A. (1998). Cumhuriyet Döneminde Modern Kadın ve Erkek Kimliklerinin Oluşumu: Kemalist Kadın Kimliği ve Münevver Erkekler. In A. B. Hacımirzaoğlu (Ed.) *75 Yılda Kadınlar ve Erkekler*, pp. 29-50. Istanbul: Tarih Vakfı.

Eastern countries. Sherifa Zuhur, who conducted a comparative study of criminal laws in the Middle East and North Africa, argues that the criminal codes in the Middle East and the Muslim world are a constant reminder that the primary social identification of women is as reproductive and sexual beings who are constrained by men, the family, and the state.[11]

The Turkish Penal Code of 1926 reflected an understanding of sexuality, in particular women's sexuality, as a potential threat to public order and morality, and thus to be in need of legal regulation. The code included sexual crimes under the section Crimes Against Society in a sub-section titled Crimes Against Traditions of Morality and Family Order (*adab-ı umumiye and nizam-ı aile*), instead of defining these as crimes against persons. The designation of crimes such as rape, abduction, or sexual abuse against women as "crimes against society" rather than as crimes against individuals, was not only a manifestation of the code's foundational premise that women's bodies and sexuality are the property of men, family, or society; it was also a reflection of the social anxiety about a perceived need for stricter state control of sexuality in the context of the liberalizing impact of the Kemalist revolution, including the abolition of religious laws, the participation of women in the public sphere, and the implementation of Western dress codes.

The new feminist movement and the rise of political Islam in the 1980s

Right and left wing political movements dominated Turkish political debate and action in the 1960s and 1970s in reaction to strong state controls. In this environment women's issues were subsumed under Marxist discourses, as leftist women activists were incorporated into the Marxist movement. Thus, the emergence of a new feminist movement similar to those in the West did not take place until the late 1980s. The new Turkish feminist movement of the 1980s brought human rights violations against women in the private sphere to public attention for the first time. An initial campaign focusing on domestic violence was followed by a widespread and energetic feminist campaign against sexual harassment and sexual violence in 1989, resulting in a significant legal reform; article 438 of the Turkish Penal Code, which reduced by one third the sentence given to rapists if the victim was a sex worker, was repealed by the Grand National Assembly in 1990. However, the initial vigor of the new feminist movement to publicize issues related to women and sexuality was short-lived.

[11] Zuhur, S. (2005) *Gender, sexuality and the criminal laws in the Middle East and North Africa: A comparative study*. Istanbul: WWHR – NEW WAYS

The rise of political Islam,[12] concurrent with the emergence of the new feminist movement, changed the political scene in Turkey dramatically. The women's movement was confronted not only with the rise of the Islamic Religious Right but also with the rise of militarism and nationalism driven to a large extent by the armed conflict between Turkish security forces and the separatist Kurdistan Worker's Party (PKK) beginning in 1984.

The triumph of the conservative Islamic Welfare Party in 37 of 81 provinces in the 1994 local elections drastically shifted the Turkish political scene. The perceived threat of the Islamic religious right redirected most women's attention and interest from women's human rights violations in the private sphere to the protection of the "republican principles" and secularism of Kemalist ideology. These were the traditional concerns of pro-republican women activists, whose main agenda has historically been the defense of the principle of secularism as well as the protection and advancement of women's legal rights in the public sphere. As a consequence, the ideological differences between feminist activists and traditional pro-republican women activists, which might have been expected to diminish under more advantageous political conditions, further deepened following the elections. Despite the rapid emergence and institutionalization of several women's NGOs across Turkey, the rise of the Islamic Religious Right, nationalism, and militarism and the resulting polarization of the political environment in the 1990s have diminished the space for feminist discourses and activism on a number of issues. In the 1990s, the new feminist movement failed to raise a substantial critical focus on militarism and on the rise of nationalistic ideologies. Debates on sexuality and sexual liberation, critiques of the heteronormative model, the redefinition of female sexuality, and the human rights of lesbians — issues which might have taken hold in a more politically supportive environment — failed to make an impact on the public agenda.

Throughout the 1990s, feminist activism and legal advocacy in Turkey concentrated mainly on reform of the civil code, which designated husbands as heads of family and contained provisions violating both the constitutional guarantee of gender equality and international conventions, like the Convention on the Elimination of All Forms of Discrimination against

[12] For other local examples of the impacts of religious authorities in sexuality discourse, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 33-35; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, p. 135; Nowicka, W., The struggle for abortion rights in Poland, pp. 183-185. For impacts in global debates, see: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

Women (CEDAW), to which Turkey was a signatory.[13] The civil code and the draft amendments for gender equality came to the forefront of the public agenda in 2001 during parliamentary reform debates as the result of a dynamic and extensive campaign by a coalition of over 120 women's NGOs from around the country – the broadest alliance of women's groups since the new feminist movement emerged in the 1980s.

Unexpected resistance to the gender-equality clauses, from a coalition of male MPs led by the ruling Nationalistic Action Party and the opposition Islamist Welfare Party, triggered the campaign. This backlash occurred despite the acceptance of Turkey as a candidate for EU membership in December 1999, a development that had been expected to intimidate opponents of gender equality. But those opponents stubbornly argued that the gender equality provisions would create anarchy and chaos in the family and threaten the foundations of the Turkish nation. Nonetheless, the campaign by the women's coalition gained media attention and galvanized public opinion, which scorned any resistance to the notion of equality between women and men. Consequently, the opposition was forced to step back, and the campaign scored a victory with the realization of the November 2001 Civil Code reform, which abolished the supremacy of men in marriage and established by law equality between women and men in the family.

Seizing a window of opportunity:
The Campaign for Reform of the Turkish Penal Code from a Gender Perspective

Inspired and motivated by the successful outcome of the campaign to reform the civil code in the face of strong opposition, Women for Women's Human Rights (WWHR) – NEW WAYS, a leading Turkish women's NGO and key advocate for civil code reforms on gender equality since the early 1990s, initiated a Women's Working Group on the Turkish Penal Code in early 2002. In 2001, two years after Turkey was accepted as a candidate for full EU membership, the government, in agreement with the EU, had prepared a national program. It outlined the political, economic, and legal reforms that Turkey pledged to carry out by late 2004 to fulfill EU membership criteria. This included the reform of the Turkish Penal Code. The European Commission was concerned mainly with the abolition of the death penalty, pre-trial

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[13] Turkey ratified CEDAW in 1985 with several reservations, which were not removed until 2002.

detention provisions, and the expansion of the scope of freedom of expression, and not with gender equality or articles concerning sexuality. Despite the lack of EU interest in these areas of reform, WWHR – NEW WAYS saw in the planned reform of the Turkish Penal Code an opportunity to push for reforms on gender equality and sexual rights. In early 2002 it initiated a Women's Working Group on the Turkish Penal Code comprising 15 representatives from NGOs and lawyer's associations as well as academics from various regions of Turkey. Its goal was a comprehensive reform of the Turkish Penal Code from a gender perspective that included a strong set of principles concerning sexual rights and bodily integrity.

The Working Group's comprehensive view of sexual rights and bodily integrity was based on a recognition of the basic human right of all women to full autonomy over their bodies, sexuality, and reproductive capacity, independent of age, marital status, socio-economic background, or sexual orientation. The main aim was to change certain articles in the penal code that violate women's human rights. These articles included one that reduced sentences for perpetrators of honor crimes, which was the only issue on the EU agenda related to women. Another objective of the campaign was to rewrite the law, with women's autonomy over their bodies and sexuality as the main guiding principle. The demands of the Working Group were therefore presented as a single indivisible package.

In keeping with these principles, the Women's Working Group adopted a methodology to translate these demands into legal terms. After identifying all the articles that violated women's human rights and the right to sexual and bodily integrity in both the existing code and the draft law, the group undertook a comparative study of penal codes in different countries. This helped the group to prepare detailed proposals and justifications for about 45 amendments, formulated as new provisions and articles to be integrated in the new law, which the group then published as a booklet. As these efforts got underway, the three-party government coalition led by the social democrats resigned after a political crisis leading to early elections in November 2002 that ended with a stunning victory for the newly formed religious conservative AKP.

Despite repeated requests by the Women's Working Group, representatives of the new government refused to meet with members to hear their demands. Faced with strong govern-

ment resistance, the group extended its lobbying efforts into a massive public campaign, which it launched on May 23, 2003 with a widely attended press conference. At that press conference, campaigners and NGOs that supported the Working Group's demands formed the Women's Platform. The campaign, and the discussion on sexuality it provoked, drew great public and media interest, resulting in several front-page headlines and daily coverage by a majority of newspaper, TV, and radio outlets. It continued for 18 months until the new penal code was ratified by the parliament in September 2004, with more than 35 amendments to laws concerning sexuality and sexual crimes.[14]

The most controversial debates during the campaign revolved around social constructions of honor, virginity, sexuality of youth, and sexual orientation, all issues seen as related to extramarital sexuality and strongly opposed by religious conservatives in various Muslim countries.[15] About 40 of the Women's Platform demands were accepted. The proposals that were rejected included designation of honor crimes as aggravated homicide, criminalization of virginity tests, removal of an article penalizing consensual sexual relations between youths aged 15 to 18, and the penalization of discrimination based on sexual orientation. The two other rejected demands were the removal of an article prohibiting publication of "obscene" content and extension of the legal abortion period from 10 to 12 weeks.

The section below presents the essential elements of the controversial public discourses on honor, virginity, sexual relations of youth and sexual orientation during the Campaign for the Reform of the Turkish Penal Code, and the different sides in these debates.

Contested discourses

Honor and virginity: Fundamental elements of "Turkish identity"?
Issues around honor and virginity were the most controversial and widely debated topics

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[14] The Platform's demands incorporated in the penal code reform included a revision regulating sexual offences under the section "crimes against individuals," sub-section "crimes against sexual inviolability," instead of the previous section "crimes against society," sub-section "crimes against moral customs," constituting a groundbreaking shift in the overall perspective of Turkish penal law. The notion that women's bodies and sexuality are commodities of men and of society, and that sexual offences are to be regulated with reference to patriarchal social constructs such as "society's traditions of morality," "chastity," and "honor" were deleted, bringing, for the first time, legal recognition of women's ownership of their bodies.

[15] Amado, L. E. (2004, May). Sexual and bodily rights as human rights in the Middle East and North Africa: A Workshop Report. *Reproductive Health Matters*, 12.23, pp. 125-128.

during the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. The significance attached to virginity and honor in both rural and metropolitan Turkey is deeply entrenched; both constructs involve social, legal, and political means for controlling all forms of female extramarital sexuality. Unmarried women are generally expected to remain virgins until their wedding night, and virginity is not only the symbol of a woman's purity and chastity, but also an icon of her family's honor. Sexual relations outside marriage on the part of a married woman, including rape, are generally understood primarily as assaults on men's honor.

The Women's Platform demands to reform the code around issues of honor and virginity became the major focus of opposition from the religious conservatives. Only a few days after the launch of the campaign, *Vakit*, a radical right-wing religious newspaper, attacked women's groups in an article with the headline, The Shameless Proposal, which denounced the demand for the removal of all penal code references to *namus* (honor) and *adab* (public morality) as "immoral" and "shameless."[16] Interestingly, the arguments in the article were not centered on religion, that is, Islam, but on the construction of Turkish national identity. The article argued that the demands of the Working Group were alien to Turkish society and that its members were "obviously" leading lives completely estranged from the Turkish nation. Notably, this argument underlay both religious and secular conservative discourses against the demands concerning honor and virginity throughout the entire campaign.

Several of the Women's Platform demands aimed to delete articles in the code that constructed honor and female virginity as values to be protected by law. One called for the removal of an article canceling punishment in cases where a rapist married his victim. This article was predicated on the notion that a woman who had been raped, and therefore dishonored, could restore her honor by marrying her rapist, and that by marrying his victim, the perpetrator's offence could be considered undone. This article essentially re-victimized the woman as she is forced to marry her rapist, first, by her own family to "save" their honor, and second, by the perpetrator's family, to prevent his incarceration. It also served to sustain a cultural construction of honor, which enables the violation of women's sexual autonomy by the law itself. The feminist movement brought the issue of honor to the public agenda for the first time and the campaign contributed significantly to raising public consciousness about the

[16] Yılmaz, M. (2003, May 28). Edep'siz Teklif (The shameless proposal). *Vakit*.

issue.[17] Of all the feminist demands, this issue, addressing the re-victimization of unmarried women who suffer rape, was the first to gain passionate widespread support from the liberal and left-leaning media shortly after the launch of the campaign. The newspaper headlines at the time reflected growing criticism of the provision, as in The Additional Punishment of Marriage for Victims of Rape,[18][19] and, Turkey's Contribution to the Criminal Medicine Literature: Rape to Marry.[20] The media focus on this one stipulation among the more than 40 demands of the Women's Platform that aimed at sexual liberation, was not surprising given that the portrayal of women as victims is as popular a theme in Turkish media as elsewhere in the world. Indeed, the tendency to reproduce the image of women as victims exists even among the global women's movement in its advocacy for women's human rights.[21]

Despite the early public and mainstream/left media support for the cancellation of the provision, members of the government did not hesitate in supporting its retention. As the parliamentary sub-commission working on the draft law revision began convening in October 2003, Doğan Soyaslan, a chief consultant to the Justice Minister, triggered a public uproar when he said, "No man would like to marry a woman who is not a virgin. Marrying the rapist after a rape is a reality of Turkey. The brother and the father of a girl who was raped would like her to marry the rapist. Those who are opposing this here [at this meeting] would also like to marry virgins. Those who claim the opposite are fakers."[22] This statement, coming from a senior government representative, was a turning point in the campaign, prompting the widest outburst of public opposition against the government regarding the draft law since its inception, and bringing public attention to the debate between the government and the Working Group to a peak.

Two weeks later, Soyaslan created an even greater uproar during a televised debate when he said that the provision generally applied in situations involving victims of lower socio-eco-

[17] Article 433 of the old Turkish Penal Code.
[18] Korap, E. (2003, July 24). The additional punishment of marriage for victims of rape. *Milliyet*.
[19] (2003, September 23). The additional punishment of marriage for victims of rape. *Cumhuriyet*.
[20] (2003, September 28). Turkey's contribution to the criminal medicine literature: rape to marry. *Vatan*.
[21] Kapur, R. (2005). *Erotic justice: Law and the new politics of post colonialism*. London: Lasshouse Press.
[22] Yalçın, Z. (2003, October 23). Bakan Danışmanının 'Bekaret' Takıntısı (The "virginity" obsession of the minister's consultant). *Sabah*; Önal, G. (2003, October 23). Kimse Bakire Olmayan Biriyle Evlenmek İstemez (Nobody wants to marry a woman who is not a virgin). *Milliyet*; Korkmaz, İ. (2003, October 23). Herkes Bakire İster (Everybody wants a virgin). *Hürriyet*.

nomic status, and that he could not imagine applying it to his own daughter.[23] Asked if he would marry his daughter to a man who had raped her, he said, "No, but I'm different, I'm a professor. I would think that she had gone to him of her own will. If that wasn't the case, I wouldn't allow her to marry him."[24] Soyaslan's remarks reflected the rarely acknowledged fact that in Turkey legal articles and provisions that violate women's human rights disproportionately affect women and girls of lower socio-economic status. This is not only because these women and girls are more vulnerable to the impact of discriminatory traditions and customary practices, but also because they are deprived of the socio-economic means to protect themselves from such violations.

The extremist newspaper *Vakit* supported Soyaslan's defense of women's honor and virginity as Turkish values that should be protected in law. The newspaper argued that the Working Group's platform was not representative of Turkish women, despite the fact that the group was made up of 26 NGOs from almost every region of the country. *Vakit* also implied that the proposals were Jewish influenced, targeting a member of WWHR – NEW WAYS whose father was a Turkish citizen of Jewish background.[25] A columnist in *Vakit* argued that the Women's Platform was not representative of Turkish women because the member organizations "belonged to high society and radical leftist organizations, whose sexual instincts have become out of control."[26] The article did not discuss how members of "high society and radical leftist organizations" had come to be united for a common cause despite their class conflicts.

There is no question that the Turkish constitutional principle of secularism played an important role in the decision of the AKP government to base its opposition to penal code reforms promoting gender equality and sexual rights on the ideology of "national values" rather than on religious arguments. However, other historical and strategic factors have played a more important role in this secularization of oppositional discourse. As I argued earlier in this paper, the transformation of Turkey from a regime based on religious norms in the Ottoman Empire to a modern republic with a secular Western legal framework included the translation of Islamic and customary laws, norms, and discourses on gender hierarchy into a new

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[23] The Press Club (Basın Kulubü). *Habertürk TV*, first aired on November 2, 2003 and repeatedly aired on the same channel for several days after.
[24] Asena, D. (2003, November 5). Profesör ve Düş Kırıklığı (The professor and disappointment). *Yarın*.
[25] (2003, November 14). Azgın Teklif (The wild/oversexed proposal). *Vakit*.
[26] Karakoç, A. (2003, October 6). *Vakit*.

language. This language appeared secular but traditional philosophical and ideological gender constructs were embedded within the "new" national identity, including such concepts as *namus* (honor), *ırz* (purity, honor), *iffet* (chastity), and *haya* (shame). The choice of arguments based on national identity to ground the legal regulation of women's bodies in defense of honor and virginity was not only consistent with this historical discourse but also ensured the support of secular conservatives on these issues. Indeed, renowned secular jurists and academics supported the religious conservatives in their opposition to amendments of articles concerning honor and virginity, agreeing that these articles were in line with Turkish customs and traditions. For example, a respected professor of criminal law, Sulhi Dönmezer, often referred to as "the professor of professors," asserted that the article canceling sentencing for rapists who subsequently married their victims should remain as "this law is in line with realities of Turkey. Virginity is a component of Turkish customs and practices. The law has to respect this."[27]

Although Islam forbids extramarital sex for both women and men, customary practices such as honor killings or virginity testing cannot be justified by an appeal to the Qur'an. In 2004, Turkey's Department of Religious Affairs issued a statement that honor crimes are patriarchal practices condemned by the Qur'an.[28] It is also notable that virginity is a requirement of all Muslims until marriage; the Qur'an makes no distinction between women and men here, despite the obsession with female virginity in both the penal code and Turkish society. (In Turkey a woman is expected to remain a virgin until her wedding night, whereas men are traditionally encouraged to have sexual relations before marriage). Thus, the use of an historicized construction of values anchored to national identity as opposed to religion to defend the judicial encoding of honor and female virginity was an effective strategy that not only avoided political, ideological or social complications, but also ensured the support of secular, liberal conservatives. This strategy was possible because the Kemalist form of secular republicanism was always based on the premises of male privilege and women's sexual subordination embedded in Turkish national identity.

Despite the strong political opposition, intensive lobbying by the Women's Platform and the growing public uproar over the rape article finally resulted in the acceptance of many of the

[27] Lakşe, E. (2003, November 6). Eşinizi bakire mi alırdınız? (Do you prefer a virgin wife?) *Haftalık.*
[28] The Republic of Turkey, Presidency of Religious Affairs, Press Release. (2004, March 8). Retrieved June 9, 2005, from http://www.diyanet.gov.tr/english/default.asp.

group's demands. Under increasing public pressure, the parliament finally decided to delete not only those articles providing for sentence cancellations for rapists who married their victims, but also several other references to "society's traditions of morality," "chastity," and "honor." Rape and sexual assault, previously defined as "forced or consensual seizure/attack of honor/chastity," were redefined in article 102 (1) of the new Turkish Penal Code as "any sexual act violating a person's bodily inviolability." Articles discriminating against women based on virginity or marital status, such as provisions for a lighter sentence in cases where the woman raped was not a virgin or an abducted woman was unmarried, were removed. Clauses implying legal distinctions between virgins and non-virgins were deleted from the "definitions" section, and the code no longer considers honor a mitigating circumstance in an unwed mother's murder of a newborn.

However, as explained below, some of the Women's Platform demands were rejected, especially those justifying reduced sentences for perpetrators of honor killings.

Honor killings or customary killings: What's in a name?

While there has been extensive feminist activism against honor killings in Turkey since the 1990s, the debates during the campaign showed that there was considerable controversy and confusion regarding the conceptual definition of honor as it related to female sexuality and honor killings. One interesting outcome of this conceptual controversy was the acceptance by the Justice Commission, in one of its final meetings on the penal code draft in May 2004, of the inclusion of "customary killings" instead of "honor killings" in the article defining aggravated homicide. The Women's Platform had never used the term "customary killings" in its publications or campaign statements. It immediately issued a statement that replacing the term "honor killings" with the term "customary killings" was unacceptable.[29]

While both terms are commonly used in Turkey, often erroneously in an interchangeable manner, the term "customary killings" is associated primarily with a practice more prevalent in eastern and south-eastern Turkey, in the context of a semi-feudal traditional agricultural

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[29] Women's Working Group on the Turkish Penal Code (TCK Kadin Calisma Gurubu). (2003). *Kadin Bakis Acisindan Türk Ceza Kanunu* (*Turkish Penal Code from a Gender Perspective*). Istanbul: WWHR-NEW WAYS.

economy and among a predominantly Kurdish population. It entails a death warrant, issued by the so-called extended "family assembly," against a female accused of "dishonoring" her family through alleged "inappropriate" conduct. While "customary killings" are also "honor killings," the latter is a broader term that entails any act of murder motivated by the (male) perception that his "honor" has been blemished by the actions of a female relative. Thus, the term "honor killings" includes both so-called "crimes of passion" arising from feelings of hurt, jealousy, or passion on the part of a spouse, as well as the more traditional customary practice of a death warrant as described above.

The definition of "customary killings" instead of "honor killings" as aggravated homicide in the penal code was the result of a last minute compromise proposal by some women MPs from the opposition Social Democrat Party (CHP) after repeated rejections of several proposals on honor killings by both the draft law sub-commission and the Justice Commission. In an interview with the author CHP MP and Working Group member, Gaye Erbatur, said, "The issue of honor was discussed for days. AKP members constantly argued that if a man sees his wife with another man, what else could he do except to defend his honor? Honor was a very sensitive issue that they were obsessed with. So we thought we could convince them to at least accept the term 'customary killings,' which has different connotations. However, there was also resistance against the proposal on customary killings from AKP. Although the Minister of Justice supported the proposal, several AKP members of the Justice Commission voted against it, thus it was not accepted unanimously."

It seems that under pressure from women's groups, the public, the media, and the opposition CHP, AKP made a compromise that created an unclear, arbitrary, and inconsistent distinction between customary and honor killings. In fact, both of these terms imply that murder in the name of honor is a lesser or even a justified crime. Bekir Bozdağ, an AKP sub-commission member, acknowledged this confusion in an interview with the author. "Customary and honor killings do not intersect 100 percent, but all examples given by those who prefer the term honor killings can also be conceptualized under the notion of customary killings. Obviously there is conceptual confusion here," he said.

In interviews with members of the sub-commission it became clear that there was a perceived difference between honor and customary killings based on idiosyncratic understand-

ings of custom and honor. As the head of the sub-commission, Hakkı Köylü, said, "Honor was the issue that triggered the biggest discussion. I was under immense pressure on this issue, especially from the women's organizations… I agree that customary killings cannot be justified. Just because the customs demand so, it is not right that a girl is killed when she elopes and marries someone her family does not agree with. This is a customary killing, I understand… However, if a father kills the man who abducted his daughter, this is not a customary killing, because it includes a provocation (which) can provoke and distress a man. Or, if a man kills a man he found in bed with his wife, this is not a customary killing… This is an honor killing, and you cannot put it in the same basket with a customary killing… We have to accept that this is a homicide which is conducted under provocation and should receive a reduced sentence."

The construction of "honor" as a sacred value and its deep association with female sexuality were so strong that AKP members vehemently resisted any association of acts so described with criminal penalty. Adem Sözüer, an independent legal expert on the sub-commission, says that the discussions about honor were often irrational: "Penalizing killings in the name of honor seemed to be considered almost like penalizing honor as a value. They said, 'How can we use the words honor and penalty together? One should lead an honorable life, this is one of our basic values, for example if a spouse kills her/his spouse because she/he caught him/her with someone else.' I'm giving this example because it was repeated constantly; shall there be a sentence reduction or not, that was the major discussion… Therefore, the discussion generally concentrated on how to solve this problem without using the word honor."

Sözüer claims that there was not a great deal of difference between the AKP and the CHP perspectives on honor as a positive value, especially regarding the use of the word "honor" in the code. Orhan Eraslan, a CHP MP, said, "AKP argued that honor is a value of Turkish society, and that we could not therefore bring a legal provision against it. This issue is a two-edged knife. If there is public pressure on them, do you think we did not feel the same pressure? AKP presented the issue as if we (as CHP members) are against honor and thus unscrupulous, immoral … Such pressure was created, but we tried to withstand it; we tried to demonstrate this was unacceptable."

This reflects the fact that "honor" and "virginity," as socio-cultural constructs, are deeply entrenched in Turkish popular discourse, and that eliminating them requires broad campaigns aimed at their deconstruction.

Criminalization of consensual youth sexual relations: Social democrats in defense of virginity

CHP presented a more conservative attitude when it came to the issue of premarital sexual relations. In an interview with the author, Sözüer related how a CHP MP on the commission, who had been otherwise very cooperative with the Women's Platform, played a leading role in the inclusion of an article providing for the criminalization of consensual sexual relations of youth aged 15 to 18 upon complaint, despite strong protests by both the Women's Platform and some AKP members. In discussions with Women's Platform representatives, including the author, the MP repeatedly mentioned that he has a daughter and he believed this article was very important to protect girls. Erbatur, the woman MP from CHP who worked most actively on the reform process, also reported that female CHP MPs encountered the most resistance from male party colleagues on the issue of decriminalizing consensual sexual relations among youth.

CHP members claimed that the opposition of some AKP members to the article criminalizing consensual adolescent sexual activity was based on their quest to maintain the customary practice of early/religious marriages.[30] This claim is based on the fact that in cases of early marriages, still very common in Turkey, a religious marriage ceremony is conducted even though religious marriages do not have any legal validity and it is forbidden by law to hold a religious marriage ceremony prior to the civil ceremony.[31]

The insistence of CHP, a social democratic party, to criminalize sexual relations of youth, while some religious conservative AKP members opposed it in order to defend the customary practice of early marriages, illustrates the unique complexity of political attitudes regarding sexuality in a secular Muslim country. In this instance, a supposedly liberal and secular po-

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[30] Until 2001 the minimum legal age for marriage was 15 for girls and 17 for boys in Turkey. It was raised to 17 for both sexes with the reform of the Turkish Civil Code in 2001.

[31] Research shows that 16.3 percent of women living in the eastern and southeastern regions of Turkey were married by the age of 15, the minimum legal age for marriage until 2001. See Iikkaracan, P. (1998). Doğu Anadolu'da Kadın ve Aile (Women and family in eastern Anatolia). In A. B. Hacımirzaoğlu (Ed.) 75 *Yılda Kadınlar ve Erkekler (Women and Men in 75 Years of Turkish Republic)*, pp. 173-192. Istanbul: Tarih Vakfı.

sition led to the more conservative outcome. Indeed, the defense of secularism and secular law against religious/customary practices also led to conservative stances by the CHP on other issues. For example, while CHP representatives were instrumental in the criminalization of marital rape in the new penal code, they rejected the Working Group's demand to include women living in *de facto* marriages in the article, asserting that this would lead to an implicit support of religious marriages, which are not validated by the Turkish Civil Code. Eraslan explains the CHP opposition: "Of course a couple may live together without a legal (civil) contract. In many places of the world, this is a common situation that is a result of modern life. This is something that is very acceptable. However, the case of religious marriages is a different issue, as they lead to polygamy and women's oppression… We thought if we include *de facto* relations in the article on marital rape, this could lead to an open door for further acceptance of religious marriages… This would lead to worse consequences… Therefore we removed the term *de facto* marriages from the article."

Article 104, stipulating a sentence of six months to two years imprisonment upon complaint for anyone engaging in sexual relations with young persons between the ages of 15 to 18, in the absence of any force, threat, or ruse was accepted by parliament despite the fervent protests of the Women's Platform.[32] However, at the beginning of 2006, only six months after the new Turkish Penal Code came into effect, the Court of Assize in Ardahan, a province in eastern Turkey, appealed to the Constitutional Court for the cancellation of the article. The court argued that the article could result in ambiguous legal situations concerning whom to penalize in cases of consensual sex between boys and girls aged 15 to 18, and that it violated the equality principle of the constitution as it foresees penalizing an individual based on a complaint by a third party.[33]

Both parties also rejected the Women's Platform demand for an article criminalizing virginity tests. CHP instead proposed a provision penalizing genital examinations without authorization by a judge or a prosecutor, claiming this would serve to prevent virginity testing. The provision was strongly opposed by women's groups as it fails to explicitly name and ban virginity testing and does not require the woman's consent, leaving room for forced examinations.

[32] The second paragraph of the article that stipulated doubling the penalty in cases where the perpetrator is more than five years older than the victim was cancelled by the Turkish Constitutional Court on the grounds that it violated the equality principle of the Turkish Constitution.

[33] Kaya, Ö. (2006, January). Gençlere Cinsel Özgürlük Davası (The court case against the freedom of youth sexuality). *Yeni Hukuk* 1.4, p. 20.

Despite this, the provision was accepted (Article 287) by parliament without any revision.

Penalization of discrimination based on sexual orientation: A short-lived success

The first organizational efforts around gay and lesbian rights in Turkey date back to the beginning of the 1990s. In July 1993, the Istanbul governorate forbade a planned series of activities, intended to bring gay and lesbian issues to public attention in Turkey. In response, the organizers founded Lambda Istanbul, the first gay and lesbian organization in Turkey, to focus on instituting gay and lesbian rights and raising public consciousness of issues faced by gays and lesbians in Turkish society. A year later, in September 1994, another gay and lesbian group, KAOS Gay and Lesbian Cultural Research and Solidarity Association (KAOS GL), organized in Ankara to fight discrimination against gays and lesbians. Both organizations have contributed to raising awareness on gay, lesbian, and transgender people in Turkey. Transgender sex-workers have achieved visibility in the Turkish media regarding their activism against the high level of police violence to which they are subjected. However, rights around sexual orientation have not yet become a topic of public debate.

Criminalization of discrimination based on sexual orientation was one of the demands formulated by the Women's Working Group in 2002 and supported by the groups that formed the Women's Platform in May 2003.[34] This public demand concerning sexual orientation by such a broad alliance of women's NGOs constituted a first in Turkey. WWHR – NEW WAYS, the initiator and coordinator of the campaign and instigator of this demand, has a long history of sexual rights advocacy, including sexual orientation rights, and has worked internationally for years with various organizations around the world. Although initially some women's organizations were not supportive of the demand, they all finally backed it.

A small group of lesbian women active in both the Women's Platform and LGBT organizations played a leading role in motivating gay and lesbian organizations to work on penal code reform from an LGBT perspective.[35] Lambda Istanbul held a press conference, publicizing its demands related to the Turkish Penal Code, in January 2004.[36] The demand to penalize

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[34] The formulated demand concerned the revision of article 170 of the draft law penalizing discrimination based on race, ethnicity, sex, family status, customs, political views, philosophical belief, and religion to specifically refer to "discrimination based on sexual orientation" as well.

[35] Author interview with Oner Ceylan from Lambda Istanbul, December 8, 2005.

[36] Lambda Istanbul Press Statement. (2004, January 16). TCK_Kadin listserv. http://groups.yahoo.com/group/tck_kadin/message/378.

discrimination based on sexual orientation initially met resistance from even the most pro-gressive MPs and sub-commission members working on the Penal Code draft law. However, after intensive lobbying, Sözüer, one of three independent experts on the sub-commission, was persuaded to put it up for discussion. The sub-commission's ensuing debate on sexual orientation revealed that the very term "sexual orientation" was unknown to the majority of the MPs. The debate was rather short, and Sözüer was able to convince sub-commission members by focusing on examples of discrimination against male transsexuals and trans-vestites, which is more publicized in the Turkish media than discrimination against gays and lesbians.[37] In the sub-commission, discrimination against gays and lesbians was not raised, and the brevity of the debate was the first indication of the silence that was to come as the Minister of Justice canceled the revision four months later at a Justice Commission meeting on penal code reform. While it may be said that defending the argument on sexual orientation based on transgender issues was a strategic move as it used the higher visibility of transgender people in the media, I would argue differently. In my view, the silence around gay and lesbian issues reflects the monumental anxiety in Turkish society around homoerotic desire; it is easier for many to address violence against transgendered people than face issues of gay and lesbian sexuality. Transgender issues are perceived in the final analysis as more accommodating to the heteronormative paradigm.

While the media reported extensively on other penal code revisions, the initial acceptance of the criminalization of discrimination based on sexual orientation garnered only brief mention in a few liberal newspapers. However, the headlines in the religious conservative media accused the AKP of protecting homosexuals while failing to lift the ban on female students wearing the headscarf at universities.[38] The comparison of these two issues was not only based on religious conservative sentiments, but was also aimed at mobilizing the religious community in Turkey against the right to sexual orientation. The lack of women's right to wear *hijab* at universities is one of the major political issues targeted by religious conservatives and is a hotly debated topic. Although the AKP has made several attempts to lift the headscarf ban at the universities since its election, its efforts remained fruitless due to fervent opposition from the secularists, including CHP and Turkey's President, Ahmet

[37] The increased attention of the media to transvestites and transsexuals in Turkey is due to the visible and widespread police violence exerted on transvestites and transsexuals involved in sex work and their more forceful advocacy efforts on discrimination compared to gays and lesbians.
[38] Yılmaz, M. (2004, February 7). AKP Nereye? (Where is AKP going?). *Milli Gazete*.

Necdet Sezer. The failure of AKP to lift the ban remains one of the strongest criticisms against the party by voters.[39]

While LGBT organizations cheered the initial inclusion of the revision, women's organizations, experienced in the complexities of legal reform and the political system, were more skeptical and warned LGBT organizations that the issue was not yet settled. Lambda Istanbul and KAOS GL organized a delegation to visit parliament and lobby members of the Justice Commission in May 2004, the first visit of an LGBT group to the Turkish parliament. This resulted in the first widespread coverage by the liberal media on the criminalization of discrimination based on sexual orientation since the start of the campaign. Although the delegation hoped to meet all members of the Commission, they were received only by Orhan Eraslan from CHP, which was used against him by the AKP in his electoral province. AKP disseminated photocopies of the press clippings covering Eraslan's meeting with LGBT delegates to even the most remote villages, accusing him of working for homosexuals rather than for his voters. Although Eraslan claimed that he had the support of his CHP colleagues, his remarks to the press reflect the unease he felt as the only MP who agreed to meet homosexuals: "Being a democrat means, however, to listen to the opinions of those who are different, and to reflect on them. The fact that I agreed to meet them [homosexuals] does not mean that I agree with their demands. I did my duty as a member of the sub-commission."[40]

As stated earlier, the revision on discrimination based on sexual orientation was ultimately removed from the draft law in May 2004 by the Minister of Justice, who argued that since the term "sexual orientation" was similar to the term "sex," which is mentioned in Article 10 of the Turkish Constitution on equality, there was no need for such an article in the penal code. The only objection to the Minister's withdrawal of the revision came from Eraslan, who elucidated the difference between "sex" and "sexual orientation." The Minister insisted that they were similar and the revision was cancelled without further discussion by a majority vote, including the votes of several other CHP members of the Justice Commission.

[39] Faced with strong opposition from the establishment in Turkey, AKP hoped to resolve the issue through a ruling of the Strasbourg-based European Court of Human Rights (ECHR). However, in June 2004, the ECHR, in Leyla Sahin v. Turkey, unanimously ruled that the university's headscarf ban did not infringe the European Convention on Human Rights, a ruling that was sharply criticized by the AKP.

[40] (2004, May 25). TCK'yı Bizi de Koruyacak Şekilde Düzenleyin (Revise the Penal Code so that it will protect us too). *Vatan*.

Explanations for the cancellation of the initially accepted demand on sexual orientation differ. While CHP members Eraslan and Erbatur, who worked diligently on the reform, think that the AKP's Islamic identity and pressure from radical Islamists and the religious conservative media were to blame, representatives of LGBT organizations said they did not see much difference between the views of AKP and CHP on sexual orientation. Arguing that neither AKP nor CHP had an established political position on the issue, Öner Ceylan, a representative of Lambda Istanbul said, "We as homosexuals think that the leftists are just as harmful to us as the religious extremists. Maybe it's different for women or other groups, but … from our perspective there is no difference in the unconscious homophobia of all parties, even if they wouldn't say that they are against homosexuals… The only party that I see as a threat is not AKP, but the nationalist MHP (the Nationalistic Action Party)."[41]

All representatives of LGBT organizations interviewed by the author have indicated that they do not perceive Islam or the religious conservative identity of AKP as the major reason for the rejection of the proposal on sexual orientation. They argue that widespread homophobia in Turkey, patriarchal ideologies on the part of all political parties, the traditional government attitude of ignoring the existence of the LGBT community and thus LGBT human rights, and lack of sufficient preparation by LGBT organizations for the campaign, were the key factors in the failure to adopt the article on sexual orientation.[42] Ali Erol, a representative of *KAOS GL* suggests an analysis based on class issues as well, as evidenced by the varying reactions of the Islamist media in Turkey to the sexual orientation proposal. Erol said, "While newspapers like *Zaman* or *Yeni Şafak*, which are close to the AKP government, chose to ignore the issue, *Vakit* demonstrated hate and profanity against homosexuals… *Zaman* or *Yeni Şafak*, which represent the Islamists who are adapting to middle-class urban life in Turkey, are aware that they cannot control the lives and behaviors of everybody and that they should give up such claims, even if reluctantly. *Vakit* on the other hand expresses the Islamist reaction of people from the poorer and lower middle classes, who are left out of the political and economic system. This is why *Vakit*'s rhetoric demonstrates rage and hatred."

[41] Author interview with Öner Ceylan from Lambda Istanbul, December 8, 2005.
[42] Author interviews with Öner Ceylan and Ülku Özakın from Lambda Istanbul, December 8, 2005, and Ali Erol from Kaos GL, December 16, 2005.

Despite the failure of the campaign to criminalize discrimination based on sexual orientation, the representatives of LGBT organizations agree that the campaign has been an influential and successful step in raising consciousness on sexual orientation, leading as it did to a first-ever discussion of the issue in parliament and the first lobbying effort of parliament by members of the gay, lesbian, and transgender communities. Indeed, there is concrete evidence that the campaign has influenced public policy on sexual orientation in Turkey. In September 2005, the Attorney General of Ankara declined an application by the Department on Associations for a court case against *KAOS GL*. The application stated that the very existence of *KAOS GL* had violated Article 56 of the Turkish Civil Code stipulating that an association against law and morality cannot be established. In its rejection of the application, the Attorney General referred to the parliamentary debate on sexual orientation and stated that "...while the concept of morality includes a notion of subjectivity and varies according to different societies, and at a time in which discrimination against sexual orientation is debated within the context of the reform of the Turkish Penal Code, it is determined that being a homosexual does not mean being immoral and the reality should be based on a notion of freedom of human will, as experts on ethics concur."[43]

The first time collaboration of the women's movement with the LGBT movement on an issue regarding sexual orientation is also perceived by LGBT organizations as very important, though some members express doubt as to whether this will continue and question the sincerity of the support from some of the women's organizations. According to Erol, "While the [Women's Platform] as a whole expressed its demand on sexual orientation in a strong manner, emphasizing its absolute significance, this does not mean that all women's organizations in the [network] have made sexual orientation a priority… Some women's organizations ignored the issue entirely in their panels and conferences related to the campaign, as we witnessed in Ankara, although it was included in the public declarations of the Women's Platform." The evolving relationship between women's organizations and LGBT organizations will be a critical determinant of the strength and the future of struggles around sexual rights in Turkey.[44]

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[43] The Press Office of the Ankara Attorney General, Press Decision No: 2005/1491.

[44] For more on women/LGBT alliances, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, pp. 341-352; Vianna, A. R. B. & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 47-49; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, p. 117; Cáceres, C., Cueto, M. & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false promises, p. 154.

Re-criminalizing adultery

After the parliamentary summer break in 2004, just weeks before the new draft law on the Turkish Penal Code was expected to win approval, a development occurred that threw the entire debate into chaos. A headline in *Hürriyet*, Turkey's most renowned mainstream newspaper, announced an AKP government proposal to add a clause to the penal code criminalizing adultery. This surprise move — as mentioned at the beginning of this paper — sparked an intense debate that split the nation in two, irrespective of traditional, political, or ideological positions. The government based its argument to re-criminalize adultery on the alleged demands of "the Anatolian woman" (women living in rural areas).[45] This argument aimed to ameliorate the AKP's image as unsupportive of women, which had resulted from the Campaign on the Turkish Penal Code from a Gender Perspective, and at the same time reiterated the religious conservative claim that the women's groups in the Women's Platform network were marginal and unrepresentative of the nation's women.[46]

Both the AKP and the CHP appeared split over the issue.[47] CHP members signaled an initial acceptance of the revision, provided men would face the same penalties as women, but later changed their position after strong criticism from its women MPs and women's groups, who were the first to react.[48] Within the AKP, the coalition in favor of the revision was led by Prime Minister Erdoğan, a devout Muslim, and included the Women's Minister and all other women MPs, as well as a majority of the male MPs. The Minister of Justice and AKP members from the sub-commission that had prepared the draft law on the penal code opposed the revision behind closed doors. While the debate on other issues related to sexuality in the penal code ran mainly on the national level during the three-year campaign, the criminalization of adultery carried the debate to the international level. The move met with sharp criticism from EU officials, who were expected to issue a crucial appraisal of Turkey's progress towards EU standards within the month.[49]

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[45] Korkmaz, S. (2004, August 28). Here is AKP's justification for adultery (İşte AKP'nin Zina Gerekçesi). *Hürriyet*.

[46] This was an oft-repeated argument against the Women's Platform in the extreme religious right press throughout the campaign.

[47] Şahin, Ö. (2004, September 1). İktidar ve Muhalefet Topluma Kulak Verdi: Zina tekrar suç kapsamında (The government and the opposition listened to the public: Adultery criminalized again). *Zaman*.

[48] Doyle, C. (2004, September 2). Women Attack Turkey Adultery Law. BBC News. http://news.bbc.co.uk/1/hi/world/europe/3623072.stm

[49] The European Commission was expected to issue a crucial report to the European Union on October 6, 2004, stating its view on whether or not to open accession negotiations. This report would serve as the basis of discussions at the EU Brussels Summit of December 17, 2004, where the final decision over Turkey's accession was made.

The initial draft Penal Code prepared by the AKP government contained no provisions on adultery. Moreover, the issue had not arisen during the three-year campaign on the Penal Code, except for a proposal made by one AKP MP in October 2003 that didn't attract any support at the time, even within AKP circles.[50] Thus, the AKP's last minute attempt to criminalize adultery and the Prime Minister's personal efforts to promote this despite national and international criticism, hint at an extemporaneous political strategy aimed at stirring up the religious sentiments of voters and upholding Islamist identity at a moment of heightened sensibilities around national identity in the context of the pending decision on Turkey's accession to the EU. Interviews revealing that the attempt came as a surprise even to AKP members of the sub-commission confirm the impression that this move was a political strategy employed by the Prime Minister, rather than a reflection of any genuine interest in criminalizing adultery as part of AKP's agenda.[51]

The debates on adultery covered a wide range of issues: the extent to which the state has a right to intervene in the private sphere; the alleged differences between rural and urban women; the meaning and content of so-called Turkish values; the role of Islam in Turkey; the assumed threat of *shari'a*; whether European culture and values were compatible with Turkey as a Muslim nation; and whether the AKP was an Islamist party aiming at *shari'a* or a religious conservative party in the European sense.

Finally, in contrast to all other issues debated at the national level during the campaign, the AKP government was forced to withdraw its proposal on criminalizing adultery. The withdrawal was not a result of national debate, but due to pressure from the EU, although the AKP insisted until the last moment that the EU had no right to intervene in such an issue, an argument that had never been made in a European Convention or accession agreement.

The fierce debates around adultery between the EU and Turkey that nearly led to the rejection of Turkey's full membership in the EU, is an example of the significant role sexuality plays in political struggles and constructions of national or religious identities.

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[50] Ahmet Büyükakkaşlar, an AKP MP, made the proposal. See Adultery should become a crime again. (October 8, 2003). *Yeni İleri and Hürriyet*.
[51] For another example of political manipulation of women's sexuality in relation to EU accession, see also in this publication: Nowicka, W., The struggle for abortion rights in Poland, p. 172.

Conclusion

The reform of the Turkish Penal Code in 2004 as a result of a three-year campaign by a broad coalition of women's organizations and two LGBT organizations included drastic changes related to sexual and bodily rights in Turkey, despite the opposition of the religious conservative AKP government. The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective was successful in revising more than 40 articles in the Turkish Penal Code, ending all varieties of legal categorization of women on the basis of virginity and marital status, and instituting a groundbreaking shift in the overall perspective of Turkish Penal Law towards sexuality and gender. The major revisions included the redefinition of sexual crimes as crimes against persons and sexual inviolability instead of as crimes against society and public morality, the recognition of women's ownership of their bodies and sexuality, and the removal of all references to "chastity," "honor," and "virginity."

The most contested discourses during the campaign emerged as those related to extramarital sexuality: honor, virginity, sexual relations of youth, and sexual orientation. The religious conservatives based their defense of legally regulating women's sexuality on the notions of women's honor and virginity as elements of Turkish identity that should be protected by law. This discourse is in line with the ideology of the founders of the new Turkish Republic; in an effort to abolish religious and customary laws of the Ottoman Empire and establish a modern, secular republic, they translated religious and customary laws, norms, and discourses into a new language subsumed under the notion of "public morality." This new language was constructed around such values as gendered notions of honor, virtue, and purity, vested in women as the primary guardians — through their chastity — of the nation's morality at a time of political and social transition. Thus, the debate on honor and virginity during the campaign shows not only that this ideology continues to be influential in Turkey despite 80 years of modernization and progress, but also that it is now employed as a key rhetorical device by religious conservatives in order to restrict women's ownership of their bodies and sexuality.

The insistence of the social democrats on criminalizing consensual sexual relations between youths and their relative silence on the issue of sexual orientation, show that these issues remain taboo in Turkey above and beyond the ideological differences between conservative or

progressive political parties. The analysis of the debates around sexual orientation during the campaign and interviews with MPs who played a major role in the reform process show that the lack of public and political awareness around sexual orientation contributed significantly to the rejection of the demand for criminalization of discrimination based on this ground. The relative openness of some MPs to the protection of transgender rights compared to the silence around gay and lesbian issues also suggests that homoerotic desire as manifested by gays and lesbians, which threatens the heteronormative model radically, triggers a higher social anxiety than that created by sexual minorities who are perceived as conforming to the traditional binary modalities of heterosexuality.

However, despite parliament's rejection of demands concerning youth sexuality and the right to sexual orientation, subsequent debates around an appeal to a higher court to cancel the article criminalizing voluntary sexual relations between youths, and a court ruling against a plaintiff aiming to shut down an LGBT organization, were significant in creating public and judicial consciousness on these issues.

The debates generated by the AKP's attempt to re-criminalize adultery, in order to bolster its religious conservative identity just weeks before a parliamentary vote on the new Penal Code and the final decision on Turkey's accession to the EU, and the withdrawal of the proposal as a result of strong opposition from EU officials, are reflective of the centrality of issues related to sexuality in the political struggles around culture and identity politics both on national and international levels.

The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective, aiming at a fundamental transformation of its philosophy, prompted the widest public debate on gendered notions of sexuality and sexual rights in Turkey since the foundation of the modern/secular Turkish Republic in 1923. Yet, given that there are three bodies of law that potentially apply to sexual activity — the constitution, civil law and criminal law — the concentration of advocacy for sexual rights within the context of criminal law will have a limited effect in establishing such rights in Turkey. There also needs to be advocacy and lobbying to anchor sexual rights in the constitution and civil law, and beyond that, in popular culture and imagination. The future success of this advocacy seems to depend on the strength of

coalitions between those struggling for the realization of sexual rights, namely the women's and LGBT movements as well as human rights groups.

The new Turkish Penal Code is the first example of a comprehensive reform of sexual and bodily rights in the legal domain in Muslim societies. The success of the campaign, despite a governing Islamist party, can be an inspiration for other activists working on sexual and bodily rights under conservative governments, especially those in a stage of socio-political transition like Turkey.

Vietnam

From Family Planning to HIV/AIDS in Vietnam: Shifting Priorities, Remaining Gaps

Le Minh Giang
Nguyen Thi Mai Huong

Le Minh Giang

Introduction

Story of a billboard
I have been standing in the middle of a busy crossroad in front of a bustling market in the center of Hanoi for almost 20 years. The people who gave birth to me were from the city's Propaganda Department. They built me with a large metal frame to make sure market goers notice me. My first outfit was the picture of a young couple and their two cute kids. The husband, a factory worker, wore his blue uniform, and the wife, a teacher, held a couple of schoolbooks. Their children, one boy and one girl, were healthy — even a little chubby — and they held beautiful flowers and toys. The family was standing beside a nice Honda motorbike, the dream of many families at the time, and a caption that read: "Stop at two if you want to raise your children properly."

People passing by admired me and for a good few years I was very proud of myself. Then one day everything changed; someone put up a huge picture of a beautiful young woman on a building

just across the street from where I stand. The young woman was a famous singer and she was advertising the favorite make-up of the moment. I was so jealous because that picture attracted many more onlookers than my Honda "dream" couple. I even thought about joining one of the regular protests at the Propaganda Department. But before I could take action I was swamped by a multitude of competitors with more market brand names than I could count. It was alarming; the image of my happy couple was fading, the metal frame becoming rusty.

Just as I began to feel desperate some people from the Propaganda Department brought me a new, and very strange, outfit. It had words like "SIDA," "prostitute," "drugs," and "social evils," and ugly images of the angel of death and a large syringe. My new outfit attracted some attention at first but in general it didn't excite onlookers. A few years later the people at the Propaganda Department stopped by again. This time they brought me a more colorful outfit. The acronyms "HIV" and "AIDS" have replaced "SIDA" and the ugly faces of death have been thrown out in favor of smiling faces and people hugging each other. My latest outfit also has foreign words, like "FHI" and "USAID," which, I'm told, are the names of my new sponsors.

This story of a typical billboard in the streets of Hanoi, the capital of Vietnam, illustrates some of the key issues we explore in this paper. The changing faces of public billboards in any society give keen observers substantial insights into important aspects of social life. For a country like Vietnam, where the state controls the images displayed in public spaces, the changes also give observers insights into the interests of the state. As such, the story above tells us that in Vietnam family planning as a social and health priority during the 1980s and 1990s has given way to an increased focus on HIV/AIDS since 2000. This impression is strengthened when one takes the pulse of the public-health sector, with its huge community meetings organized by the government and donor agencies, and the efforts to involve various local organizations. The growth of HIV/AIDS awareness is not only remarkable in the public sphere but also in private life; in the early 1990s few in Vietnam had heard of HIV/AIDS (which was then known by the French acronym "SIDA"), now a decade later the acronyms "HIV" and "AIDS" have become all too familiar to the Vietnamese people.

In this paper we take the above observations as an entry point to assess whether there has been a shift in social and health priorities from family planning to HIV/AIDS, and, if so,

how and why this shift has occurred. Globally, both the disjunction between sexual and reproductive health and HIV/AIDS, and the fact that HIV/AIDS has taken over the political and funding agenda, are well noted. A recent editorial in the journal, *Reproductive Health Matters*, summed up this trend, noting that although HIV/AIDS has been with us for more than two decades, "now, suddenly, following rapid shifts in political leadership, priority setting, power brokering, and funding policies in international health and development circles, it is widely considered an unassailable fact that in the global 'competition' for resources and attention, sexual and reproductive health has less priority and has lost out to AIDS, as if addressing the one had no connection with addressing the other" (Berer, 2003, p. 7). Has this trend been realized in Vietnam? If so, what are some of the factors that have shaped this trend and which of its characteristics should Vietnam take into account moving forward?

Despite indications that the narrow focus on fertility control has given way to a broader agenda in reproductive health and rights and that HIV/AIDS has emerged as a new social and public health priority, our findings show family planning remains relevant to the various actors in the country as both a social and health priority. For one thing the state has not relinquished its interest in fertility control, which has been seen as crucial for its project of pushing Vietnam towards modernity. More importantly, we argue, this incomplete shift has signaled more continuity than discontinuity as some key issues that underlined family-planning programs have continued to haunt HIV/AIDS programs. We focus on two such issues in this paper: the lack of strong civil society organizations advocating for change other than those within the state and the donor community, and the control of women's bodies and sexuality driven by the ever-shifting project of nation building sponsored by the state.

From family planning to HIV/AIDS: Has there been a shift in priority?

The emergence of HIV/AIDS as a new priority evidenced in media coverage
In this study we examine the coverage of family planning and HIV/AIDS over the past few decades in four national newspapers: *Nhan Dan* and *Phu Nu Viet Nam*, the two official newspapers of the Communist Party and the Women's Union respectively, and *Thanh Nien*

and *Vietnam News*, two other newspapers with broad national audiences.[1] The analysis shows an upward trend in the coverage on HIV/AIDS and a corresponding downward trend in the coverage on family planning. In the case of *Nhan Dan* and *Phu Nu*, while articles on family planning appeared as early as 1963 and articles on HIV/AIDS understandably didn't appear until 1987 (for *Nhan Dan*) and 1988 (for *Phu Nu*), the number of articles on HIV/AIDS has now surpassed those on population and family planning. In the case of *Nhan Dan*, family planning dominated over HIV/AIDS until 2002 when the trend was reversed; by 2004 the ratio of articles on HIV/AIDS over those on family planning was one to six. Two exceptions to this trend in *Nhan Dan* were in 1995, when the Ordinance on HIV/AIDS was introduced and in 2003 when the Population Ordinance was approved. The downward trend in coverage on family planning in *Nhan Dan* started after the second national strategy on population was approved in 2000. For *Phu Nu* the reverse trend happened much earlier in 1997, and the ratio of articles on HIV/AIDS over those on family planning reached five to three by the year 2004. For both *Vietnam News* and *Thanh Nien*, the number of articles on HIV/AIDS has surpassed those on population and family ever since they were first published. One exception was in 1999, the year the National Committee for Population and Family Planning (NCPFP) was presented with the United Nations Population Award, when the ratio in *Vietnam News* was zero to nine.[2]

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[1] We conducted quantitative content analysis through close reading and coding of articles that were printed over the past few decades. For the *Nhan Dan* and *Phu Nu Viet Nam* we conducted this analysis for selected years in the 1980s and from 1991 to 2004. For the 1980s, we selected one year before and one year after key events in family planning, including the establishment of the NCPFP in 1984 and the introduction of the one-to-two child policy in 1988, as we expected that there would be increased activities in media coverage at and around the time when these policies were introduced. For the *Vietnam News* and *Thanh Nien* we conducted the analysis from the period they were first published until 2004. We will present here the main results of this analysis.

[2] There should be a word of caution here in reading the upward trend in media coverage on HIV/AIDS. For both *Nhan Dan* and *Phu Nu*, while reporting on policies or implementation of policies accounted for the majority of articles on population and family planning (55% for *Nhan Dan* and 36% for *Phu Nu*), this is much less so in the case of HIV/AIDS (30% for *Nhan Dan* and 7% for *Phu Nu*). This corresponds to the domination of articles that reported on statistics or situation of HIV/AIDS (61% for *Nhan Dan* and 67% for *Phu Nu*). It is worth noting that some of the first policies on HIV/AIDS were introduced around the same time as major policies on family planning were implemented in earnest. These policies on HIV/AIDS, however, did not receive as much attention as the policies on family planning. Analysis of trends in the types of articles over the years further showed that although articles on the implementation of HIV/AIDS policies have increased in recent years, the total number of articles over the years has not matched up to those on family planning. For both *Vietnam News* and *Thanh Nien*, the numbers of articles reporting on statistics and situations have always been higher than those on implementation of policies, regardless of whether the topic is HIV/AIDS or family planning. The difference between *Nhan Dan* and *Phu Nu* versus *Vietnam News* and *Thanh Nien* might reflect the fact that the latter two were more into reporting news while the *Nhan Dan* and *Phu Nu*, fulfilling their function as the leading newspapers of the state and a state-led mass organization, are more into reporting on policies and policy implementation. Indeed, *Nhan Dan* and *Phu Nu* have been quite responsive to key changes in domestic policies. In the case of *Nhan Dan*, for example, the number of articles on family planning increased in 1987 and 1988 when the "one-to-two" child policy was introduced, in 1992, 1993 and 1994 when the Resolution No. 4 and the first national strategy on population were approved, in 1997 when the Prime Minister issued Directive 37/CT-TTg to accelerate the pace of family planning in Vietnam and approved Vietnam Population Day (December 26th), and in 2000 and 2003 when the second national strategy on population and the Population Ordinance were approved respectively. The coverage on HIV/AIDS in *Nhan Dan* increased significantly in 1995 when the Ordinance on HIV/AIDS was approved, in 1997 and 1998 when the government introduced Decision 1122/QD-TTg that determined the structure of HIV/AIDS bureaus from the national to the local levels, in 2001 after the establishment of the National Committee for Prevention and Control of HIV/AIDS, Drug Use and Prostitution, and jumped to the highest level in 2004 when the national strategy for HIV/AIDS was approved.

This upward trend in the ratio of coverage on HIV/AIDS over family planning must also be viewed against the downward trend in coverage of family planning.

Our analysis shows that although the number of articles on reproductive-health issues other than HIV/AIDS and family planning has increased, this upward trend has been slow compared to the rising coverage of HIV/AIDS. In the case of *Nhan Dan* and *Vietnam News*, the number of articles on reproductive health has never reached even half that of the number of articles on HIV/AIDS, and the number of articles on reproductive health was always lower than those on family planning. Both *Phu Nu* and *Thanh Nien* have done better as there were a few years when the ratio of articles on reproductive health over those on HIV/AIDS was upward of zero-to-five. In the case of *Phu Nu* this ratio reached one-to-two in 2000 before starting to fall in the years following. In *Thanh Nien*, coverage of reproductive health issues, especially teen pregnancy and abortion, has always been higher than the coverage of family planning. The higher level of coverage of reproductive health issues other than HIV/AIDS and family planning in *Phu Nu* and *Thanh Nien* might reflect the responsive nature of these two newspapers to the real needs of their readership.

Changing level of funding for family planning and HIV/AIDS

1) Data on funding for the population and family-planning program between 1999 and 2005 (table 1) show that both the investment per capita and the share of investment from the central government as a percentage of GDP have declined. Although the absolute value of funding from the central government appears to increase over the years, these increases have mainly made up for a corresponding reduction in international loans. Furthermore, the share of international grants, mainly from the United Nations Population Fund (UNFPA) and some other bilateral sources, has accounted for a relatively small percentage of investment in family planning. Although the total funding from UNFPA has been consistent over the past two four-year cycles of programs (at around US$20 million each cycle), this funding has been increasingly shifted to other reproductive-health activities, including HIV/AIDS. Furthermore, since the mid-1990s international lenders like the World Bank and Asian Development Bank have surpassed UNFPA as the main donor in population and family planning (Reynolds et al., 2000).

Table 1: Funding for population and family planning activities 1999–2005 (million VN$)

Sources of Funding	1999	2000	2001	2002	2003	2004	2005
Central government	245,000	255,000	236,000	267,000	290,000	320,000	400,000
% of GDP	0.61	0.58	0.49	0.50	0.47	0.45	n/a
Local governments	28,087	24,658	18,788	19,891	18,664	19,288	n/a
International loans	230,000	200,000	158,000	157,500	135,000	0	0
International grants	25,000	25,000	25,000	20,000	20,000	118,000	42,000
Total	**528,087**	**504,658**	**437,788**	**464,391**	**465,728**	**462,458**	**442,000**
Population (million)	76,597	77,635	78,911	79,720	80,755	81,785	-
Investment per capita (US$)	**0.49**	**0.45**	**0.38**	**0.38**	**0.37**	**0.36**	-

Source: VCPFC
Notes: Investment per capita calculated at the average exchange rate of the corresponding year.
Percentage of GDP calculated on the basis of GDP at current price (World Bank 2006 Table 2.1).

Data on funding for HIV/AIDS is limited and there are many difficulties in calculating the level of expenditure. One reason is because the Ministry of Health does not have access to figures for international funding divested directly to local projects in more than 50 provinces of the 64 in Vietnam. Furthermore, many donors tend to give an overall total of grants disbursed without specifying amounts per country. However there is sufficient evidence to show that the amount of money invested in HIV/AIDS in Vietnam has risen sharply in the past few years. From 1995 to 2000, the central government's funding for HIV/AIDS activities increased from VND40 billion to VND60 billion, with an average of VND5 billion added each year (San et al., 2002). The level of investment in 2000 didn't change until 2004, when the government increased its investment to VND80 billion (approximately US$5.1 million)

In terms of international donors, UNDP estimated that the total investment in the period 2002 to 2005 was around US$70 million, almost four times higher than the investment from

the government during the same period (UNCT, 2004). This is reflected in the Ministry of Health's estimates, which show that per-capita investment from the government was about US$.04 million in 2003 and US$.06 million in 2004 and 2005, while per capita investment from both the government and international sources was US$.14 million in 2003, rising to US$.24 million in 2004 and 2005 (Vietnam, 2006). The increase in 2004 and 2005 can be attributed to several major new donors, including the Global Fund to Fight AIDS, Tuberculosis, and Malaria (US$12 million for a two-year program), PEPFAR — the U.S President's Emergency Plan for AIDS Relief[3] — (US$17 million in 2004 and US$27 million in 2005), the U.K. Department for International Development (DfID) and the Government of Norway (US$24 million for a five-year program beginning in 2003), and the World Bank (US$35 million USD for a five-year program starting in 2005). So far all international funding in HIV/AIDS has been in the form of grants.

During the period from 1996 to 2000, international funding only accounted for about 25 percent of the total financial resources compared to 60 percent central government funding (San et al., 2002). By 2003, however, HIV/AIDS funding from international donors had surpassed funding from the central government, and the increase in international funding was disproportionately higher than the increase in government investment. This is quite different from the case of family planning where, at least since 1999, funding from the central government has always been higher than international funding. This difference in funding trends for HIV/AIDS and family planning in Vietnam reflects the global situation where funding for HIV/AIDS has surpassed funding for population and family planning. The role of international donors in sharing the burden of HIV/AIDS funding is important to note in light of the following section where we examine the changing responses of the state towards HIV/AIDS.

The story of "population surge," or the resurgence of interest in population control[4]
The evidence presented above seems to suggest that family planning and population control have been pushed to the background when it comes to the interests of the state. In fact, this

[3] For other PEPFAR references, see also in this publication: Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, p. 114; Beresford, B., Sember, R., & Schneider, H., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 238.
[4] For other examples of population control ideology and strategy, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, pp. 319-321; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 104-105; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140.

is not the case. From mid-2004, a flurry of articles appeared in major newspapers reporting on what they called a "population surge" beginning in 2003 and continuing through the early months of 2004. These articles cited the higher population growth rate in 2003 (reportedly 1.47%) compared to the rates in 2002 (1.35%) and 2001(1.32%), and increased numbers of couples opting to have a third child. Worse still, according to these media reports, government officials and Communist Party members accounted for a significant percentage of those who had a third child in 2003 and 2004 and were, therefore, setting a bad example. One particular article in the newspaper *Lao Dong* sarcastically reported that the Vietnam Committee for Population, Family and Children (VCPFC) feared a "broken plan" (*vo ke hoach*), referring to the national policy of "two–children–per–couple."[5] *Vietnam News*, the main daily English newspaper in the country, featured an article headlined; "Population surge in 2004 could undermine decade of progress,"[6] which reminded readers that the policy goal of lowering fertility rates by the end of the 1990s had been achieved. It should be noted that many media articles blamed the 2003 Population Ordinance, which approved the right of couples to choose the number of children they have, as the main cause of the "population surge."

The response from the highest level of the state came in early 2005 in the form of a Political Bureau resolution on strengthening the implementation of policy on population and family planning.[7] This resolution confirmed the goals of "achieving as soon as possible the fertility replacement rate, while gradually improving the quality of life of the population." Furthermore, it reiterated the population target of two-child families and underscored the importance of ensuring all Vietnamese people understood that "stopping at two is the responsibility of each and every person to contribute to the cause of reducing the population burden for the country." Among its solutions, the resolution proposed strengthening the leadership of the Party and government, including punishments for Party members and government officials who violated the demographic goals. The resolution also called for a revision of the

[5] (2004, October 20). Ty le sinh con thu ba tang: Uy ban Dan So lo…vo ke hoach (High rise in third-child births: The Committee on Population fears of broken plan). *Lao Dong*.
[6] (2004, October 28). Population surge in 2004 could undermine decade of progress. *Viet Nam News*.
[7] Resolution of the Political Bureau on continuing to strengthen the implementation of policy on population and family planning (Resolution 47/NQ-TW).

Population Ordinance and other policy documents that were not "in line with the movement to mobilize for the population target of two children per couple."

Compared with the swift and huge responses from the state, the media, and government officials, the responses from the donor community came more slowly. Two months after the Political Bureau's Resolution came out, UNFPA published a booklet, Vietnam Population Growth – What Does the Data Tell Us? (UNFPA, 2005), in which it told readers the government of Vietnam was asking them to "support an independent review in order to determine the actual situation regarding the current trend of Vietnam's population growth." On the basis of existing government data, the booklet concluded that compared to 10 years ago significantly fewer mothers had opted to have a third child, which must mean that larger numbers of people had followed the stop-at-two population target and that "fertility decline is an incontrovertible fact."

The booklet presented two reasons why the slight upturn in the population growth rate in 2003 should not be a cause for alarm; first, a bias in estimating death rates, which could contribute to an increase in the population growth rate, and, second, that since the increase amounted to one percentage point in a general trend of decline for both birth rates and population growth rates, it was too early to claim a serious threat to the overall fertility decline. In its conclusion the booklet also denied the claim that the Population Ordinance had caused the slight increase in the population growth rate in 2003, and sought to assure readers that Vietnam would reach its population targets if "the current downward trends in fertility and population growth rate are sustained." This, it said, requires "now more than ever" the country's population program "to be strengthened."[8] It is interesting that the term "family planning" is somehow omitted in this UNFPA booklet although the word "population" is never separated from family planning in Vietnam's official responses.

From family planning to HIV/AIDS: Key actors in public health policy

The ebb and flow of family planning
It is impossible to understand the story of "population surge" without recalling the long his-

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[8] UNFPA News Brief. (2005, January 9). Vietnam's population growth – What does the data tell us? Retrieved January 20, 2006, from http://vietnam.unfpa.org/documents/CP5evaluation.doc.

tory of family planning and population control in Vietnam. Early attempts by the communist government to regulate reproduction date back to 1961 when family planning was described as "birth under guidance." This concern was in fact even more pronounced after the Reunification of North and South Vietnam, when economic prospects were severely affected both by the aftermath of the war and by mismanagement of the economy. This led the government to resurrect several policy measures that had been established earlier but were not pursued vigorously because of the war, and to accept assistance from UNFPA for the first cycle of programs in 1978. The looming economic crisis of the mid-1980s, which was one of the decisive factors for the government to embark on *Doi Moi* (economic "renovation," which has had negative impacts in both the social and political spheres[9]), further accelerated the efforts to curb population growth.

In 1984 the government established the National Committee for Population and Birth with Plan (*Uy Ban Dan So va Sinh De Co Ke Hoach*) — which would later became the NCPFP — thereby elevating population concerns to a new level of importance. While some advocates acknowledge that the establishment of NCPFP was an important milestone, most consider the 1993 Central Committee endorsement of Resolution Number 4 on population and family planning as the turning point since it provided the clearest evidence of the "strong commitment of the Party," (Nhan & Phuong, 2004). In the same year the government approved the first National Population and Family Planning strategy, to run through 2000.[10] Annual funding from the government increased almost tenfold from 1992 to 1996 (from VN$27 billion to VN$260 billion), and funding from donors like UNFPA also increased in the fourth cycle of programs (1992-1996) to more than half of all the support in the previous three cycles (1978-1991) combined.

In the years following these political and financial inputs the programs quickly advanced to the extent that demographic goals set out in the strategy were achieved before the target date. By 1998 the total fertility rate had already fallen from around 4.0 in 1989 to 2.33,

which is significantly lower than the target of 2.9 by 2000 in the population strategy. In fact early indications of the rapid fall of birth rates were recognized by the government as early as 1997 when it decided to push for an earlier achievement of the replacement fertility rate. While both the resolution and the first national strategy set 2015 as the deadline for this demographic goal, Directive 37/1997/TTg pushed this date forward to 2005.[11]

In any event, in 1999 NCPFP received the United Nations Population Award for its role in making population control a major success in Vietnam. Significantly, this award also marked a time when population policy in Vietnam began turning away from an emphasis on family planning and demographics towards a more comprehensive agenda of reproductive health in line with the Programme of Action of the International Conference on Population and Development (ICPD). Despite its early endorsement of the ICPD PoA, Vietnam did not immediately embark on a revamping of its family planning program as the conference took place at the same time as the family planning program was just starting to pick up steam.[12] One long-term observer of the family planning program in Vietnam, Annika Johansson (1998) noted that it wasn't until 1998 that the first high-level national meeting was organized, under the auspices of the National Assembly, to discuss translation of the ICPD PoA into the Vietnamese context: "The proceedings of the conference give reason for optimism that a shift in policy towards reproductive health and rights was in process in Vietnam."

Various efforts were made to have ICPD recommendations included in policies and programs, including advocacy at the highest levels of government. Studies were published

[11] There are various views on this rapid decline in the fertility rate. Some considered the Party leadership and timely policies and programs initiated by the government as crucial factors (Nhan, V. Q., & Phuong, N. L., 2004). *In Dan So va Phat Trien o Viet Nam* (*Population and Development in Vietnam*), (Gurby, P., Dung, N. H., & Huong, P. T., Eds., pp. 631-62, Hanoi: The Gioi Publisher) other critics called attention to harsh and even "forced" measures introduced in various localities, including heavy fines for couples who had more than two births (Goodkind, D. M., 1995, pp. 85-111; Scornet, C., 2001, 13: 101-34). Some have pointed to lesser-known factors, like rapid attitudinal changes to childbearing in the context of economic and political pressures as well as modernity aspirations (Gammeltoft, T., 1999b). As Daniel Goodkind points out, the fact that the 1988 institution of the one-to-two-child policy, however little political and financial backing that it received from the state at that time, overlapped with the introduction of economic reforms made it difficult to separate "the independent roles of population policy, economic development, and other factors in fomenting fertility decline in Vietnam" (Goodkind, D. M., 1995).

[12] In his speech to the Cairo meeting, Mai Ky confirmed that "the government of Vietnam is deeply conscious of the close link between population and development." However, the prevailing emphasis in most policy documents and program implementation in Vietnam at that time was on ways in which curbing population growth could contribute to development, especially economic growth, rather than the new emphasis on the contribution that development and equity could bring to various population and health issues.

to raise awareness of the broader issues of reproductive health including abortion, maternal mortality, reproductive tract infections, quality of reproductive-health services, lack of knowledge about reproductive health and rights among government officials at different levels, and the limitations of the existing family planning program in providing a broad spectrum of contraceptive choices.

UNFPA played a major role in supporting these efforts through its fifth cycle of programs (1997-2000), which supported a strategic shift from a strong emphasis on family planning and demographics towards provision of an overall reproductive-health package and relevant policies in line with ICPD (Reynolds et al., 2000). Besides UNFPA international NGOs such as Population Council and Pathfinder were also active in promoting the shift. Most of these international organizations implemented their activities through governmental agencies like NCPFC and the Ministry of Health, or through mass organizations like the Women's Union and the Youth Union. The fledgling community of local NGOs was involved to a limited extent in these efforts, mainly conducting a number of studies contracted out by government agencies or International NGOs.

These efforts culminated in various important policy documents, which signaled state approval for the shift from family planning to the broader concerns of reproductive health and rights. In 2000 the government approved the second national population strategy for the period 2001 to 2010. It explicitly acknowledged the need to move beyond a narrow focus on fertility control in order to take into account "population structure, quality of population, and population distribution that are parts of a direction towards the integration of population, reproductive health, and development."[13] Demonstrating this commitment the national strategy offers various guidelines in its action plan including "behavioral-change" communication, improvements to quality of care in comprehensive reproductive health and family-planning services, and improvement of services in remote and under-served localities of the country. Gender equality and women's empowerment are mentioned as critical components for success.

In addition to this guiding national strategy other policy documents were also formulated and approved by the government during this period. These included the first ever national

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[13] Decision of the Prime Minister on ratifying the Vietnam population strategy for the period 2001-2010 (Decision 147/2000/QD-TTg).

strategy for reproductive health care (for the period 2001 to 2010), the national strategy for behavioral change communication in population and reproductive health, and, most significant of all, the Population Ordinance. Passed in 2003 by the National Assembly's Standing Committee, the Population Ordinance promotes and protects the rights of couples and individuals to "decide the timing, number, and spacing of births in accordance to their age, health, studies, employment and work, income, child-rearing conditions … and on the basis of couple's equality."[14] One year before the Ordinance was passed the NCPFC was merged into a new agency, the Vietnam Commission for Population, Family, and Children (VCPFC), which has assumed a broader agenda beyond population control.

Changing state responses to HIV/AIDS and the role of international donors

Since the first reported case of HIV in 1990 the state has responded swiftly to the threat of AIDS. As early as 1995 there was a policy response from the highest level of state power in the form of a Directive by the Communist Party Central Committee on strengthening leadership in the prevention and control of AIDS.[15] In the same year, the National Assembly passed the Ordinance on HIV/AIDS Prevention and Control, and the government issued a decree detailing how it should be implemented.[16] The National AIDS Committee was established in the early 1990s, initially under the Ministry of Health. It became a government department in 1994 with the authority to coordinate multisectoral responses to the epidemic. While these attempts in the early development of HIV/AIDS in Vietnam had many positive aspects, such as the recognition of the need for multisectoral responses and the emphasis on prevention, there were also many problems. One of these problems was the strong emphasis on linking HIV/AIDS prevention and eradication to control of drug use and prostitution, which have been labeled as "social evils" in Vietnam. In the party's directive, rank and file members were told: "It is necessary to combine effectively the tasks of HIV/AIDS prevention with those on prevention and control of social evils, primarily drug abuse, drug injection, and prostitution."

A number of policy documents on prevention and control of drug abuse and prostitution were enacted before or around the same time as the policy documents on HIV/AIDS were

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[14] Ordinance on Population, approved by the National Assembly Standing Committee (Ordinance 06/2003/PL-UBTVQH).

[15] Directive on strengthening the leadership in the prevention and control of AIDS, issued by the Communist Party Central Committee Secretariat (Directive 52/CT-TW).

[16] Decree of the Government on guiding the implementation of the Ordinance on Prevention and Control of HIV/AIDS (Decree 34/CP).

issued. Two infamous government decrees, dealing specially with drug abuse and prostitution, were issued in 1993,[17] and another, giving instructions on how to abolish "social evils," was issued a few months after the party's directive.[18] In 2000, the National AIDS Committee was merged with the National Committee for Prevention and Control of AIDS, Drug Use, and Prostitution. The emphasis on linking HIV/AIDS prevention to "social evils" in the early stage of the epidemic resulted from the prevailing belief of the state that "to prevent the spread of HIV, the fundamental and most effective method is for everybody to exercise a healthy, faithful lifestyle, and to stay away from evils such as prostitution and drug use,[19]" reflecting in part initial reports of the epidemiological characteristics of the epidemic, which were largely focused on drug users and female sex workers. More importantly, perhaps, it reflects the state's anxiety on being confronted with whirlwind societal transformations during the years after *Doi Moi*. With few alternatives, the state resorted to what it knows best — the socialist approach to social issues such as drug abuse and prostitution.[20]

The donor community[21] has been, for good reasons, very vocal about the importance of de-linking HIV/AIDS from so-called "social evils" (Partners, Community of Concerned, 2002). Donors have rightly argued, for example, that this link leads people to believe they are not at risk and therefore need not practice safe sex, and undermines efforts to fight against HIV/AIDS stigma and discrimination. The emphasis on linking HIV/AIDS with "social evils" has increased police actions aimed at drug abuse and prostitution, thereby hampering HIV-prevention activities — for example, condoms and syringes have been used as evidence for illegal activities where they should have been used to promote safe behaviors. But the state has also taken on board some aspects of the international community's awareness-building efforts. In 2004, for example, the president visited an HIV/AIDS clinic where he shook

[17] Resolutions on prevention and control of prostitution and drugs, issued by the Government (Resolutions 05/CP and 06/CP, respectively).

[18] Decree of the government on strengthening management of cultural activities and services and abolishment of serious social evils (Decree 87/CP).

[19] Resolution of the Political Bureau on continuing to strengthen the implementation of policy on population and family planning (Resolution 47/NQ-TW).

[20] See Nguyen-Vo (1998) for an insightful analysis on changing approaches to governing prostitution in Vietnam throughout the socialist and Doi Moi era.

[21] For more on the local influence of international donor policies, see also in this publication: Vianna, A. R, B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 40; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 102, 114; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 140-141; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 238.

hands with patients and declared that HIV/AIDS is not a social evil.[22] And, in late 2005, the vice-president, with National Assembly and Party department heads, met with people living with HIV/AIDS (PLWHA), one of the first organized groups in Vietnam, and hailed their important role, especially in the fight against stigma and discrimination.

It is interesting to note the state response to people living with HIV/AIDS in policy documents as well as in practice. Early policy documents emphasized protection of the "general population" at all costs, leading to an approach of keeping people living with HIV/AIDS as far away as possible from the "general population." (For a critique of this concept, see Fordham, 2001). Although people living with HIV/AIDS were protected by law against discrimination in health-care settings and in their communities, they were "not permitted to work in some sectors [since they were assumed as] being able to easily transmit HIV/AIDS."[23] PLWHA were also required to inform their spouses and if they declined, then their health worker was responsible for so doing.[24] Treatment for opportunistic infections is guaranteed to people living with HIV/AIDS, but this does not cover access to antiretroviral (ARV) therapy since the majority of government funding has been spent on prevention. Furthermore, people living with HIV/AIDS have been warned that any intentional action to infect others is strictly prohibited.

The donor community has challenged these assumptions and beliefs. Through local NGOs they have supported such activities as publication of studies on stigma and discrimination, newspaper writing contests on HIV/AIDS issues, and exhibitions of photos and paintings by people living with HIV/AIDS, which focus on the severe stigma and discrimination they suffer despite living responsible lives. Images of women who have been infected by their husbands and yet have risen up to fight stigma and discrimination are embodied in Pham Thi Hue, a woman living with HIV in the city of Hai Phong, who was one of *Time Magazine's* Asian Heroes in 2004.[25] A number of PLWHA groups have emerged throughout the country, initially with support from the donor community. Their work has moved from mainly providing support for each other to participating in various public activities like conferences,

[22] HIV/AIDS Report. (2004, August 26). Vietnamese President calls on public to reduce stigma surrounding HIV/AIDS. *Kaiser Daily*.
[23] Ordinance on the prevention and control of AIDS, approved by National Assembly's Standing Committee, May 31, 1995.
[24] Ordinance on the prevention and control of AIDS, approved by National Assembly's Standing Committee, May 31, 1995.
[25] Time Asia. Pham Thi Hue: Making her voice heard. Retrieved December 20, 2005, from http://www.time.com/time/asia/2004/heroes/hpham_thi_hue.html.

education campaigns, and media interviews to share their views and experiences, and, to a limited extent, advocacy for recognition of their legal rights. Furthermore, the international community has introduced various new concepts such as "harm reduction," "behavioral change communication," GIPA (greater participation of people living with AIDS), and VCT (voluntary counseling and testing), which have offered the state new ways to approach the challenges of HIV/AIDS. Indeed, the first national strategy for HIV/AIDS prevention and control, approved in 2004 by the government, specifically names "harm reduction," VCT and "behavioral change communication" among solutions to stem the rise of HIV/AIDS.

The strategy also addresses the need to improve care and support for people living with HIV/AIDS and promotes their greater participation in HIV/AIDS activities as a key solution. Greater attention has also been paid to improving the availability of ARV drugs, reflected in the national strategy as one of nine key actions and in a greater allocation of the government's HIV/AIDS budget going to ARV in recent years (Long, 2004). Furthermore, in the national strategy, HIV/AIDS prevention and control activities are no longer linked with activities dealing with drug use and prostitution, but, rather, presented as key components of socio-economic development in Vietnam. These changes in the national strategy perhaps signal a shift from the approach to people living with HIV/AIDS as potential threats to the amorphous "general population" to one that addresses their issues, needs, and rights.

The role of civil society in policymaking

In the controversy about a "population surge" described above, the flow of opinions can be characterized as a two-way discussion between the state and its experts and the donor community. Missing from the debate are the voices of people who have opted for a third child and those of civil society calling attention to the fact that reverting to fertility control is not compatible with the state's decision to embark on a course of reproductive health and rights. This is especially true as Vietnam is facing enormous challenges in reproductive health in the post-*Doi Moi* era. A recent review of reproductive health and rights in Vietnam notes the disproportionate share of women among contraceptive users and their over-reliance on the intrauterine device (IUD), against the lack of systematic efforts to improve the share of men and to diversify contraceptive choices.

The review also listed numerous challenges in improving the quality of reproductive-health services, including the impacts of structural adjustment reforms that have come with *Doi Moi*, limited access to services, especially among communities of ethnic minorities and people who live in rural and remote areas, and lack of sex education for youth despite rising numbers of young people seeking abortions. The high rate of abortion in general is another challenge, especially repeated abortions, which has raised concerns about the quality of abortion services as well as the overall reach of contraceptive services to those who need them the most.

Among other issues raised by the review: inequality in maternal mortality, with ethnic women and women living in remote areas at a greater disadvantage than women of the ethnic majority and those living in urban centers; high rates of reproductive tract infections (RTIs) among women due to their greater vulnerability to sexually transmitted diseases and HIV/AIDS; lack of understanding about the concept of reproductive rights at the community level where most policies have to be put into practice; a limited acceptance of individuality outside of connections and responsibilities towards family and community, which poses problems in introducing the concept of individual rights in reproductive health; and centuries-old (yet constantly reinforced) norms and values regarding gender roles that make it difficult to reinforce the concept of women's empowerment. Last, but not least, the review points out that the limited existence of advocates for change, outside of the state and the international community, is one of the greatest challenges to moving forward the reproductive rights agenda in Vietnam (Knudsen, 2006).

This lack of alternative voices in advocacy for reproductive health and rights can be attributed to two major factors. First, there exists no legal framework that allows the development of social movements as alternatives to those sponsored by the state in the form of mass organizations like the Women's Union. These mass organizations have many strengths — networks in all communities in Vietnam, a wide range of civic activities, and strong contributions to the advancement of various reproductive health issues — but they also have limitations that are not easy to overcome. In relation to advocacy for people living with HIV/AIDS, for instance, mass organizations are often viewed as carrying socially and politically sanctioned views on issues like drug use and sex work that makes it difficult for them to represent the

needs of many in these vulnerable communities. But there exists no legal framework for people such as those living with HIV/AIDS to form their own associations to advocate for their rights, leaving them little choice but to associate themselves with one of the mass organizations (which they do not consider as an appealing alternative), or with one of the growing pool of local non-governmental organizations. But there are many issues related to the nature of these local NGOs, which brings us to the second major factor contributing to the lack of alternative voices.

While local NGOs were unheard of before *Doi Moi*, the number of such organizations has exploded in the decade since the introduction of *Doi Moi*. The important factor that made this development possible was the introduction of two government decrees allowing for the establishment of "science and technology research associations" and "social and charity funds." Another factor, (which might also be one of the reasons why the state issued the two decrees in the first place), was that these organizations have filled the gaps left by the state and its weakened public sectors, especially in providing research, training, and social services in response to a variety of social problems arising during the period after *Doi Moi*. The proliferation of NGOs was also due to increasing development aid and the lack of capacity of the state sector to absorb it effectively, leading some donors to insist on the inclusion of non-state actors (Lux & Straussman, 2004). There has been some speculation about the development of "civil society" but a number of authors have cautioned against the use of such a Western concept in the context of Vietnam. Lux and Straussman, for example, argue that these local NGOs are working in a "state-led civil society," a strange concept at best to many Western observers. This concept, however, is apt in the context of Vietnam as it describes the current situation where many local NGOs are "[mediating] between the state and the citizenry but are not fully independent of the state, as found in liberal democracies."

This description is reflected in the results of the first survey of NGOs in the country, which the author refers to as "issue-oriented organizations" (Wischermann, 2003). The survey showed that these organizations are mainly staffed with professionals with university degrees, many of whom identified themselves as academics/scholars, teachers, researchers, and social workers. Many of the founders once worked for the government and are now helping to fill the gaps left by the state. The majority of NGOs receive funding from international

donors and government agencies, either in the form of direct support or as fees for services provided. Funding from foreign donors tends to be higher than funding from the government, implying a higher degree of affinity to donors, at least in terms of financial support, than to the government. Funding from private donations accounts for a small percentage, with the least amount going to Hanoi-based (northern) organizations as compared to Ho Chi Minh City-based (southern) organizations.

The survey found other differences between these two geographic groups of organizations. Those in the north were more likely to have been established because their founders were interested in changes in state policies or practices, while those in the south were more likely to tackle urgent issues and needs among particular segments of the population. Hanoi-based organizations tend to work on research, dissemination of information, and consultancy services, and they generally identify problems in such terms as "lack of information" and "inadequacy of research or policies." Ho Chi Minh City-based organizations, on the other hand, have focused their efforts on tackling concrete and urgent needs of specific target groups who have been marginalized by the state and the market in the process of *Doi Moi*.

The results of the above mentioned survey and the analysis of funding on family planning and HIV/AIDS makes it possible to speculate about the absence of local NGO voices in the debate on "population surge." It might be that these organizations considered this whole incident simply as a temporary insurgence of state interests in fertility control that would die down once better statistics become available. It might also be that the leaders of those organizations agreed with the state and therefore saw no need to raise their voices, or that NGOs have shifted their interests to other issues emerging on the social and public health agenda, including HIV/AIDS, and now considered family planning as an outdated issue. In this latter case, one has to speculate about what will happen once HIV/AIDS becomes outdated in the social and public health agenda. Will these organizations continue to raise their voices on behalf of individuals and groups directly infected and affected by HIV/AIDS and who are not allowed to become advocates in their own right?

Without being disrespectful of the achievements of "local NGOs," or their ability to maintain certain degrees of independence in their working relationships with both the state and

donors, we argue that it is important to raise the question of accountability. One of our key sources, who has been working in both the family planning and HIV/AIDS eras, pointed out that while most NGO founders are people of goodwill, there are few mechanisms in place to ensure that they are accountable to their communities, people who are usually of a lower social class than both founders and staff of local NGOs. Those mechanisms in place exist within the boundaries of state or donor-funded projects, which are usually short term and outcome oriented.

Women in state-led nation building: Continuity in family planning and HIV/AIDS eras

The state is among those actors most active in defining social limits in Vietnam. Throughout its history the socialist state has sought to define the images and meanings of womanhood, especially in the complex relations between women, the family, and the nation, for political and ideological ends (Pettus, 2003; Werner, 2004). But as Pettus shows in one of the most comprehensive treatments of this subject, the state's efforts to define womanhood has been fraught with contradictions, resulting primarily from the tension between aspiring to modernity (whether socialist or Western) and longing for Vietnamese traditions, both of which are embedded in the endless project of nation building. In the early days of Vietnam's establishment as an independent nation-state, the government launched mass education and hygiene campaigns with the aim of "enlightening" its citizens, primarily women and rural people who were considered to be the weakest and most "backward" elements of the colonial and class order. At the same time, the state continued to exalt women's "traditional" virtues of endurance, faithfulness, compassion and self-sacrifice as invaluable to the national cause of building a modern and industrialized nation. Therefore, while the Vietnamese woman provided a ready-made "emancipatory subject" (Pettus, 2003) for the newly established socialist order, her emancipation started with her subjugation to the new nation.

During the years of heightened socialist modernism the state continued to promote women's emancipation (*giai phong phu nu*) from the bonds of the feudal family structure — in terms of women's right to vote, freedom of marriage and divorce, and equal pay for equal labor, and women's participation in public spheres such as cooperatives and factories — as symbolic of the nation's progress towards socialist modernity. On the other hand, the state needed social-

ist women to continue to be virtuous, dutiful daughters, devoted wives and sacrificing mothers even as they were recast in new terms to serve the cause of building a socialist nation. Women were targets of the 1961 "Five Goods" campaign (*Cuoc van dong Nam Tot*), in which they were urged to simultaneously fulfill the goals of production and good budgeting, abide by state policies and laws, participate in management, advance their studies, and raise their families and educate their children. As the war against the United States accelerated, these tasks were reduced in the "Three Responsibilities" campaign (*Phong trao Ba Dam Dang*) and yet were not easier to achieve. While the men were off fighting, this new movement called for women to take charge of agricultural and industrial production, all family affairs, and direct national defense when necessary. The traditional virtues of women were translated into a heroic "war-time femininity" that could serve the nation in the fight against foreign invaders. Both the "Five Goods" and "Three Responsibilities" campaigns aimed to make women's timeless virtues work for their new public responsibilities, thereby supplanting the traditional authority of the family with the new authority driven by ideological imperatives and the political goals of the socialist state. In other words, the socialist state "[replaced] one form of patriarchy with another" (Pettus, 2003).

In the years after *Doi Moi*, the state revitalized its project of building a modern nation with a new twist; now it was based on modern, prosperous, and happy families. Households have now replaced collective entities like cooperatives and state-owned factories as well as the battlefield, as the primary location for the new nation-building project of the state. The new subjects are directed to emulate the civility of Western modernism and the prosperity of the Western market economy, while at the same time being warned to guard against becoming culturally "Westernized." The inherent contradiction in this new state project has created immense confusion and tension, both ideological and practical, in the society. Nevertheless, the "cultured family" (*gia dinh van hoa*) is being asked to combine "traditional values of filial piety, maternal devotion, and martial faithfulness with the rational, scientific standards of a modern nuclear household, namely proper nutrition, hygiene, economic discipline, birth control, 'marital democracy,' and good parenting" (Pettus, 2003).

At the helm of this new project are women who, since the beginning of *Doi Moi*, have returned in great numbers to the domestic sphere, fulfilling the traditional role of women as

caretakers in the newly defined modern domestic households. "Care taking" now extends beyond domestic chores and maintaining happiness within the family to generating income through women-centered trading activities in order to ensure that households are economically viable. The new campaign, labeled "Three Criteria" (*Ba Chi Tieu*), was launched in the late 1990s by the Women's Union, and asks women to "study actively, work creatively, raise children well, and build prosperous, happy families," (Anh, 2005). In this campaign, the "new woman" in post-*Doi Moi* embodies some of the values of her mother and grandmother, as extolled during the era of heightened socialist idealism, albeit in the context of serving their families as the way to build the modern nation. As Jane Werner points out, "Ironically, the idealized and essentialized "socialist woman" of the revolutionary era has been replaced with the essentialized model of woman *qua* mother of the development state." She further argues that the state, in failing to sustain the socialist tradition of providing free social services such as health care, has benefited from relocating women back into the domestic sphere. Although this might be an unexpected outcome of the various economic and social policies introduced during *Doi Moi*, it is certain that, post-*Doi Moi*, the new standards of womanhood have been "substantially and substantively influenced by the state" (Werner, 2002).

Family planning is one of the areas where the state discourse on womanhood has played out most clearly. After *Doi Moi*, the emphasis on family planning shifted from building socialist subjects and the socialist nation to constructing small size, prosperous, and happy families as the foundation for a strong and modern nation. As Tine Gammeltoft (2001) points out, "While family-planning messages obviously aim at raising people's awareness of the social and economic benefits of the small-sized family, they also, more indirectly, create and recreate specific definitions of the roles and positions of women vis-à-vis both family and nation." Gammeltoft also notes, "In family planning rhetoric and slogans, such as 'a happy family, a wealthy country' (*gia dinh hanh phuc, dan nuoc phon vinh*), or 'good for the country, beneficial for the family' (*ich nuoc loin ha*), family and nation are presented as analogically related and interdependent entities, the welfare of one naturally benefiting the other."

In this new endeavor of the post-*Doi Moi* state, women again play a key role since they bear the primary responsibility for the welfare of the family and therefore, by extension, the welfare of the nation. Women, therefore, have been the primary bearers of family planning in

Vietnam throughout the history of the program. This has been clearly reflected in the disproportionate share of women among contraceptive users, in the fact that the IUD has been the contraceptive of choice (Gammeltoft, 1999; Johansson et al., 1998a), and in the high rates of abortion (Goodkind, 1994; Johansson et al., 1996).

In interviews with our key sources, one common explanation for women's disproportionate responsibility for family planning is that in Vietnamese culture reproduction is seen as "women's business" (*cong viec cua phu nu*), and as having little to do with men, who take less responsibility for contraception than their wives and sexual partners. (For a different perspective of male involvement in family planning in Vietnam, see Johansson et al., 1998b). Although this cultural explanation might have some validity, we argue that it does not take into account the role of the state and its project of nation building. As shown earlier, the socialist state challenged the boundaries of "women's business" by bringing the private family into the larger family of the socialist nation, thereby turning "women's business" into a political category under the direct purview of the state. After *Doi Moi*, although the meshing of the private family and the nation has been more subtle and the notion of "women's business" more private, the state has continued to build the nation on such "women's business" as fertility regulation and women's role as the caretaker of the family. The state therefore has always been an important player in maintaining "women's business" as a domain of the state, relentlessly subjected to control and regulations. While in traditional Vietnam such "women's business" as reproduction (and, by extension, women's sexuality) was subjected to the authority of the patriarchal extended family, in modern Vietnam reproduction (and, again, by extension, women's sexuality) has been driven by the ever-shifting project of nation building led by the state.

It is ironic that while women as housewives and family caretakers have been at the front and center of family planning, they have been sidelined in the existing policies and programs on HIV/AIDS. In policy documents women are subsumed under general categories like "community," "general population," and "the family." Most efforts and resources have been focused on high-risk groups, including (largely male) injecting drug users, commercial sex workers (largely female) and, in recent months, "men who have sex with men." To be fair, the national strategy for HIV-prevention and control makes specific references to women and

the importance of gender equality in a number of places.[26] One of the specific objectives is "proper care and treatment" for all HIV-positive pregnant women. In the section on solutions, when referring to the importance of mobilizing potential within the family and community, the national strategy promotes the task of "raising awareness and ensuring equality for women so that women could participate actively in HIV/AIDS prevention and control." In the context of "behavioral change" communication in the community, it specifies "raising gender awareness and gender analysis skills [among] decision makers and program managers, as well as implementing gender equality in HIV/AIDS prevention and control programs." And, in the section on prevention of mother-to-child transmission, one of the strategies is to "raise awareness of women in reproductive age ranges about [their] HIV risks and the possibility of mother-to-child transmission." Ample policy guidance, however, has not been translated sufficiently into action plans and/or program activities, which could have brought about major changes in turning around the epidemic.

Although concerns have been raised for some time about the epidemic becoming more widespread — reflected among other things, by increasing rates of HIV-infection among pregnant women — little has been done to prevent this scenario as far as the "general population," especially women, is concerned. Studies in Vietnam have shown that women are vulnerable to HIV infections because their husbands and sexual partners have injected drugs and/or have had extramarital sex, and because women have little power to negotiate condom use (Go et al., 2002; Ha, 2005). Women are vulnerable not only when they are young and unmarried, or when they were married and at their "reproductive age," as defined by the strategy, but also when they have experienced menopause (Huong & Duc, 2005). These studies have also shown that women with HIV/AIDS continue to be at risk to HIV super-infections because they do not have the power to negotiate their sexuality and bodies (Huong & Vinh, 2004).

In Thailand, a neighboring country with some successes in dealing with the epidemic, people are familiar with condoms thanks to extensive promotion in family planning education in the early 1970s (Ainsworth et al., 2003), so when the HIV/AIDS epidemic hit the country, condoms were reintroduced with little difficulty. Condoms were introduced much

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[26] Decision of the Prime Minister on approval of the National Strategy on HIV/AIDS Prevention and Control in Vietnam until 2010 with a vision to 2020 (Decision 36/QD-TTg).

later in Vietnam, initially for family planning but then overwhelmingly in connection with HIV/AIDS prevention. Condom use was linked either with married couples (in family planning messages) or with "promiscuous sex" (in early HIV-prevention messages). Some efforts have been made recently to rectify this situation but it is an uphill battle to turn around the earlier images of condom usage. Although women in Vietnam, as in countries worldwide, are the ones who suffer most from the impacts of the epidemic on their families, little has been done to alleviate the burden of care and support that they have been providing for their ailing sons and husbands.

While women as housewives have not received sufficient attention in the policy documents and programmatic efforts on HIV/AIDS prevention, another group of women — "females who trade in sex" (*gai mai dam*) — has received special attention. It is important to note that female sex workers receive special attention not only for the sake of HIV/AIDS prevention, but also as a group that could threaten social stability. As already mentioned, various non-HIV policy documents have been produced for the purposes of prevention and control of commercial sex, including the national strategy for prevention and control of prostitution (2001–2005) and the 2003 Ordinance on preventing and combating prostitution. Although the Ordinance sanctioned penalties for the (overwhelmingly) male customers, including fines and notifying their employers, implementation has fallen short. One of the reasons for hesitancy in enforcing the law on male customers — including growing numbers of government cadres — has been the concern that the news could damage their families. On the other hand severe penalties, ranging from administrative detention to forced re-education, have been enforced against female sex workers.[27]

In recent years public-health measures, like harm reduction, treatment of STDs for sex workers, HIV sentinel surveillance, and behavioral surveillance, have been introduced and hailed as better alternatives to punitive measures in terms of HIV/AIDS prevention and control. And, as the concern about a "generalized" epidemic has grown, female sex workers

[27] For more on HIV/AIDS policy effects on sex workers and other marginalized groups, including PLWHA and MSM, see also in this publication: Bahgat, H. & Afifi, W. Sexuality politics in Egypt, pp. 65-66; Ramasubban, R., Culture, politics, and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 97-100; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, pp. 151, 154-155; de Camargo, K. & Mattos, R. Looking for sex in all the wrong places: the silencing of sexuality in the World Bank's public discourse, pp. 368-369.

have increasingly become the focus of public-health research and intervention. For example, research literature and the media cite growing numbers of female sex workers injecting drugs as the cause of rising infection rates among them (Tran et al., 2005). It would be hard not to get the implicit message that female sex workers have become an increasing threat to the so-called "general population" and therefore deserve special attention from both the administrative and public health points of view.

In her study on the changing patterns of the governance of prostitution in Vietnam, Nguyen-vo (2002, p. 144) shows the intertwining connections between the increasing public health attention to female sex workers — a new mode of the governance of prostitution in the post-*Doi Moi* era — and the promotion of middle-class heterosexual norms and behaviors aimed first and foremost at the growing legions of middle-class housewives. Nguyen-vo shows that during the socialist era, the state discourse portrayed prostitution as "no more than a vestige" of the past, whether it was French colonialism or American imperialism. The task of the socialist state, then, was to eradicate this unwanted product of the past – prohibiting prostitution and transforming female sex workers into "proletarian subjects" through re-education and compulsory labor in rehabilitation centers – with the goal of constructing a socialist nation that presented itself as a complete break from the inglorious past. In this context, the role of public health and medical professionals was mainly to treat female sex workers with STDs when they were in rehabilitation centers.

As *Doi Moi* accelerates the process of social and economic transformation, the number of female sex workers has reportedly been increasing. In this new context, Nguyen-vo (2002) argues, the state has found a new mode of governance in the use of public health and medical expertise. These professionals now prescribe prostitutes and their health risks (objectified through scientific research) as an imminent threat to the health of the nation. Public health and medical professionals certainly are not alone in this endeavor, as the explosion of media coverage of commercial sex work has helped to project the image of prostitutes as a threat to the public (Huynh et al., 2004). This professionally constructed image of a public threat allows public-health professionals and the state to prescribe further intervention measures against the bodies of female sex workers. Unlike in the socialist era, when the prostitute was treated as a "vessel of disease that ought to be cast out or eradicated," now it is "the embed-

ded-ness of her body in the nation's body" that makes the latter so visible as an entity that needs to be protected at all costs (Nguyen-vo, 2002).

The fight against the "imminent threat" posed by largely lower-class prostitutes, however, does not just involve the state with its administrative measures, or public health and medical professionals with their more "humane and effective" interventions, but also the housewives of the expanding middle class with their new-found femininity and their bodies. As Nguyen-vo also shows, public health and medical discourse offers little but to urge "wives and potential wives of the middle classes to compete for their men's sexual interests against the lure of prostitutes." This is evidenced in the growing industry of self-help books and counseling centers that focus mainly on teaching middle-class housewives in urban areas about "bourgeois femininity" and "sexual necessities" that could help them to provide class-appropriate pleasure to their husbands. The socio-sexual order preferred and maintained by the state is constructed, therefore, first and foremost "within the [socially and politically sanctioned] hygienic confines of the conjugal bed" (Nguyen-vo, 2002).

To build on this original analysis of Nguyen-vo, it is possible to conclude that women as housewives are not completely out of the picture in the fight against HIV/AIDS. They remain crucial because they are the ones who maintain the image of the "happy and prosperous family" that, among other things, should be free from potentially devastating diseases like AIDS. They also remain crucial for the state because they are the ones who maintain the socio-sexual order deemed appropriate to its nation-building project. On the other hand, the category of "females who trade in sex" (*gai ban dam*) and the bodies of female sex workers are important for the state to construct in order to uphold the socio-sexual order that makes the maintenance of the "happy and prosperous family" an endless task for the housewives in post-*Doi Moi*. And yet, the vulnerabilities and risks of housewives have received little attention, which ironically could make the project of nation building crumble at any moment.

With the help of the public health and medical expertise that developed throughout the family-planning era and blossomed with the advent of HIV/AIDS, the post-*Doi Moi* state has furthered its technology of power to complement its arsenal of Leninist governing tools.

From family planning to HIV/AIDS, the state has completely realigned "private" matters such as intimacy, sexuality, and reproduction with its nation-building interests, and has made women's sexuality and bodies a domain of the state. Despite the state's endorsement of the discourse on women's emancipation throughout the socialist era and of the new discourse of women's empowerment in the era after *Doi Moi*, reproduction and women's sexuality have not been autonomous, as they never were under the traditional structure of the patriarchal extended family. We would argue that this is the second continuity that exists as Vietnam moves from family planning to the HIV/AIDS era.

Conclusion: Moving forward on reproductive and sexual health and rights

In this paper we first showed that in the early decades of family planning in Vietnam policy-makers were under immense pressure to ensure that population growth was kept in check and that economic development was not affected by what they considered as "overpopulation." This led to the introduction of numerous policies where the emphasis on fertility control to achieve demographic targets was prominent. As these targets were largely achieved and as the state opened its policymaking processes to greater external influences, including donors and international treaties, policies introduced during the early years of this millennium have moved towards a more comprehensive agenda that takes into account the integration of population and development and reproductive health and rights.

During this development of population and family planning as a social and health priority, HIV/AIDS entered the picture in the early 1990s. As the number of HIV/AIDS cases rapidly increased, media coverage and donor funding for HIV/AIDS have increased disproportionately as compared to media coverage and funding for family planning. While the government responded quickly with HIV/AIDS policies aimed at halting the spread of the epidemic, these early policies were fraught with contentious issues. Such issues, we argue, resulted largely from the conflict between the perceived need to protect the imagined "general public" and the increasingly acknowledged importance of protecting the rights and interests of those who are infected and affected by the virus and disproportionately from the bottom ranks of the society.

This conflict reflects the larger difficulty for the state in striking a balance between what the state perceives and defines as in the interests of the society and the country, and the interests of individuals and groups with who these state-sponsored interests might be in conflict. In recent years, as the international community has played a larger role in HIV/AIDS funding and policymaking, new policies have been introduced that probably reflect the new perspective within the state that it is possible to strike a balance between these two demands. Similarly, the move towards a broader agenda of reproductive health and rights in population policies also reflects this new perspective. And yet there are many challenges in translating these policies into practice, including the specter of that public/private balance. The story of "population surge" mentioned above is one example of how this specter could return to haunt the state even when the state appears to have moved past it.

We have further showed that the lack of a strong civil society that could serve as advocates for change, rather than relying entirely on individuals within the state and the donor community, reflects continuity in the shift described earlier. In controversies like the story of "population surge," the role of civil society is important in reminding the state and donors about their commitment towards change. Another aspect of continuity is the interest in controlling and regulating women's bodies and sexuality to serve the ever-shifting project of nation building sponsored by the state. As long as women's bodies and sexuality are subsumed under this project and therefore relegated as a domain of the state, women will continue to see their reproductive and sexual autonomy devalued as they once were under the patriarchal structure of the traditional extended family. These two aspects of continuity are not disconnected as success stories in the struggle for reproductive and sexual rights have shown that the power of one would translate into the success of the other (Parker et al., 2004; Petchesky, 2003).

In this paper we have chosen to examine family planning and HIV/AIDS because we held them not simply as two distinctive public-health programs, but rather as two paradigms in approaching and controlling reproductive and sexual health and rights. Family planning focuses primarily on controlling unprotected procreative sex, often within the context of heterosexual marriage. On the other hand, unsafe non-procreative sex, often outside the context of marriage, has been the primary concern for HIV/AIDS prevention. Literature on HIV/AIDS is replete with studies on the risk of unsafe non-procreative sex such as "commer-

cial" sex, teenage sex, and homosexual sex, while demographic studies have hardly moved beyond sex between legally registered heterosexual couples. Seen in this way, as Vietnam moves from one end of the continuum to another, the struggle to break this continuum and the underlying dynamics that have maintained it has added significance. In the context of national and global transformations, where diversity and heterogeneity is the norm, we believe that breaking this continuity will best benefit the development of Vietnam.

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United Nations

Negotiating Sexual Rights and Sexual Orientation at the UN[1]

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Introduction

On September 8, 1995, in the main plenary hall at the United Nations Fourth World Conference on Women in Beijing, China, a group of 35 women from the Lesbian Caucus unfurled a large banner from a balcony. The banner read: Lesbian Rights are Human Rights.

The action was not without its own drama; the banner was at first unfurled upside down and the women had to quickly turn it around and drop it again before UN security guards arrived on the scene. The guards removed the banner and the women were ordered from the hall. Two of them were held and questioned by UN security before being released. But everyone in the plenary, including government delegates from 189 countries, had got the message.

The United Nations has been the site of an overt struggle over sexuality from as far back as the 1948 Universal Declaration of Human Rights and other human rights treaties, all of which deal with the role of the family, the question of marriage, and equality between the sexes. Indeed, since the beginning of the 1990s the debates have intensified – whether to assert certain rights in connection with sexuality or to name explicitly those aspects that give rise to discrimination.

This should not surprise us – the UN, as one of the foremost international venues for the creation of international norms and discourses, was inevitably going to be a crucial forum to debate sexuality, a manifestation of what historian and philosopher, Michel Foucault has described as the "putting into discourse" (*mise en discours*) of sex in Western societies.[2] Foucault argues that sex, as a political issue, is "located at the point of intersection of the discipline of the body and the control of the population." It has thus proved impossible to leave sexuality out of the population and development debate that has engaged the UN.

In this paper, I analyze two different instances where governments, civil society, and international institutions have struggled around new progressive norms on sexuality at the UN; first, the negotiations on paragraph 96 of the 1995 Beijing Platform for Action (the right of women to control their sexuality), and, second, the struggle over the Brazilian resolution on sexual orientation at the UN Commission on Human Rights (CHR) in 2003 and 2004. Each case centers on whether or not to recognize "sexual rights" as a concept and to name "sexual orientation" in UN documents, and each highlights the evolving interplay at the UN of relevant actors and of their stated and underlying interests in relation to this issue over time.[3]

On the basis of first hand accounts of the events, I will examine these negotiations through the analytical lens of Foucault's concepts of discourse, power/biopower and sexuality – a particularly useful framework for analyzing UN debates because of it's emphasis on discourse

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[2] Rabinow, P. (Ed.) (1984). Truth and power. *The Foucault reader*, p. 67. Pantheon.

[3] For local impacts of global policy-making around sexuality at the UN, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 44; Bahgat, H., & Afifi, W., Sexuality politics in Egypt, pp. 59-62; Ramasubban, R., Culture, politics and discourses on sexuality; A history of resistance to the anti-sodomy law in India, pp. 103-106; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 152, 158; Nowicka, W., The struggle for abortion rights in Poland, p. 177; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 205; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 287-288.

as an essential domain of engagement in and of itself. Analyzing the mechanisms through which discourse is produced and deployed at the UN can lead us to deeper understandings and insights into progressive and conservative claims and arguments.

The implication is that Western discourses on sexuality have had a powerful impact on UN debates, yet this paper recognizes the limitations and shortcomings of these discourses and counter-discourses in the international multicultural arena. It also questions the often gender-neutral nature of Foucault's ideas.

Foucault and discourses on sexuality

In his landmark work, *The History of Sexuality: An Introduction*, Foucault analyses the processes by which Western societies began "putting sex into discourse." Rather than repressing discussion of sexuality, Foucault argues, Western societies saw a "veritable discursive explosion" around the subject of sex.

Beginning in the seventeenth-century, power began shifting from the traditional sovereign's power over death to one of managing and manipulating life. What had been limited in feudal times to taxes, forced labor, and the death penalty, was transformed into mechanisms to generate forces, make them grow, and organize and order them. One axis was the body as a machine: the optimization of its forces became the subject of the disciplines of the body. The other axis was the human species as a whole; births and death, longevity and health, became the subjects of regulatory controls and management techniques. "Biopower" thus emerged as the development of the numerous techniques for the subjugation of bodies and the regulation of populations, whether through schools, army barracks, and workshops, or public health, eugenics, immigration policy, and demography. Biopower was an essential element in the rise of capitalism and of the modern state, says Foucault, and it remains central to economic development processes. It also interacts (and sometimes competes) in multiple ways with broader medical, demographic, and public health discourses, and with pre-existing and renewed religious beliefs about procreation, the role of women in the family, and the rights of parents over their children.

While Foucault argues against the "repression hypothesis," he does not deny that sex continued to be subjected to restrictions and prohibitions. But, rather than being controlled by silence, sexuality was constructed and became regulated by means of various discourses and strategies of power. He identifies four strategies developed in the Western world since the beginning of the eighteenth-century to deploy sexuality: a "hysterization" of women's bodies (whereby women's bodies are considered by science to be thoroughly saturated with sexuality and the imperatives of reproduction, and therefore in need of medical attention and treatment); a "pedagogization" of children's sex (children's sexuality is discovered and while viewed as "natural" is also considered "dangerous" and therefore in need of control and surveillance); a socialization of procreative behavior (in other words, the "responsibilization" of couples with respect to fertility, which had to be restrained or encouraged depending on the needs of society); and a "psychiatrization" of perverse pleasures (whereby the sexual instinct is isolated as a separate phenomenon, the anomalies medicalized — that is identified as diagnostic categories — and corrective therapy devised).

These strategies were layered upon pre-existing legal codes that governed sexual relations and were centered on matrimonial relations and the marital obligation. Up to the end of the eighteenth-century, Foucault observes, canonical law – the Christian pastoral (and penance) – and civil law focused intensively on the sex between husband and wife, besetting it with "rules and recommendations." These laws were concerned with preserving the "deployment of alliance" – marriage as the means to create and perpetuate kinship ties. As economic processes and political structures rapidly changed, Western societies developed the notion of "sexuality" as a new means of controlling bodies and populations. Heterosexual monogamy was consolidated as the norm and increasingly accorded a modicum of privacy by the law: "The legitimate couple, with its regular sexuality, has a right to more discretion." The family cell was reorganized along the husband/wife and parent/children axes, with an exalted role assigned to the woman as mother and wife.[4] Foucault argues that sexuality (with the "idle woman" as its prime target) evolved first in the bourgeois family because its initial concern was not the repression of sex among the working class but the self-affirmation of the new ruling class as strong and healthy – that is, sexually "normal" and espousing the Malthusian ethic of "fewer and better" children.

[4] For example, see in this publication: Nowicka, W., The struggle for abortion rights in Poland, pp. 178-181.

Regarding the fourth strategy, Foucault says that whereas ancient civil law and canonical codes had focused on the forbidden act of sodomy,[5] the deployment of sexuality saw the creation of new, fully developed archetypes:

> "*The nineteenth-century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology. Nothing that went into his total composition was unaffected by his sexuality*."[6]

Nineteenth-century psychiatrists classified multiple other categories of "perverts" ranging from zoophiles and fetishists, to presbyophiles (those erotically attracted to older persons), and sadomasochists.

Foucault provides useful tools for analyzing the ways in which sexuality was constructed in modern Western societies and, like feminist writers, he places the body squarely at the center of sexuality "…as the site of power, that is, as the locus of domination through which docility is accomplished and subjectivity constituted."[7] His observations about the superimposition of sexuality on pre-existing religious codes of conduct and methods of enforcement (like the confessional) are also instructive in the ways religious authorities, and particularly the Holy See, have used and adapted the concepts of sexuality in their discourses at the UN.[8]

Yet Foucault did not delve into gender relations or women's unequal powers despite his analysis of the "hysterization of women." Katz has noted Foucault's generic "sexuality" and "desire," which fail to take into account feminist concerns about inequality in heterosexual

[5] As Halperin has noted, this is not to imply that there were no "deviant sexual beings" in the pre-modern era, and no connections between sex, gender and identity (see Halperin's discussion of the *kinaidos* in ancient Greece), but that these individuals were not understood as a psychosexual type in the modern sense. See: Halperin, D. M. (2002). Forgetting Foucault: Acts, identities, and the history of sexuality. In M. C. Nussbaum, & J. Sihvola, (Eds.) *The sleep of reason, erotic experience and sexual ethics in Ancient Greece and Rome,* pp. 21-54. University of Chicago Press.
[6] Louis Crompton agrees that the "homosexual" as a psychiatric category is a modern invention, but he argues that earlier ages did not merely condemn certain sexual acts, but also the category of persons who committed them. "Sodomites," he argues, had a clear and ominous presence in medieval literature. See: Crompton, L. (2003). *Homosexuality and civilization*, pp. 174-175. Belknap Press/Harvard University Press.
[7] Diamond, I. & Quinby, L. (1988). Introduction. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, (p. x). Northeastern University Press.
[8] For local examples, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 33-35; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 133-134; Nowicka, W., The struggle for abortion rights in Poland, pp. 182-185.

relationships.[9] Certainly Foucault neglects other strategies of power deployed around the sexuality of women, notably violence and the threat of violence. In The History of Sexuality he also omits the range of gender and sexual identities that fall outside conventional binaries of man/woman and homosexual/heterosexual, although he redressed this gap in his ruminations on the historical medicalization of hermaphrodism and codification of two sexes in Herculine Barbin.

Diamond notes that:

> "… Foucault is premature in claiming the deployment of sexuality as the predominant mode of power in the modern era. In arguing that Western societies have gone from 'a symbolics of blood to an analytics of sexuality' he is too quick to give precedence to a generative mode of power … Feminists have demonstrated that the kind of power that Foucault associates with the sovereign's right of death – a power operating primarily within kinship systems that is 'essentially a right of seizure: of things, time, bodies, and ultimately life itself' – remains vested in individual men and men as a group. In short, feminist analyses should help Foucauldians see that these two regimes of power coexist and often intertwine in contemporary society."[10]

Indeed, Foucault is mostly interested in power as a "productive network, which runs through the whole social body,"[11] that is, in the non-repressive/non-coercive dimension of the power relations that permeate society at large, form knowledge, produce discourses, and induce pleasure. Violence in personal, private, and non-institutional settings is of little interest to him.

Yet what Foucault says about women being confined to conjugal and parental roles, the medicalization of women's bodies, the politicization of birth control, the creation of perverts, and the sexualization of children, warrants using his analysis to take another look at some of the discourses and ideas about sexuality that were used at the Fourth World Conference on Women and at the Commission on Human Rights.

The role of the Holy See in UN negotiations on sexuality reflects Foucault's analysis of the

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[9] Katz, J. N. (1995). *The invention of heterosexuality*, (p. 179). Dutton.
[10] Diamond, I. & Quinby, L. (1988). Introduction. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, (p. xiv). Northeastern University Press.
[11] Rabinow, P. (Ed.) (1984). Truth and power. *The Foucault reader*, p. 61. Pantheon.

historical role of the Catholic Church in developing the notion of confession of sins, especially sins of the flesh, as a means of control and subjection – sex is seen as a manifestation of original sin that needs to be constantly examined. In fact, the Inquisition played a leading role in prosecuting sodomy well before the invention of "homosexuality." While the Enlightenment saw a measure of privacy granted by law to the heterosexual married couple, the modern Catholic Church is not willing to relax its control even in that realm, as evidenced by its refusal to allow modern contraception. Yet the Church has incorporated into its discourse the secular strategies of power over sexuality that suits its purposes, notably the notion of the "homosexual" and his "condition."[12] Similarly, the hysterization of women's bodies – rooted in the view that biology is destiny; that the capacity to "give life" conditions the entire female personality – was central to Pope John Paul II's "genius of women."[13]

Finally, it is important to remember that Foucault focuses on sexuality in Western societies, and to question whether and how his insights apply to other parts of the world. Stoler argues that, in fact, Europe's eighteenth-century discourses on sexuality grew out of empire and colonialism, thus shaping nineteenth-century technologies of sex. Speaking about the four sexual archetypes described above, she asks rhetorically: "Did any of these figures exist as objects of knowledge and discourse in the nineteenth-century without a racially erotic counterpoint, without reference to the libidinal energies of the savage, the primitive, the colonized – reference points of difference, critique and desire?"[14]

Especially because of the history of modern colonialism, Western constructs of sexuality have permeated debates in other countries and at the UN. They have been partially adopted by colonized countries, and readapted to suit new discourses. The extent and limits of that influence will be noted.

The context for sexuality negotiations at the UN

Before 1993, as has been noted elsewhere[15], the words "sexuality" or "sexual" had never appeared in an intergovernmental document at the international level, with the notable exception

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[12] Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons, October 1, 1986.
[13] Letter to the Bishops of the Catholic Church on the collaboration of men and women in the Church and in the world, May 31, 2004.
[14] Stoler, A. L. (1995). *Race and the education of desire*, pp. 6-7. Durham, NC: Duke University Press.
[15] Petchesky, R. (2000). Sexual rights: Inventing a concept, mapping an international practice. *In Framing the sexual subject: The politics of gender, sexuality, and power*, p.82. Berkeley: University of California Press.

of the 1989 Convention on the Rights of the Child, in provisions on protection from sexual exploitation and sexual abuse. Sexuality was addressed implicitly through related subjects: the right to marry and found a family, the right to choose a spouse, the right to family planning, and the right to determine the number and spacing of children. These rights were framed within the context of heterosexual marriage, with reproduction an important dimension.

The idea that international human rights should apply to matters of sexuality and reproduction was considered by feminist organizations in both the global North and South beginning in the 1980s.[16] Women's groups came to issues of sexuality through parallel and somewhat overlapping tracks. Groups working on women's health issues identified coercion in family planning programs and unsafe abortion as pressing concerns from the 1980s onwards. At the 1984 International Women and Health Meeting in Amsterdam, activists from North and South concurred on the urgent need for women worldwide to claim control over their reproductive lives and their reproductive rights. An active alliance of North and South women's health advocates formed on these issues by the early 1990s. Groups working on human rights identified violence against women, and in particular sexual violence, as an urgent yet neglected issue. Meanwhile lesbians in the feminist movement and lesbian and gay groups began raising the issue of discrimination based on sexual orientation in various international forums.

It is interesting to note how closely these concerns correspond to the strategies of power that Foucault describes. The battle over coercion in family planning and restrictive abortion laws reflects the politicization of birth control and fertility that emerged in eighteenth-century Europe and developed through neo-Malthusian population control programs at national and international levels, during much of the twentieth-century.[17] Some activists in the women's health movement also emphasized the over-medicalization of women's bodies and life experiences – whether childbirth, birth control or menopause – although these arguments never mobilized as large a movement as did coercion and denial of access to reproductive health services. The struggle against discrimination on the basis of sexual orientation sought to

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[16] Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, chapter 1. London: Zed Books.

[17] Chase, A., (1977). *The legacy of Malthus*. New York: Knopf; Bandarage, A., (1997). *Women, population, and global crisis.* London: Zed Books; Gordon, L. (1974). *Woman's body, woman's right: Birth control in America*. New York: Penguin.

combat the notion of "sexual perversity" embedded in psychiatric categories developed in the nineteenth and twentieth-centuries.

The important feminist and LGBT (Lesbian, Gay, Bisexual, Transgender) struggle against violence finds little resonance in Foucault, yet it is an important dimension of the experience of sexuality for many women and men around the world. Looking again at the strategies of power used to construct the sexual subject as defined by Foucault, violence is certainly part of the pre-existing grid of power; an underlying source that affects new discourses and techniques of power and gives them greater potency. The invention of the "homosexual" would have a very different import without the possibility or reality of violence inflicted on that class of persons. Similarly, the notion that women's bodies and minds are suffused with sexuality and closely linked to their reproductive and sexual function has a different meaning if violence, in the home and in society, were not used to control and channel that sexuality and reproduction, and to maintain women in a subordinate position. Feminist activists have highlighted this in a way Foucault never did.

In developing countries, colonialism's bourgeois discourses of self-mastery and the ideal family, and their legal codification, have undoubtedly shaped the debates on sexuality. The continued criminalization of "sodomy" and abortion in many former British or French colonies is only the most obvious example. These colonial concepts have also helped frame oppositional political claims. Coercive sterilization and contraception, understood as by-products of the racism and eugenics of colonialism, took on a specific, and perhaps more potent, political dimension.[18]

Before Beijing

The cycle of UN conferences that began with the 1992 Conference on Environment and Development (Earth Summit) in Rio de Janeiro, Brazil, provided an opportunity to push forward sexuality concerns. Initially appalled by the population-control language that

[18] For local examples, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 31-33; Ramasubban, R., Culture, politics and discourses on sexuality; A history of resistance to the anti-sodomy law in India, pp. 104-105; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

threatened to come out of Rio, women's health advocates and feminist groups organized to ensure that the final agreement referenced "access to reproductive health care" and women's aspirations in terms of family size "in keeping with their freedom, dignity and personally-held values."[19]

At the 1993 World Conference on Human Rights in Vienna, Austria, feminist human rights activists were successful in obtaining clear statements about the urgency of addressing violations of the human rights of women, and in particular, violence against women. The Vienna Programme of Action recognizes that "the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights..."[20] and further specifies that "violence against women in public and private life" must be eliminated. Violations named in the Vienna agreement include all forms of sexual harassment and exploitation, as well as systematic rape, sexual slavery, and forced pregnancy in situations of armed conflict.[21] Groundbreaking advocacy events included a Global Tribunal on Violations of Women's Human Rights organized by the Center for Women's Global Leadership, where detailed testimony was received on human rights violations in the family, and on violations to women's bodily integrity, including violence and discrimination against lesbians.[22] During the negotiations, Canada proposed adding sexual orientation to a paragraph prohibiting discrimination on listed grounds. The final text condemns discrimination, but without a list.[23]

At the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt, women's health advocates from the global South and North who had been strategizing together for more than two years, were determined to obtain recognition of sexual and reproductive rights and sexual and reproductive health. Corrêa notes: "We put (sexual rights) on the table and said, 'We want to talk about this!'"[24]

[19] Agenda 21, (paras. 3.8j, 5.12 and 5.49, inter alia), United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992.

[20] Vienna Declaration and Programme of Action, (Doc. A/CONF. 157/23, part I, para. 18), United Nations World Conference on Human Rights.

[21] Vienna Declaration and Programme of Action (Doc. A/CONF.157/23, part II, para 38), United Nations World Conference on Human Rights.

[22] Center for Women's Global Leadership, (1994), *Testimonies of the Global Tribunal on Violations of Women's Human Rights at the United Nations World Conference on Human Rights, Vienna 1993.*

[23] Saunders, D. (July 2005). Human rights and sexual orientation in international law. Available at www.ilga.org.

[24] Conversation with Sonia Corrêa, April 12, 2005.

As early as 1992, a diverse group of activists from nearly all regions of the world had drafted a Women's Declaration on Population Policies, which was endorsed by hundreds of organizations worldwide.[25] The Declaration demanded respect for women's sexual and reproductive rights, which "cannot be subordinated, against a woman's will, to the interests of partners, family members, ethnic groups, religious institutions, health providers, researchers, policy makers, the state or any other actors." It also stated, "Women have the right to determine when, whether, why, with whom and how to express their sexuality. Population policies must be based on the principle of respect for the sexual and bodily integrity of girls and women." The Declaration did not mention sexual orientation but later, in January 1994, at the Reproductive Health and Justice Conference held in Rio de Janeiro, lesbian rights were explicitly discussed and a statement was adopted that said, "[S]exuality and gender power relationships must be addressed as a central aspect of reproductive rights … (and) women have a right to express their sexuality with pleasure and without fear of abuse and risk of diseases or discrimination on the basis of their sexual orientation or disability…"[26]

At that time, certain women's health groups had already done important conceptual thinking about the need to deal with issues of sexuality in the context of family planning.[27] The fact that neo-Malthusian population programs consistently violated the sexual and bodily integrity of women was central to this thinking. Activists and academics had also analyzed and applied pre-existing human rights language to reproduction[28] and health[29], mapping out what the right to bodily integrity would entail in terms of "enabling conditions"[30] and why human rights should be applied to the full range of sexuality and reproduction issues. The affirmative aspect of sexuality – the capacity for pleasure and the right to diverse sexual expression – was still in its incipient stages.[31]

[25] Germain, A., Nowrojee, S., & Pyne, H. H. (1994). Setting a new agenda: Sexual and reproductive health and rights. (Women's Declaration on Population Policies). In G. Sen, A. Germain, & L. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, pp. 31-34. Harvard University Press.

[26] International Women's Health Coalition & CEPIA. (1994). Reproductive health and justice: The International Women's Health Coalition for Cairo, (Rio Statement), pp. 4-7.

[27] Dixon-Mueller, R. (1993). The sexuality connection in reproductive health. *Studies in Family Planning* 24(5): pp. 269-282.

[28] Freedman, L. & Isaacs, S. (1993). Human rights and reproductive choice. *Studies in Family Planning*, vol. 24(1), pp. 18-30.

[29] Cook, R. (1994). *Women's health and human rights*. Geneva: World Health Organization.

[30] Corrêa, C. & Petchesky, R. (1994). Reproductive and sexual rights: A feminist perspective. In G. Sen, A. Germain, & L. C. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, pp. 107-123. Harvard University Press.

[31] Correa, S. & Petchesky, R., p. 114.

Petchesky has pointed to the key role of Southern feminists in the transitional women's health movement in ensuring that the connections between "bodily integrity and individual rights of the body and person" and "social rights" were made early.[32] By the time the Cairo conference came along, "a framework firmly linking reproductive and sexual health issues to both human rights and macroeconomic policies had clearly emerged, and women from the South were a leading and majority presence."[33]

The main impetus for activists going into Cairo was to reverse the population control agenda and its excessive focus on curbing the fertility of poor women in the global South.

"We still had a lot to do with respect to reproductive rights, so we were not thinking clearly about sexuality; we were still trying to subordinate family planning to reproductive rights, rather than the other way around," said Corrêa.[34]

Petchesky recalls: "Sexuality was an annex of reproductive rights, which makes it implicitly heterosexual. By and large, we did not have a thoroughly thought through concept of sexual rights at that time."[35]

With issues like abusive family planning practices and unsafe abortion pre-eminent in the activism of the transnational women's health movement sexuality and reproduction remained linked in the thinking of many activists and academics, with sexuality often subsumed under reproduction and heteronormativity going largely unchallenged.[36]

Strategizing on sexuality for Cairo began among a limited group of activists in early 1993. "Some of the lesbians began to have a conversation about pushing rights and sexuality forward but not in a very organized manner. It was not a broad conversation yet," said Correa.

Gloria Careaga, who was in Cairo and on Mexico's delegation in Beijing, concurs. "There were no deep discussions about sexual rights before Cairo and only a few people were work-

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[32] Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, p. 10. London: Zed Books.
[33] Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, pp. 4-5. London: Zed Books.
[34] Conversation with Sonia Corrêa, April 12, 2005.
[35] Conversation with Rosalind Petchesky, December 20, 2005.
[36] Miller, A. (2002). Sexual rights, conceptual advances: Tensions in debate. Presented at the seminar on Sexual, Reproductive and Human Rights, organized by CLADEM, November 5-7, 2002, Lima, Peru. On file with the author.

ing on this," she said. "There was also a lot of confusion about concepts. Most heterosexual women's health activists thought sexual rights was about lesbian, gay, bisexual and transgender rights, while lesbians thought it was about women's rights, about sexuality. Lesbians felt that the responsibility of defending sexual rights was left to them."[37]

In spite of these tensions and the lack of clarity, sexuality and sexual rights were picked up by women's health and rights groups overall.

In May 1993, Petchesky, Copelon, and Jacobson prepared a detailed analysis of gender issues in the proposed World Population Plan of Action for the Second Preparatory Committee meeting for ICPD. The action plan focused on gender and reproductive rights but also noted the complete absence of reproductive rights, sexual health and sexuality from the text.[38] At the meeting a well-organized Women's Caucus lobbied key government delegations to address sexuality in the draft document.[39] In a hard-hitting speech to the government delegates, Bella Abzug of the Women's Environment and Development Organization reprised the 1992 Women's Declaration to demand, "All women, regardless of age, marital status, sexual orientation or other social conditions, should have access to up-to-date information and the full range of health services, including safe and voluntary abortion, all of which are necessary to their freely exercising their reproductive and sexual rights and responsibilities."[40] The Women's Caucus also pushed for the inclusion of sexual rights and sexual orientation in the draft document.[41]

Several government delegations expressed the view that sexual orientation should not be a ground of discrimination in access to health services and this was noted in the summary

[37] Conversation with Gloria Careaga, October 6, 2005.

[38] Copelon, R., Jacobson, J., & Petchesky, R. (1993, April 12). Women and the World Population Plan of Action: An analysis of gender issues in content and language prepared in advance of the Second Meeting of the UN Preparatory Committee for ICPD, New York, May 10-21, 1993. On file with the author.

[39] See, for example: Statement by Ambassador Lars-Olof Edstrom of Sweden, May 10, 1993, and Statement by Ambassador Warren Zimmerman of the United States, May 17, 1993. On file with the author.

[40] Statement by Bella Abzug, Co-Chair of the Women's Environment and Development Organization, to the Second Preparatory Committee of the International Conference on Population and Development, May 11, 1993. On file with the author.

[41] WEDO, IWHC & WorldWatch. (1993, May 12). Suggested revisions to the UN Conceptual Framework for the Draft Recommendations of the ICPD. On file with the author.

prepared by the preparatory committee's chairman.[42] In materials circulated to delegations in August 1993 for the Third Preparatory Committee (PrepCom III) the U.S. delegation included sexual orientation in the list of impermissible grounds of discrimination to be added in the section entitled Principles[43] – a position almost opposite to that espoused by the Bush administration 10 years later. At PrepCom III in April 1994, the Nordic countries introduced the Women's Caucus concepts of sexual rights and reproductive rights. At the request of many countries for clarity the World Health Organization (WHO) circulated its technical definitions of reproductive health and sexual health, which became the basis for the paragraph 7.2.[44] Vanuatu, with support from Canada, requested a reference to discrimination on the basis of sexual orientation in the chapter on the family, but that reference was rejected.

It is fascinating to see how closely the battle lines in Cairo followed the contours of biopower as described by Foucault. First, the reproductive-rights agenda proposed by women's groups sought to counter the fertility policies that Foucault recognizes as a strategy of power over bodies and populations; the anti-natalist, coercive population-control approach to family planning, and the pro-natalist rules that blocked the liberalization of restrictive abortion laws and availability and access to contraceptives. Women's groups understood that these pro- and anti- natalist population policies were deploying sexuality among the poor and in the global South through campaigns of "moralization of the poorer (and darker) classes:" "There was unanimous opposition to designing fertility control measures or population policies specifically targeted at Southern countries, indigenous peoples, or marginalized groups within both Southern and Northern countries, whether by race, class, ethnicity, religion, or other basis."[45] The pro-natalist discourse dovetailed with the strict norms propounded by the Holy See and its Catholic allies regarding contraception and abortion. It did not, however, find the same echo in Islamic countries, where contraception is allowed within marriage and abortion is generally accepted before "quickening" of the fetus.

Second, the women's agenda represented a direct attack on the construct of the "hysterical woman" — woman as necessarily confined to the roles of mother and wife in a heterosexual

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[42] Correa, S. and Petchesky, R., p. 119.

[43] U.S. Delegation's Suggested Changes to the Proposed Framework Document (PC11) for the United Nations International Conference on Population and Development, July 30, 1993. On file with the author.

[44] Singh, J. S. (1998). *Creating a New Consensus on Population*, p. 31. Earthscan.

[45] International Women's Health Coalition & CEPIA. (1994). Reproductive health and justice: The International Women's Health Coalition for Cairo, (Rio Statement), p. 4.

couple because of her sexual and reproductive function. Advocates argued for the right of women, as individuals, to decide whether and when to have a child, and for access to high quality, women-controlled reproductive health services. A closely related battle centered on the restrictive definitions of the family proposed by the Holy See and its conservative Catholic allies, who sought to strengthen or reinstate women's dependence on the male "head of the household" and negate the variety of family forms in which women participate, including same-sex couples.[46] Women's groups denounced the "fundamentalist war against women… over the meaning of "families"[47] and emphasized the need to recognize "changing patterns of sexual and family relationships."[48]

A third debate raged over the access of adolescents to sexual and reproductive health information and services. For the Holy See, which found allies among conservative Islamic countries, this debate rested on the essential role of parents in policing the sexuality of their children – in Foucault's words, in "[taking] charge, in a continuous way, of this precious and perilous, dangerous and endangered sexual potential…"[49] Islamic countries also invoked religious proscriptions against extramarital sex. Women's groups insisted on the "rights [of adolescents] to confidentiality, privacy, and access to all sexual and reproductive health services, independent of knowledge or control by their parents, including safe abortion."[50]

The fourth debate, over Foucault's "sexual perverts," took place somewhat obliquely in connection with the language on family and sexual rights, since "sexual orientation" only made a fleeting appearance in the draft document. The family had become the subject of a separate chapter of the draft after the Second Preparatory Committee (PrepCom II). The battle over various forms of the family centered on the social role of women as mothers and wives, and

[46] Cohen, S. A. & Richards, C. L. (1994). The Cairo consensus: Population, development and women. *International family planning perspectives*, Volume 20, Issue 4, 150-155, p. 151.

[47] International Women's Health Coalition & CEPIA. (1994). Reproductive health and justice: The International Women's Health Coalition for Cairo, (Rio Statement), p. 6.

[48] Germain, A., Nowrojee, S. & Pyne, H. H. (1994). Setting a new agenda: Sexual and reproductive health and rights (Women's Declaration on Population Policies). In G. Sen, A. Germain, and L.C. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, p. 32. Harvard University Press.

[49] Foucault, M. (1978). *History of sexuality*, vol. 1, p. 104. New York, Pantheon.

[50] The Women's Caucus at PrepCom III. (1994, April 4). Draft Compilation of Proposed Revisions of the Draft ICPD Programme of Action. On file with the author.

the recognition of same-sex families. During the negotiations, the Holy See and its Catholic allies sought to delete references to "families", "unions" or "the family in all its forms," and to replace them with "the family", understood as the union of one man and one woman for the purposes of reproduction. However, several Islamic and African countries could not follow the Holy See all the way on "various forms" because of their support for polygamous families.[51] The reservations issued by conservative countries at the end of the negotiations reflect these controversies and divisions:

"We also enter an express reservation on the term 'couple' where it refers to persons of the same sex…" (Dominican Republic)

"…we agree that the family may take various forms, but in no event can its essence be changed. Its essence is the union of a man and woman, from which new human life derives." (Nicaragua)

"…Our delegation called for the deletion of the word 'individuals' since it has always been our understanding that all the questions dealt with by the Programme of Action in this regard relate to harmonious relations between couples [in plural] united by the bond of marriage in the context of the concept of the family as the primary cell of society." (Egypt)

"With reference to the term 'couples and individuals' the Holy See reserves its position with the understanding that this term is to mean married couples and the individual man and women who constitute the couple… The Holy See interprets [the] chapter [on the Family] in terms of… marriage as an equal partnership between husband and wife… Regarding… 'sexual health,' 'sexual rights,' and 'reproductive health' and 'reproductive rights,' the Holy See considers these terms [to]… foster the achievement of personal maturity in sexuality and in the mutual love and decision-making that characterize the conjugal relationship in accordance with moral norms." (Holy See)[52]

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[51] Earth Negotiations Bulletin, vol. 6, issue 18, April 6, 1994.
[52] United Nations. (1994). Report of the International Conference on Population and Development (ICPD PoA). (Document A/Conf. 171/13). New York.

Regarding sexual and reproductive rights, women's groups at PrepComs II and III pushed for language that recognized the "fundamental principle of bodily integrity, respect for women's personhood, and the need for both women and men to realize their sexual and parenting potential in conditions of freedom and dignity." Preconditions included individual rights to decide "whether, when, and with whom to have children, to have sex, and to marry…"[53] The concept of rights, which implied the right of women to make claims as autonomous agents, went well beyond the notion of health as a need, the content of which could be decided by authorities.[54] The substance of these elements of sexual and reproductive rights was included in the draft by the end of PrepCom III, but remained contested. The additional call by women's groups to "eliminate discrimination based on gender, marital status, age or sexual orientation" was never included in the paragraph on sexual and reproductive rights.

It is worth noting that "pleasure," "satisfaction," and "affirmative sexuality" were not part of the language proposed by women's groups at either PrepCom. Petchesky observes, "Feminists weren't thinking about pleasure very much at that time. Both heterosexual and lesbian feminists were focused on violations, including sexual violence and abuse, oppression, economic exploitation. It was more the LGBT movement that brought up 'pleasure' later, not feminists."[55]

These dimensions were brought into the draft document through the WHO definitions of reproductive health and sexual health, which included concepts such as "a satisfying and safe sex life," "a positive approach to human sexuality," and "the enhancement of life and personal relations." While these aspects met with some opposition from conservatives, they were not the focus of the Holy See's concern with paragraphs 7.1 and 7.2 at PrepCom III.[56] The Holy See was more preoccupied with removing references to "abortion," "fertility regulation," and "individuals," and replacing them with "couples" and "responsibilities," in an attempt to circumscribe the definitions of reproductive health, sexual health, reproductive rights, and sexual rights within a traditionally gendered, conjugal, heterosexual framework. By the end of PrepCom III, "abortion" had been placed in separate paragraphs, but "fertility regulation"

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[53] The Women's Caucus at PrepCom III. (1994, April 4). Draft Compilation of Proposed Revisions of the Draft ICPD Programme of Action. On file with the author.
[54] Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, p. 18. London: Zed Books
[55] Conversation with Rosalind Petchesky, December 20, 2005.
[56] Email communication by Berit Austveg, December 22, 2005.

and "individuals" remained, and the definition of sexual health stood on its own without being subsumed under reproductive health.[57] This led the Holy See to bracket "sexual and reproductive health" and "sexual and reproductive rights" throughout the draft.

In Cairo the negotiations proved arduous. Systematic opposition by the Holy See and a few of its Latin American allies to "sexual and reproductive health" and "sexual and reproductive rights" succeeded in keeping the phrase "sexual rights" out, confining the text of paragraph 7.3 to "reproductive rights." Corrêa recalls an explicit trade-off as it became clear that "sexual rights" would not be agreed: "We had a group of activists who were very passionate about sexual rights and other actors, mostly governments, who were using sexual rights as a trade-off for reproductive rights. This was very clear; the sexual rights language was kept in the text to be traded off for reproductive rights."[58]

With regard to sexual rights language, "respect for the security of the person and the integrity of the physical body" was transformed into "full respect for the physical integrity of the human body" and moved to paragraph 7.34 on human sexuality and gender relations, which did not deal with rights. This paragraph would become the source of the second sentence in paragraph 96 of the Beijing Platform for Action a year later. However, paragraph 7.2 on reproductive health retained "safe and satisfying sex life" as a precondition.

"Sexual health" was harder for the Holy See to combat given the growing HIV/AIDS pandemic. Progressive Latin American countries like Brazil expressed support for the concept, as did Bangladesh, Pakistan, and a number of sub-Saharan African countries. Yet by characterizing sexual health as condoning "immoral" sexual behavior, particularly extramarital sexual relations, the Holy See was instrumental in keeping sexual health subordinated to reproductive health and thus within the heterosexual (and presumably married) realm. The "positive approach to sexuality" required for sexual health was also taken out and the WHO definition of sexual health substantially cut:

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[57] United Nations. (1994, May 13). Draft Programme of Action of the International Conference on Population and Development. (Doc. A/CONF.171/L.1, para 7.1).

[58] Conversation with Sonia Corrêa, April 12, 2005.

"7.2. Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. ...In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques, and services that contribute to reproductive health and well being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases."

Various other references to sexuality remained in the ICPD Programme of Action, most of which frame sexual relations as heterosexual and emphasize aspects of sexuality related to disease and violence.[59]

Beijing and sexuality

Coming out of ICPD and moving towards the Fourth World Conference on Women in Beijing, many feminist activists were, in the words of Inder, "going with the unfinished business of sexual rights on the agenda. There was no doubt about that!"[60] While there seemed to be little time and space for progressive women's groups to strategize about sexuality for Beijing, an agenda and a plan had been crafted, as confirmed by Careaga: "When we arrived in Beijing, we were much more organized for sexual rights and sexual orientation than we were in Cairo."[61]

The work had started at the High-Level Regional Preparatory Meeting for the Economic Commission for Europe (ECE), held in Vienna in October 1994 in preparation for Beijing. There, European and North American women's groups had lobbied their governments to ensure that the final regional report would highlight sexuality. The language agreed was the precursor to

[59] ICPD Programme of Action, paragraphs 7.3, 7.34, 7.35, 7.36, 7.38, 7.41.
[60] Conversation with Brigid Inder, May 19, 2005.
[61] Conversation with Gloria Careaga, October 6, 2005

the eventual sexual rights paragraph in the Beijing Platform for Action and for some of the unsuccessful language on sexual orientation:

> "2. …(a) The human rights of women are an inalienable, integral and indivisible part of universal human rights and must therefore be promoted, protected and realized at all stages of the life cycle — childhood, adolescence, adulthood and old age — and must further reflect the full diversity of women, recognizing that many women face additional barriers because of such factors as their race, language, ethnicity, culture, religion, sexual orientation, disability, socio-economic class or status as indigenous people, migrants, displaced people or refugees;

> 27. Human sexuality and gender relations are closely interrelated and together affect the ability of women and men to achieve and maintain sexual health and manage their reproductive lives. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual respect and willingness to accept responsibility for the consequences of sexual behavior. In this respect, women's reproductive rights and sexual rights are often not respected and sometimes not yet recognized.

> 86. Governments and non-governmental organizations should, as appropriate, promote equal relationships between women and men in matters of sexual relations and reproduction. Governments should ensure the implementation of the right of all human persons to full respect of the physical integrity of the human body. In this respect, Governments should take action to ensure that women's reproductive rights and sexual rights are fully recognized and respected."[62]

The other regional meetings held by the UN in preparation for Beijing did not raise "sexual rights" or "sexual orientation" but "sexual health" and "knowledge of human sexuality" were included in the Latin American report by consensus. This came after a protracted negotiation where Argentina, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras,

[62] United Nations. (1995, January 6). Regional Platform for Action: Women in a Changing World - Call for Action from an ECE Perspective. Adopted at the High-level Regional Preparatory Meeting of the Economic Commission for Europe, held at Vienna, October 17-21, 1994. (Doc. E/CN.6/1995/5/Add.4).

Nicaragua and Peru took reservations on reproductive rights, and the United States on the negative effects of the debt burden and structural adjustment programs.[63] The Organization of African Unity (OAU), under the leadership of Senegal, agreed to the language of sexual rights in its regional preparatory meeting. As noted by Klugman, "African ministers had accepted the terminology of sexual rights on the basis of its importance in the context of HIV/AIDS and violence on the continent. They recognized that addressing unequal sexual and power relations between men and women was a central prerequisite for preventing HIV/AIDS and responding to violence against women…"[64]

In the fall of 1994, the International Gay and Lesbian Human Rights Commission (IGL-HRC), a U.S.-based group, organized a petition to "put sexuality on the agenda" of the Beijing Conference. The petition, which had garnered some 6,000 signatures of individuals and groups around the world by the time it was presented in Beijing, called on governments to "…recognize the right to determine one's sexual identity; the right to control one's body, particularly in establishing intimate relationships; and the right to choose if, when, and with whom to bear or raise children, as fundamental components of the human rights of all women regardless of sexual orientation."[65] The geographical and cultural diversity of those who signed the petition was impressive, and it succeeded in countering the notion that sexual orientation was "a Western or Northern issue,"[66] a main IGLHRC objective. IGLHRC also took the lead in organizing the Lesbian Tent at the NGO Forum held in connection with the conference. Many organizations worked in close partnership with IGLHRC during that time, notably the International Lesbian and Gay Association (ILGA), the Center for Women's Global Leadership, and *El Closet de Sor Juana* of Mexico.

In the period leading up to PrepCom III in March 1995, key women's health advocates lobbied for sexual rights separately from reproductive rights. The reactions of conservatives in Cairo

[63] United Nations. (1995, January 6). Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001, adopted by the Sixth Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean (Doc. E/CN.6/1995/5/Add. 3). Mar del Plata, Argentina, September 20-25, 1994 and Santiago, Chile, November 16-18, 1994.

[64] Klugman, B. (2000). Sexual rights in Southern Africa: A Beijing discourse or a strategic necessity?. *Health and Human Rights*, vol. 4, no. 2, p. 152.

[65] International Gay and Lesbian Human Rights Commission. (1995). Put Sexuality on the Agenda at the World Conference on Women, Beijing Campaign. On file with the author.

[66] Fried, S.T. & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin & D. Koenig, (Eds.) *Women and international human rights*, vol. 3, Toward Empowerment, p. 119. Transnational Publishers.

to "sexual rights" and "families" had started a process of reflection that was taking feminists in new directions. Looking back on it, Petchesky concludes, "Beijing was the pivot, the moment where our thinking about sexuality shifted. The Vatican's reactions and anticipatory attacks made us think. It was a dialectical process, and in that process concepts were developed."

While sexual orientation was explicit in this evolving concept of sexual rights,[67] health activists did not emphasize it. Sexual rights applied to "all women and men," and were part of universal human rights, so their advocacy materials focused on violations, as in, "Recognition of sexual rights will ensure that women and girls are not subject to… unwanted sexual relations… physical, sexual and psychological violence… coercive or unsafe contraceptive practices… unwanted medical interventions… discrimination… transmission of… HIV/AIDS… systematic rape…" But they did put forward some affirmative aspects of sexual rights, like access to health services and information, and the "right to make decisions concerning sexuality and reproduction…" Pleasure, satisfaction and expression were still not mentioned.

If, as Foucault believed, "[T]he real strength of the women's liberation movements is not that of having laid claim to the specificity of their sexuality and the rights pertaining to it, but that they have actually departed from the discourse conducted within the apparatuses of sexuality…"[68] that vision was already bending to the realities of intergovernmental negotiations.

At PrepCom III "sexual rights" and "sexual orientation" were both put forward by women's groups as part of a common strategy forged out of the experience of Cairo. Lesbian activists wanted visibility, and organized a separate Lesbian Caucus. But feminist, human rights and lesbian activists worked in alliance and the tensions experienced in Cairo, while not completely absent, were less pronounced. Health groups (which included some lesbians) were in charge of sexual rights, and the Lesbian Caucus and human rights groups took the lead on sexual orientation, with a few activists acting as a bridge between the various groups.

Placement of the language on sexual orientation was carefully considered from a conceptual point of view akin to a Foucauldian "reverse discourse." As noted by Careaga, "The decision to put sexual orientation under human rights was made because lesbians are stigmatized as a re-

[67] See, for example: International Women's Health Coalition (1995). *Fact Sheet on Sexual Rights*, available at www.iwhc.org.
[68] Foucault, M. (1980). In C. Gordon, (Ed.) *Power/knowledge: Selected interviews and other writings*, p. 219. Pantheon.

sult of their sexuality; they become 'perverts' and 'abnormal.' We wanted to be seen as women with our own rights, in other fields. We didn't want to be defined only by sexuality."[69]

But strategic considerations were also important Careaga recalls. "We did not want sexual orientation in the Health chapter because we knew that conservatives were going to put all their forces to work on that chapter, which contained abortion. So we put it in the chapters on Human Rights and Employment."[70]

So it was that Canada and the European Union introduced sexual orientation in four paragraphs of the draft Platform for Action, two of them declarative (preamble of the Strategic Objectives section and chapter on Human Rights), and two action-oriented (chapters on Human Rights and Economy).[71]

The language on sexual rights was proposed by the European Union for placement in the Health chapter partly because of its genealogy in the ICPD Programme of Action (it was originally in the paragraph on reproductive rights), and partly because of its justification in relation to HIV/AIDS. That ancestry also influenced its initial formulation, which referred to the sexual rights of the individual (male or female), rather than of women only. The draft paragraph did not refer specifically to human rights, leaving it open to an interpretation that sexual rights were less than human rights. In addition the paragraph contained a sentence on the equal relationships between men and women from the ICPD Programme of Action (paragraph 7.34). In that sense, what would become paragraph 96 was already "heteronormatized:"

> "97. (*Sexual rights include the individual's right to have control over and decide freely on matters related to her or his sexuality, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual consent and willingness to accept responsibility for the consequences of sexual behavior.*)"

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[69] Conversation with Gloria Careaga, October 6, 2005.
[70] *Ibid.*
[71] United Nations. (1995, May 24). Draft Platform for Action, Doc. A/CONF. 177/L.1, paras. 48, 226, 232(h), 180(b).

Corrêa observes, "We did not really react to the second sentence at that time. Only after Beijing did we consider its implications."[72]

The Holy See and a handful of its conservative allies (notably, Honduras, Sudan and Malta) launched a counteroffensive of their own at PrepCom III. Predictably, they repeated their objections to ICPD-agreed language on sexual and reproductive health and reproductive rights, and opposed sexual rights and sexual orientation. The surprise came in the third week of the PrepCom (and after sexual orientation and sexual rights had already been introduced in the draft), when the alliance began contesting the use of the term "gender" throughout the document. Many activists and governments were caught off guard by the Holy See's request for definitions or deletion of the term; the word "gender" had been agreed by governments many times before (as recently as Cairo and Copenhagen), and appeared in dozens of paragraphs in the draft Platform.[73]

"They came at us with something we didn't expect," said Petchesky. "Many of us thought: what are they TALKING about? We had to ask ourselves: what do WE think about it? We had to explain gender to ourselves and to others."[74]

North American right-wing groups jumped into the fray with arguments linking gender to homosexuality and to a state takeover of maternity, and accusing feminist groups of promoting five genders. A pamphlet from the Coalition for Women and the Family stated, "Unfortunately there is a 'gender feminism,' often homosexual, which strongly promotes the idea that gender is something fluid, changing, not related naturally to being a man or being a women. According to such feminist/homosexual ideology, there are at least five genders!"[75] An article in *The Arlington Catholic Herald* picked up the charge: "The coupling of 'five genders' with the reproductive tools of contraception, abortion and sterilization that are marketed as the 'empowerment of women' results in a 'state-owned womb.' As is evident among anti-life

[72] Conversation with Sonia Corrêa, April 12, 2005.

[73] Fried, S.T., & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin, & D. Koenig, (Eds.) *Women and international human rights, vol. 3, Toward empowerment*, p. 111. Transnational Publishers.

[74] Conversation with Rosalind Petchesky, December 20, 2005.

[75] Coalition for Women and the Family, Note concerning the term "gender." On file with the author.

forces throughout the world, verbal manipulation precedes social manipulation."[76] This accusation was apparently based on a 1993 article in which Anne Fausto-Sterling had argued for replacing the two-sex system with a five-sex one (female, male, "true" hermaphrodites, male "pseudo-hermaphrodites," and female "pseudo-hermaphrodites").[77]

Yet the Holy See's arguments about the "hidden meaning" of gender highlighted its understanding of contemporary debates about sexuality. While most governments and feminist activists at the negotiations were in fact using "gender" in accordance with contemporary political usage, as a proxy for "women," the Holy See recognized the far-reaching implications of detaching social roles, identities and expressions from biological sex. They understood Fausto-Sterling's point that "if nature really offers us more than two sexes, then it follows that our current notions of masculinity and femininity are cultural conceits."[78]

While the Holy See (and right-wing NGOs) emphasized the link between gender and homosexuality, they also linked gender with transsexuality, thereby moving beyond sexual orientation. As noted by Judith Butler, "The term 'gender' has become a site of contest for various interests … Discrimination against women continues – especially poor women and women of color – so this dimension of gender discrimination remains crucial to acknowledge. But gender now also means gender identity, a particularly salient issue in the politics and theory of transgenderism and transsexuality."

Was this a preemptive move by the Holy See against future claims based on gender identity and gender expression? It certainly was an acknowledgement that fluid or multiple gender identities or expressions (transgender, cross-gender, queer) bring into question the very notion of binary categories, like "woman/man" or "femininity/masculinity," and of preordained social roles.

Faced with this, the Holy See and its allies clearly meant to reaffirm the idea of "woman" and re-essentialize her as wife and mother. Butler concludes, "If the Vatican seeks to re-

[76] Laird, G. (1995, May 4). Verbal manipulation and the World Conference on Women, *Arlington Catholic Herald*, p. 10.

[77] Fausto-Sterling, A. (1993). The five sexes: Why male and female are not enough. *The Sciences*, March-April, pp. 20-24.

[78] Fausto-Sterling, A. (2000). *Sexing the body: Gender politics and the construction of sexuality*, p. 31. Basic Books.

place the language of gender with the language of sex, it is because the Vatican wishes to rebiologize sexual difference, that is, to re-establish a biologically narrow notion of reproduction as women's social fate."[79]

In a speech to the PrepCom, Abzug addressed that specific objective head on, while leaving aside the broader question of gender identities and what is "woman:" "We will not be forced back into the 'biology is destiny' concept that seeks to define, confine, and reduce women and girls to their physical sexual characteristics… In the present context, 'gender' recognizes the multiple roles that females fill through our life cycles, the diversity of our needs, concerns, abilities, life experiences, and aspirations."[80]

At the end of PrepCom III, a Contact Group of governments, chaired by Namibia, was charged with reaching agreement on a definition of gender. Rather than delve into these debates, the Contact Group defused the issue by declaring, "'Gender' as used in the Platform for Action was intended to be interpreted and understood as it was in ordinary, generally accepted usage."[81]

The ultra-conservative U.S.-based Family Research Council was left to "hope the commonly accepted meaning of gender in the United States remains that which acknowledges the biological classifications of male and female,"[82] while the Holy See took a reservation: "The term 'gender' is understood by the Holy See as grounded in biological sexual identity, male or female… The Holy See thus excludes dubious interpretations based on world views which assert that sexual identity can be adapted indefinitely to suit new and different purposes."[83]

But the Holy See had advanced one of its objectives: to create "a general nervousness about the existence of a feminist/lesbian agenda" and therefore constrain the possibilities

[79] Butler, J. (2004). *Undoing gender*, p. 185. Routledge.
[80] Quoted in: Butler, J. (2004). *Undoing gender*, p. 182. Routledge.
[81] United Nations. (1995, October 27). Statement by the President of the Conference on the commonly understood meaning of the term "gender." *Report of the Fourth World Conference on Women*, Doc. A/CONF.177/20/Add. 1, Annex IV.
[82] Family Research Council. (1995, August 21). *Reinventing family values in Beijing*.
[83] United Nations. (1995, October 27). Adoption of the Beijing declaration and Platform for Action, *Report of the Fourth World Conference on Women*, Doc. A/CONF.177/20/Add. 1, chapter V.

for advocating sexual orientation or sexual rights.[84] North American right-wing groups had distributed multiple leaflets that equated sexual rights and sexual orientation with "behaviors which are unhealthy" and "which everyone knows spread HIV/AIDS" in addition to being "illegal, immoral, contrary to religious beliefs and cultural traditions." The leaflets asked whether sexual rights and sexual orientation included "pedophilia, prostitution, incest, and adultery."[85] These groups had also launched a virulent attack against the Canadian delegation for introducing sexual orientation into the draft.

In Beijing, the Holy See adopted a lower profile than in Cairo or at PrepCom III. Rather than taking the lead it worked closely with its conservative Catholic and Islamic allies, putting forward arguments that centered on the preservation of the traditional family and the rights of parents.

"I regret that we did not photograph the mullahs and the Vatican priests, in the UN corridors and the hotels, sitting and preparing their joint texts together," says Gerd Johnsson-Latham, who was on the Swedish delegation and negotiated the language on the family.[86]

The Holy See also sought to frame its views in light of the "equality in dignity of women," which "requires respect for the roles of women whose quest for personal fulfillment and the construction of a stable society is inseparably linked to their commitments to God, family, neighbor and especially to their children."[87]

The North American right-wing groups that had been active at PrepCom III continued their strident campaign against sexual rights, equating them with pedophilia and making ample use of references to all the "perversions" created by nineteenth-century psychiatry.

Negotiations on sexual rights and sexual orientation proceeded on two separate tracks, with different negotiators in different rooms. In the small room where sexual rights was be-

[84] Fried, S.T. & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin, & D. Koenig, (Eds.) *Women and international human rights, vol. 3, Toward empowerment*, p. 112. Transnational Publishers.

[85] Coalition for Women and the Family. *Sexual rights and sexual orientation: What do these words really mean?"* On file with the author.

[86] Conversation with Gerd Johnsson-Latham, October 28, 2005.

[87] Holy See Statement of Prof. Mary Ann Glendon, Head of the Delegation of the Holy See to the Fourth World Conference on Women, Beijing, 5 September 1995.

ing negotiated Guyana chaired the discussions and the EU, South Africa and Iran played active roles. Domestic electoral considerations weighed on the U.S. delegation, which was supportive but not in the lead as in Cairo. Relying on the OAU position, African delegations (with the exception of a few like Benin and Morocco) consistently supported the language of sexual rights. However, interpretation of what this entailed differed; while South Africa clearly supported the inclusion of sexual orientation in the Platform and understood that sexual rights covered sexual orientation, other supportive African delegations did not.

Klugman, who was on the South African delegation in Cairo and Beijing, observes, "Had the African delegations understood sexual rights to mean rights to gay relationships, they would have retracted their support as a result of their own prejudices."[88]

She adds: "Sexual rights was not at all [for the African delegations] about control of sexuality per se, or pleasure, or sexual orientation, except for South Africa. It was HIV and violence against women, which are huge development and human rights challenges in Africa. Let's be clear: getting [paragraph] 96 required obfuscation of the sexual orientation issue."

As the debates continued some EU delegates (who Johnsson-Latham confirms were heavily lobbied by lesbian activists) began making arguments for sexual rights exclusively on the basis of sexual orientation. As Klugman recalls, "The EU hadn't come in with a worked-out agenda for sexual rights. They hadn't discussed what [it meant]. We were faced with the particular development of a concept in a certain [European] context, a certain society, where 'sexuality' has come to mean 'gay.'"

In the end, paragraph 96 was successfully negotiated and resolved a few days before the end of the conference, and not in a direct trade-off against anything else. The result of this negotiation was a paragraph about the right of women to have control over matters related to their sexuality and without the words "sexual rights." "Men" and "adolescents" were out. The reference to "physical integrity of the human body" from Cairo was deleted and replaced with the "integrity of the person."

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[88] Klugman, B. (2000). Sexual rights in Southern Africa: A Beijing discourse or a strategic necessity? *Health and Human Rights,* vol. 4, no. 2, p. 153.

96. *"The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent, and shared responsibility for sexual behavior and its consequences."*

The outcome was a result of strong support from sub-Saharan Africa, especially South Africa and Senegal, as well as the Caribbean and a number of Latin American countries like Brazil and Mexico, along with the leadership of Ambassador Merwat Tallawy of Egypt in the larger contact group on Health. Iran's Vice President for Women's Affairs, Shahla Habibi, who headed the Islamic Republic's delegation, claimed that Iran was responsible for the deletion of the phrase "sexual rights" from the document, but Iranian diplomats were, in fact, key to securing an agreement that left intact the content of the paragraph.[89]

There is no doubt that paragraph 96 was a great achievement in the circumstances. As Johnsson-Latham notes, "In 1995, we took ourselves by surprise, and we took our opponents by tremendous surprise!"[90]

Susana Fried says the work done over the previous years paid off. "The possibility of sexual rights in Beijing came about because we had talked about violence against women and violations with respect to sexuality in Vienna. We had brought women's bodies into the picture. This was crucial for how we were able to move the issue forward, through Cairo, Copenhagen and then at Beijing."[91]

In the end, 20 countries (overwhelmingly Muslim) issued reservations or made interpretive statements on paragraph 96 or the term "sexual rights," as compared with 21 reservations on "sexual and reproductive health" and "reproductive rights" in Cairo.

[89] Qureshi, A. (1995, October). The 1,000-mile journey begins: Fourth World Conference on Women in Beijing. *The Minaret: America's Source on Islam*; Conversation with Ellen Marshall, June 13, 2005.
[90] Conversation with Gerd Johnsson-Latham, October 28, 2005.
[91] Conversation with Susana Fried, May 25, 2005.

On the other front, mention of "sexual orientation" was not agreed even in paragraphs that were merely statements of fact about the barriers women face to the realization of their rights. The final reference to sexual orientation was taken out on the last night of the conference in a trade-off against language, in the framework of the Platform, which would have conditioned human rights to religious values and cultural backgrounds. The existing agreement on sexual rights made this trade-off more palatable.

"The fact that paragraph 96 had already been agreed allowed governments that had wanted sexual orientation as well as strong language on human rights, to let sexual orientation go," says Fried.

Klugman confirms the point. "We recognized that sexual orientation was not going to be possible, but that we had something else that could work."[92]

Nonetheless it was the first time the language had been discussed by government delegations at a UN Conference, and the discussions were substantive not only procedural. Careaga says, "This was a success for us because there were four or five days of discussion on sexual orientation. Beijing, so far, has been the only space where governments have spent so much time on this subject."[93] Klugman agrees. "It was an enormous victory that it had been discussed at all."[94]

On the penultimate day of the conference, Palesa Beverley Ditsie, a South African representative of the Lesbian Caucus, addressed the plenary on the situation of lesbians and the importance of guaranteeing their human rights. During that debate, opposition to mention of sexual orientation was voiced by the Holy See, some Catholic countries and a number of Islamic countries. Sudan and Yemen made especially virulent statements against homosexuality. Some sub-Saharan African governments also opposed it, notably Benin, Cote d'Ivoire, and Uganda. Even Senegal, which actively supported paragraph 96, objected. But, to the surprise of many, mention of sexual orientation was supported by more than 30 countries, including

[92] Conversation with Barbara Klugman, September 16, 2005.
[93] Conversation with Gloria Careaga, October 6, 2005.
[94] Conversation with Barbara Klugman, September 16, 2005.

South Africa, Barbados, Jamaica, Cuba, Bolivia, Brazil, Chile, Columbia, Venezuela, the 15 countries of the European Union, Slovenia, Norway, Canada, the U.S., Australia, New Zealand, Israel, and the Cook Islands. South African Health Minister, Nkosazana Zuma, made a particularly strong appeal for inclusion of sexual orientation in the Platform for Action by calling for an end to all forms of discrimination.

At the time, activists were profoundly disappointed. Says Fried, "I remember bring crushed about what happened around sexual orientation. I felt that paragraph 96 was a poor substitute."[95]

But the intervening years have led to a re-evaluation. Now Fried says, "Paragraph 96 serves me much better than I expected. I have become critical of identity frameworks. Now I feel it is more far-reaching than references to sexual orientation."[96]

The UN Commission on Human Rights, 2003 and 2004

Eight years later, in April 2003 at the Commission on Human Rights in Geneva, Brazil took activists and other governments by surprise by proposing a resolution entitled, Human Rights and Sexual Orientation, and modeled on the Universal Declaration of Human Rights. Brazil had not consulted with other potentially supportive governments beforehand, and had not invited to Geneva civil society organizations that could support its resolution.

From Brazil's point of view, presenting this resolution was a natural follow-up to its recent positions at the global level – it had been supportive of sexual rights and sexual orientation in Beijing and led the way in pushing (unsuccessfully) for sexual rights at the UN's first five-year progress review of the Beijing Platform for Action (known as Beijing+5) in 2000. Brazil had strongly supported mention of "men who have sex with men" (MSM) in the 2001 Declaration of Commitment on HIV/AIDS. It had also played a leading role in advocating for "sexual orientation" at the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, where Brazilian civil society organizations were highly visible and active. Brazil was therefore an eminently legitimate banner

[95] Conversation with Susana Fried, May 25, 2005.
[96] *Ibid.*

carrier for sexual orientation at the UN. Nevertheless, the absence of consultations created tensions that would continue to play themselves out over the next two years.

"Some governments, like Sweden and Canada, had felt ownership of the issue, and were not happy to see Brazil taking their leadership role without consultation," says Suki Beavers of Action Canada for Population and Development.[97]

"The Brazilians didn't do ground work with other governments, didn't even share their draft … They were very capable individuals, very enthusiastic, spontaneous … It's OK to surprise your opponents, but not your allies," observes Inder.[98]

Moreover, the CHR had adopted several times since 2000 a resolution presented by Sweden on Extra judicial, summary or arbitrary executions (EJEs), which explicitly mentioned sexual orientation.[99] In addition, there had been a number of resolutions on sexual violence and Special Rapporteurs to the CHR mentioned issues of sexuality regularly in reports.

Fried says, "Sweden's view was that they had made steady progress working with the Special Rapporteur [on Extra judicial, summary and arbitrary executions] to get issues of sexual orientation, sexual rights and gender identity… translated into resolutions in a more organic way."[100]

The Brazilian diplomats in Geneva saw non-discrimination on the basis of sexual orientation as a simple expression of the general principle of non-discrimination in human rights. By their own admission, these diplomats simply jumped in with the resolution with little expectation of opposition.

Frederico Duque Meyer recalls, "When we announced the resolution, we never thought the reaction would be so strong. To be frank, this reaction was a great surprise to us!"[101]

[97] Conversation with Suki Beavers, September 27, 2005.
[98] Conversation with Brigid Inder, May 19, 2005.
[99] See, for example: United Nations, Commission on Human Rights, Resolution on Extra judicial, summary or arbitrary executions, doc. E/CN.4/RES/2000/31.
[100] Conversation with Susana Fried, May 25, 2005.
[101] Conversation with Frederico Duque Meyer, October 4, 2005.

After the initial surprise Amnesty International, Action Canada for Population and Development, and other NGOs present, rushed to build what support they could for the resolution. Informal discussions were held with activists and many governments (Islamic countries did not take part), and the resolution was rewritten by the EU, with NGO input, as a much shorter text that focused on the universality of rights, the existence of violations, and, consequently, the importance of non-discrimination on the basis of sexual orientation. Activists asked that gender identity be included in the resolution but Ireland's apparent opposition precluded this. Neither did the resolution refer to sexual rights, the right to control matters related to sexuality, or the integrity of the body, all concepts that had been adopted or debated in Cairo and Beijing – evidence of the silo effect of UN negotiations, and of the small contingent of experienced negotiators at the CHR with Beijing or Cairo experience.

Brazil cosponsored the resolution with Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. Croatia, Cyprus, New Zealand, Poland, Serbia and Montenegro, Slovenia, and Switzerland subsequently joined the sponsors (27 in all). The resolution expressed "deep concern at the occurrence of violations of human rights in the world against persons on the grounds of their sexual orientation" and emphasized "that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question, and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation." It also called on all states "to promote and protect the human rights of all persons regardless of their sexual orientation," and requested the UN High Commissioner for Human Rights "to pay due attention to the violation of human rights on the grounds of sexual orientation."[102]

Strong opposition to the resolution was quickly raised by Pakistan purporting to speak on behalf of the Organization of the Islamic Conference group in Geneva, even though the OIC does not adopt positions on sexuality and social matters. According to Meyer, the ambassador of Pakistan denied the existence of homosexuality in his country, and argued, "If there are homosexuals in your country, you should pass a national law not a resolution at

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[102] UN Commission on Human Rights, 59th session, Human rights and sexual orientation: draft resolution, doc. E/CN.4/2003/L.92

the United Nations."[103] The Holy See joined Pakistan in opposing the text, arguing it could condone pedophilia.

The Brazilian diplomats were surprised. Says Meyer, "It was obvious we were not defending pedophilia. But Brazil had not anticipated this line of argument."[104]

Meyer also noted opposition from some sub-Saharan African countries. "One African diplomat told the Brazilian ambassador that there are no homosexuals in their countries; that this is something that came with the white man."[105]

Action on the resolution was confined to aggressive procedural maneuvering, with little substantive debate – Pakistan, Saudi Arabia, and others introduced amendments to the resolution that would have completely changed its nature and repeatedly raised dubious points of order (for instance, a no-action motion was put forward by Pakistan), and Pakistan and Syria brought significant pressure to bear on the Chairwoman of the Commission, Najat al-Hajjaji of Libya, to bar consideration of the resolution. Moreover the Holy See was reported to be telephoning Latin American capitals to secure abstentions or a vote against the resolution.[106] In the end, consideration of the resolution was postponed to the 2004 CHR.

The 23 CHR members voting in favor of postponement included: Algeria, Argentina, Bahrain, Burkina Faso, Cameroon, China, Democratic Republic of Congo, Gabon, India, Kenya, Malaysia, Pakistan, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Sudan, Syria, Thailand, Togo, Uganda, Vietnam, and Zimbabwe. Seventeen members voted against postponement: Austria, Belgium, Brazil, Canada, Croatia, France, Germany, Guatemala, Japan, Mexico, Poland, Republic of Korea, Sweden, Ukraine, the UK, Uruguay, and Venezuela. Ten countries abstained: Armenia, Australia, Chile, Costa Rica, Ireland, Paraguay, Peru, Russia, South Africa, and notably, the U.S. But it was close; if voting had been allowed, many observers

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[103] Conversation with Frederico Duque Meyer, October 4, 2005.
[104] *Ibid.*
[105] *Ibid.*
[106] For example, see in this publication: Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, p. 25.

believe the resolution could have passed by one vote. In contrast, the annual resolution on EJEs passed with its usual mention of sexual orientation.

In preparation for the 2004 CHR, international human rights groups, sexual and reproductive health groups, and LGBT groups organized a meeting to review events and to mobilize support for the resolution.

"Even before the CHR was over we thought of bringing together a broad-based coalition. The aim was good, but possibly too ambitious. We had lots of groups who had never worked together, who had different goals and different perspectives," recalls Suki Beavers.[107]

The meeting brought together sexual and reproductive health groups and advocates who had been active in Beijing, international human rights organizations, and Brazilian LGBT groups. While some of those present had been key players in Cairo and Beijing, there was limited awareness of those past struggles in the group as a whole.

This diverse group managed to reach agreement to push for inclusion of gender identity in the sexual orientation resolution. Sexual and reproductive health activists pressed others present to focus on the sexual orientation resolution as well as on resolutions on health or the rights of the child where issues of sexuality could appear, but agreement on this strategy remained elusive. It was also decided to seek greater visibility for LGBT activists through side events, panels, and statements to the Commission.

As the 2004 CHR approached Pakistan once again sprang into action, claiming to speak on behalf of the OIC as Coordinator of Human Rights and Humanitarian Issues. In February 2004, Ambassador Shaukat Umer of Pakistan sent a letter to all the other ambassadors in Geneva warning them that reactivating the resolution would "re-ignite the divisions" of the previous year, and raising multiple arguments against it. After stating that sexual orientation had never been defined at the UN (but admitting that it had been mentioned in UN documents, although "hardly ever"), he claimed that sexual orientation as a human right or basis of discrimination is "not enshrined in the UDHR and subsequent instruments, resolutions,

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[107] Conversation with Suki Beavers, September 27, 2005.

conventions and mechanisms." (He omitted to mention the 1994 decision of the Human Rights Committee in Toonen).

Ambassador Umer then claimed that "all minorities who could possibly be marginalized in society have been identified in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities," even though the Declaration, as its name implies, is far from exhaustive. Leaving aside legal arguments, Ambassador Umer made the predictable charge that sexual orientation may encompass "grossly errant behavior like pedophilia." He went on to state that sexual orientation is not a human rights issue but is related to "social values and cultural norms" and should therefore be dealt with in the social and legal parameters of individual countries. The ambassador also brought up the "concept of the traditional family," which, he said, "Muslim people, like the adherents of all other faiths," cannot abandon. He concluded with the assertion that adoption of this resolution would "cause serious offense to the religious values of 1.2 billion Muslims as well as to the followers of other religions and faiths around the world."[108]

A few days later, the Permanent Mission of the Holy See to the UN in Geneva issued its comments on the proposed resolution repeating most of its previous arguments but focusing on the supposed threat the resolution would present to heterosexual marriage and to children. The Holy See was particularly concerned that the resolution could be used to claim adoption rights for "unisexual households."[109] (The repeated use by the Holy See of the word "unisexual" should be mentioned since the Holy See does use "heterosexual" in the same Note). Indeed, the wording of the resolution clearly left open the possibility that the "right to marry and to found a family" (in Article 16 of the Universal Declaration of Human Rights) should be available to all without discrimination on the basis of sexual orientation.

As Meyer points out, "The Holy See was vociferous on family, marriage. They don't deny homosexuality exists; they have the same Western concept of it as we do."[110]

[108] Letter from Ambassador Shaukat Umer, Permanent Mission of Pakistan to the United Nations in Geneva, to other ambassadors, February 26, 2004. On file with the author.
[109] Permanent Mission of the Holy See to the United Nations in Geneva. Note on the Project of Resolution of the United Nations Commission on Human Rights concerning "sexual orientation" and discrimination, March 1, 2006. On file with the author.
[110] Conversation with Frederico Duque Meyer, October 4, 2005.

At the start of the 2004 CHR, to the consternation of LGBT and sexual health activists, Brazil announced it would not proceed with the resolution. In a press statement Brazil showed just how much it had retreated: "Brazil considers that the treatment of any issue in the Commission should not lend itself to exploitation of a political nature nor should it generate controversies with communities and countries with which we hold deep links of friendship."[111]

As Fried recalls, "In 2004, as we got to the CHR, Brazil disappeared on us. They told us they didn't want a discussion that divides rather than unites."[112]

Tremendous pressure had apparently been placed on Brazil by OIC states, which threatened to boycott a trade summit Brazil was due to host later that year. The Holy See also mobilized domestic channels of pressure on the Brazilian government. Inder says, "The year between 2003 and 2004 gave conservatives the time to organize, find other issues as trade-offs. They raised fears about sexual orientation in other UN meetings, like the [Commission on Population and Development] in [March] 2004, and the Fifth Committee."[113]

In the event, no other country was willing to step in. The EU refused to take the lead on the grounds that a Southern country should take forward the resolution. South Africa, which has a constitution that expressly mentions sexual orientation, would not sponsor the resolution, disappointing many who remembered the strong support of the South African delegation in Beijing. Things moved very fast, and activists, who attended in large numbers, had little time to react.

John Fisher of ARC International notes: "Brazil said it was concerned that the EU did not want to support the resolution, but it did not give us much time to pressure the EU. We had no chance to explore alternative strategies."[114]

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[111] Permanent Mission of Brazil to the United Nations, Geneva. Press Release. (2004, March 29). On file with author.

[112] Conversation with Susana Fried, May 25, 2005.

[113] At the March 2004 meeting of the UN Commission on Population and Development, conservative governments, led by Egypt, began to oppose re-affirmation of the 1994 ICPD Programme of Action by arguing that it would be tantamount to supporting same-sex marriage. The UN Fifth Committee, which happened to be meeting at the same time in an adjacent conference room, was debating same-sex partner benefits for UN employees from countries that recognized same-sex partner status or same-sex marriage in national law.

[114] Conversation with John Fisher, December 5, 2005.

Meanwhile, advocacy on other relevant resolutions proceeded. However, support from LGBT groups for sexual rights resolutions more broadly conceived did not materialize in spite of the December 2003 discussions in Rio de Janeiro. "The LGBT groups went only for the Brazilian resolution," remembers Careaga. "They were not aware of other issues. They learned a lot after 2004 but it was not an easy lesson. They were not experienced."[115]

Crucially, the LGBT groups did not extend their efforts to the resolution on the right to health, which was meant to welcome the report tabled by Paul Hunt, the Special Rapporteur on the Right to Health. This report, which contains the most complete analysis ever found in a UN document of what sexual rights entail, concludes: "[T]he Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty, or social interference."[116]

This lack of support from LGBT groups in the context of the resolution on sexual orientation, made it difficult to battle for the adoption of the resolution on the right to health. Egypt, the U.S. and the Holy See objected to language on sexual and reproductive health and to the content of Hunt's report. "As it became clearer that Brazil would not proceed the attack shifted to Paul Hunt. The other NGOs did not organize to support his work and protect him from the onslaught," says Beavers.[117]

Divisions between feminist activists and LGBT groups were also apparent. Careaga says, "The LGBT groups did not link with feminists, and feminists did not link with LGBT groups either. Feminists got involved with the Brazil resolution when they got to Geneva. Because of their experience, they could do both [Brazil resolution and other resolutions], but LGBT groups could not. They thought [feminists] were wasting their time, distracting them."[118]

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[115] Conversation with Gloria Careaga, October 6, 2005.

[116] United Nations, Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur, Paul Hunt*, doc. E/CN.4/2004/49, para 54.

[117] Conversation with Suki Beavers, September 27, 2005.

[118] Conversation with Gloria Careaga, October 6, 2005.

"None of them [LGBT] were working on the resolutions on HIV, education, violence against women, on sexuality as such," notes Hossam Bahgat.[119]

Fried concurs. "There was lots of disagreement on appropriate strategy. In general, national-level LGBT advocates focused on the resolution on sexual orientation while LGBT street-level activists wanted to focus on raising visibility at the CHR, and the more experienced human rights and feminist groups wanted to inject sexuality into various resolutions."[120]

The strategies discussed in Rio in December 2003 evidently had not met with general agreement. Feminist and sexual and reproductive health activists favored a broad approach that promoted sexual rights and sexual health across the board, building on the achievements of Beijing. LGBT groups had little interest at that point. Inder observes, "The tension between gender analysis and sexuality analysis came to the fore. It was difficult to maintain a gender analysis in the coalition. But at the December 2004 strategy meeting [organized by ARC in Geneva] the coalition moved to take positions we [feminists] had advocated; to look at sexual rights across all resolutions, not just the single resolution."[121]

This focus on getting the Brazil resolution through precluded an overall debate amongst activists about whether other language or approaches would be more useful. Fried says, "We may have constructed the issue too narrowly. Sexual orientation is too narrow. It may also be better not to seek a resolution, but go for other processes."[122]

"The resolution itself was not well conceived," says Bahgat. "The opposition said it led the way to marriage, and they had a point. We had been working on violence, torture, and discrimination as entry points, and that could work. But not marriage."[123]

Fisher concurs. "The anti-discrimination framework tends to raise questions around marriage and family, but NGOs have more core needs like freedom from violence and security.

[119] Conversation with Hossam Bahgat, December 23, 2005.
[120] Conversation with Susana Fried, May 25, 2005.
[121] Conversation with Brigid Inder, May 19, 2005.
[122] Conversation with Susana Fried, May 25, 2005.
[123] Conversation with Hossam Bahgat, December 23, 2005.

From my perspective, universality of rights should be the framework rather than non-discrimination. Many states don't accept that we have human rights."[124]

The homosexual archetype as conceived in Western sexuality has limited resonance for many activists in the global South. Bahgat relays his experience in the Middle East: "There is a problem with sexual orientation as a concept, with identity frameworks. In the region people don't identify as gay. Many have wives and children. In my country [Egypt], people don't get arrested for who they are, but for what they do; conduct is the issue. Of course, identity politics are still useful for activism but we need to look at other frameworks."[125]

Meyer says the debate was an eye-opener for the Brazil delegation. "We never thought about identity politics, how would that work for Africa. We discovered a lot of things we didn't know!"[126]

It seems clear that focusing the entire battle on sexual orientation instead of finding ways to step outside or transcend the Western sexuality discourse left LGBT activists with fewer options.

At the International Dialogue organized by ARC in Geneva in December 2004 activists and NGOs from around the world once again sought to reach a common approach. They endorsed the previously agreed strategy of working on a range of sexual rights issues and integrating sexual orientation and gender identity in a range of relevant thematic resolutions. They also endorsed the need to build support for a new resolution to be presented jointly by states from a variety of regions to demonstrate that sexual orientation was not only a Western issue, and to limit dependence on the willingness of any one government to proceed. In addition, activists reaffirmed the need to increase LGBT visibility at the CHR and educate governments to better understand the issues. But it was too late; the moment for the resolution on sexual orientation had passed. At the 2005 CHR Brazil confirmed it would not proceed with the resolution and no other country was willing to take it up. The resolution thus lapsed.

[124] Conversation with John Fisher, December 5, 2005.
[125] Conversation with Hossam Bahgat, December 23, 2005.
[126] Conversation with Frederico Duque Meyer, October 4, 2005.

Nonetheless, the advocates at the 2005 CHR were able to claim some progress. New Zealand delivered, on behalf of 32 countries from diverse regions, a strong statement against discrimination on the basis of sexual orientation. Interestingly, New Zealand characterized sexual orientation as part of identity and self: "Sexual orientation is a fundamental aspect of every individual's identity and an immutable part of self. It is contrary to human dignity to force an individual to change their sexual orientation, or to discriminate against them on this basis. And it is repugnant for the state to tolerate violence against individuals. All states must exercise due diligence to prevent, investigate, prosecute, and punish the perpetrators of violence committed against individuals because of their sexual orientation."[127] Another mark of progress: South Korea became the first Asian government to openly endorse non-discrimination on the basis of sexual orientation. And panels and presentations by activists from various parts of the world continued apace.

Many advocates question why the EU or Canada would not take over the resolution in 2004 or 2005. Legitimate questions about strategy seem to mesh with a certain degree of territoriality; in 2005 Sweden included gender identity in its annual resolution on EJEs, and Canada put sexual orientation and sexual rights in its annual resolution on violence against women.

"Do we really need a Southern country to present sexual orientation?" Bahgat asks. "Sweden presents its resolution on EJEs with sexual orientation every year and it passes."[128]

And yet, analysis by Northern NGOs of the EU's internal dynamics was probably insufficient. Observes Beavers, "The assumption was that the EU would be easily brought on board. But there was a failure to pay attention to EU dynamics, the internal paralysis. Northern groups are then surprised, but they shouldn't be. The EU always has that propensity unless they are lobbied hard."[129]

The debate over whether gender identity should have been included in the resolution remains unresolved. Some believe that this would have made the resolution even harder to pass, while others believe that to be a Northern construct of what the South thinks.

[127] United Nations, Commission on Human Rights, Statement by New Zealand Permanent Representative Ambassador Tim Caughley, 19 April 2005. On file with the author.
[128] Conversation with Hossam Bahgat, December 23, 2005.
[129] Conversation with Suki Beavers, September 27, 2005.

Bahgat says, "Including gender identity is the moral position but there is no way it would have passed. It's true that Egypt is not as antagonized by gender identity, but they would not support it because they understand it's part of the same agenda, politically."[130]

Says Beavers, "Many Northern NGOs thought gender identity was harder to accept. But I think that was not in fact true. In many Southern countries, gender identity is much easier to deal with. There was a failure to check assumptions from the start."[131]

The focus on the resolution on sexual orientation generated strong opposition by conservative governments to previously agreed concepts. According to Bahgat, "The resolution brought a significant backlash in 2004 and 2005, not just on sexual orientation but also sexuality, the International Guidelines on HIV/AIDS [and human rights], sexuality education, the resolution on Extra judicial, summary and arbitrary executions, and so on. In 2005 at the CHR even Beijing language on HIV was under attack; Canada and Sweden took sexual orientation, gender identity and sexual rights out of their resolutions before the vote. One of the Egyptian representatives at the CHR in 2005 told me we could not have the word 'sexuality' in the resolution on education because that implied gay marriage and sexual orientation."[132]

Fisher notes that references to sexual orientation or sexual rights in other resolutions became even harder to sustain in 2005: "[They] were no less controversial, and perhaps more, because they could not jeopardize other resolutions. Some states became reluctant to move forward (and) some mainstream human rights NGOs also shared their concerns."[133]

Yet the backlash may have begun even before that. The resolution on EJEs, which had been adopted with mention of sexual orientation without a vote in 2000, had to be voted on each year beginning in 2002 after the Special Rapporteur on EJEs, Asma Jahangir, highlighted the

[130] Conversation with Hossam Bahgat, December 23, 2005.
[131] Conversation with Suki Beavers, September 27, 2005.
[132] Conversation with Hossam Bahgat, December 23, 2005.
[133] Conversation with John Fisher, December 5, 2005.

number of persons killed because of their sexual orientation in her report to the CHR. In 2005, the EJEs resolution was adopted by a vote of 36 in favor, zero against and 17 abstentions, with the U.S., Egypt, Saudi Arabia and Pakistan among the abstainers.

Nevertheless, even if some regrouping might now be needed, attention to issues of sexual orientation and gender identity at the CHR has been raised to a higher level than ever before. Says Fisher, "Regardless of the outcome the resolution had a significant mobilizing effect. We have become aware of other entry points, and have an appreciation for the international system as a whole."[134]

The involvement of new groups in the UN's work on human rights will be a lasting legacy of the Brazil resolution. Another positive consequence is the greater awareness and understanding by governments and advocates of a range of issues related to sexuality.

Brazil's Meyer is unreservedly optimistic: "Everyone knows that one day we will pass this resolution. It's only a matter of time. We put this on the agenda of the UN, something that was not dealt with before. And those who 'don't know what it is' are forced to hear about it." And he does not believe the failure to pass the resolution has had negative effects. "If we had not done it, it would not have happened otherwise. We could have waited until 2030."[135]

Meanwhile, the demise of the CHR and its replacement by the new Human Rights Council in 2006 have put this and many other issues on hold at the UN.

Conclusion

While governments would not name sexual rights or sexual orientation in Beijing, the result and the process have proven more useful than anticipated. A change in norms has been underway in international law since then, as evidenced by the growing body of documentation and commentary on these issues at the UN and in regional human rights forums.

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[134] *Ibid.*
[135] Conversation with Frederico Duque Meyer, October 4, 2005.

Confronting homosexuality head on, while essential, remains difficult. Beijing and the CHR show that homophobes are not ashamed of speaking up. Homophobia *qua* homophobia, which is anchored in the Western experience of sexuality, has been transported to the developing world by colonialism and mixed in with new nationalisms and discourses and counter-discourses about tradition and culture. The refusal of South Africa to support the resolution on sexual orientation at the CHR, in spite of its own progressive constitution, shows what a potent mix this can be. Yet, because of the incomplete incorporation of the concepts, the reliance on gay/lesbian identity as an organizing tool continues to have only partial resonance with Southern activists.

Sexuality is an issue that progressive forces have put on the table at the UN; they are the ones who "put it in discourse." Conservatives have sought to obtain norms about sexuality in a covert way; they seek agreements about the family, marriage, the rights of parents, or trafficking but they would never have put the words "sexuality," "sexual health," and "sexual orientation" up for discussion.

For their part, feminists and lesbian and gay activists have been very proactive. The image of the lesbians and their banner in the Beijing plenary is an apt one; they dared to take action, even in places and at times when it was deemed "inappropriate" or "too early." This is worth considering when progressives face right-wing opposition today, feel embattled and put on the defensive by their attacks. On sexuality, the right wing is operating on the ground progressives laid out, not the other way around.

In Beijing and at the CHR, the initial impulse of activists and supportive governments was, "Let's plunge in." Those lesbians with their banner and the Brazilian diplomats who presented the resolution at the CHR just went for it. But, in both cases, the action was not accompanied by equivalent conceptual thinking; What is meant by sexuality? What are the limits of a non-discrimination framework and how does it relate to positive sexuality? Is the action challenging or reinforcing heteronormativity? What do identity politics mean in a multicultural context? Should gender identity be included, and if so, what else is missing or what will progressives regret having used or left out in 10 years?

As already demonstrated, there was some thinking about these concepts. But the thinking was partial, evolving along with rapidly changing events in a kind of dialectic, and what conceptualization existed was not widely understood. Most activists proceeded largely on intuition, a sense that this was the right thing to do, so they were not always prepared for the opposition's arguments and tactics. For example, activists at Beijing and at the CHR did not anticipate right-wing arguments linking pedophilia and bestiality to homosexuality to discredit sexual rights and sexual orientation and were therefore ill prepared to respond.

In general, thinking had to catch up with action. When paragraph 96 was transformed from one on the sexual rights of all, to one on the sexual rights of women only, what did that mean for the future in terms of the sexual rights of men who could be allies? What about the second sentence in paragraph 96 on the equal relationships between men and women? Even relatively sophisticated activists did not analyze and react until after the fact.

Mobilization was key to success in Beijing, and will be key to future successes at the Human Rights Council and elsewhere. North/South alliances are especially important. They were crucial in Beijing and at the CHR. These alliances are essential to combat the arguments of culture and religion that constitute the main obstacles to the advancement of rights related to sexuality: the leadership provided by Southern activists effectively counters the claim that these are Northern/Western issues.

These alliances are not without tensions due to objective differences between North and South NGOs in agenda and priorities, perceptions of the issues, resources to follow the negotiations and develop media messages, and multiple discrimination and stigma.

North/South coalitions face power dynamics that must be recognized clearly and addressed directly. Beavers notes, "There are difficulties when Northern-based groups are at the forefront of strategizing. When you have regionally-based networks, the situation is much different than when you have identity-based or issue-based networks."[136] Given that culture and religion remain the principal arguments deployed against progressive language on sexuality at the UN, and given the difficulties many activists have in responding to these arguments, it

[136] Conversation with Suki Beavers, September 27, 2005.

seems evident that more resources must be allocated to support the work of Southern/Eastern activists in this respect.

The difficulties involved in forging coalitions with multiple identities and interest groups, also needs particular attention. In Beijing, feminists and lesbians (and those who overlapped) did not always see eye to eye on objectives and tactics. Some sexual-rights activists working on paragraph 96 did not approve of the visibility of the Lesbian Caucus, in part because they thought this would jeopardize the negotiations on paragraph 96, but also, in some cases, because of discomfort with the issues raised by lesbians.

At the CHR there were also tensions between feminists and gay men. Feminists and their allies supported the sexual orientation resolution, but also pushed for sexual rights and sexual health language in other resolutions. Many of the LGBT activists focused only on the sexual orientation resolution and were not active on other resolutions. Diverse conceptualizations of the issues underlie these differences. Power dynamics between men and women also proved to be a concern. Speaking about the 2004 CHR, one activist commented, "The coalition was very North American, very male-dominated. We ended up working in an environment we had spent 20 years critiquing!"

When it comes to sexuality, creative ambiguity is often a component of success, with all the exclusions and difficulties that this entails. That was certainly the case in Beijing during the negotiations on paragraph 96. When the words "sexual rights" were defined as inclusive of the rights of lesbians by the Dutch delegates, they had to be taken out of the paragraph, but the first sentence of the paragraph can be read as supportive of the rights of lesbians. Leaving certain things unsaid in the negotiation room ensured it was agreed, but that meant some things remained unsaid, which was a loss in and of itself. Gender identity never even made it into the resolution on sexual orientation at the CHR. The difficulty of getting the words "sexual orientation" in a negotiated document is the flip side of this. Explicit words can generate even more virulent opposition even as the opposition claims not to know what they mean, as with Pakistan at the CHR.

To advance a progressive agenda on sexuality, multiple parallel strategies are needed. The battle for explicit words has to continue because those words are essential to combating discrimination and violence. But other approaches must also be taken. The Beijing model, with parallel negotiations on sexual rights and on sexual orientation, is also the way forward for work with human rights bodies in Geneva.

The need for groundwork, for building alliances[137] and preparing argumentation, emerges from the experiences of Beijing, however imperfect those efforts were at the time. The energy generated by the alliances made at Cairo and Beijing had multiple effects says Inder. "From 1998 on there were lots of references to sexual orientation in the concluding recommendations of treaty bodies, in the work of Special Rapporteurs [and in] other bodies – the CRC [Committee on the Rights of the Child], CEDAW [Committee on the Elimination of all forms of Discrimination Against Women], the Working Group on Arbitrary Detention, the Special Rapporteur on Violence against Women, the Representative of the Secretary General on Human Rights Defenders. This momentum was generated by Beijing. Paragraph 96 had a lot of impact and it led to a change in norms post-Beijing."[138]

Parallel strategies were also important at the CHR. The successes evidenced by the 2002 adoption of a resolution on the right to health and the appointment of the Special Rapporteur on the Right to Health, Paul Hunt, were overshadowed by the battle over the resolution on sexual orientation. Yet Hunt's report on sexual and reproductive health contains one of the most complete, well-argued and explicit statements on sexual rights as human rights in any UN document and will likely prove useful in years to come. Note too that the resolution on EJEs continued to be adopted throughout these events. In the struggle for progressive language on sexuality, multiple fronts have to be opened and sustained.

Advocates also need to think more deeply to ensure advocacy on sexuality does not inadvertently reinforce heterosexism. As Ignacio Saiz has pointed out, "The binary categories

[137] For local examples of alliance building, see also in this publication: Vianna, A. R. B. & Carrara, S. Sexual politics and sexual rights in Brazil: a case study, pp. 41-51; Ramasubban, R. Culture, politics and discourses on sexuality: a history of resistance to the anti-sodomy law in India, p. 119; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, pp. 152-154; Iikkaracan, P. How adultery almost derailed Turkey's aspiration to join the European Union, pp. 266-270.

[138] Conversation with Brigid Inder, May 19, 2005.

inherent to non-discrimination norms – men/women, homo/heterosexual – can also serve to subtly reinforce the subordination of one by the other."[139] Some of the advocacy on behalf of "sexual rights for all women" in Beijing is a case in point. Similarly, advocates have to push forward a positive agenda on sexuality, and guard against the temptation to frame arguments solely in terms of avoiding violence and disease.

The post-Foucauldian deconstruction of gender, sex, and sexuality has revealed that progressives can and do occupy different positions and speak from different perspectives. As the bases of discourses have multiplied so have the potential forms of counter-discourses. This does not mean that it is not valid to speak from the perspective of "woman," "gay man," or "trans." "Sex", "gender", and "sexual orientation" remain viable terms of engagement, but they can no longer be understood as universal, immutable terms of engagement. Foucault makes it clear that identities are tied to history and power so are thus open to change.

Foucault's description of biopower as a multiplicity of forced relations running through the social body as a whole is instructive in thinking about progressive organizing on sexuality. Since power is not centralized, neither can resistance come from a single source. Feminisms and LGBT and queer activisms, in all their permutations, offer possibilities for this kind of resistance. Biddy Martin argues that:

> "…a very different form of political organization and struggle suggests itself, an alternative to the frontal attack on the state led by the One revolutionary subject, local struggles that undermine institutional power where it reveals itself in ideology under the mask of humanism, or as it operates in homes, schools, prisons, therapists' offices, and factories, wherever the work of normalization is carried on. What is crucial is the capacity to shift the terms of the struggle, the ability to see our position within existing structures but to respond from somewhere else."[140]

Such may be the path to Foucault's "different economy of bodies and pleasures."

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[139] Saiz, I. (2004). Bracketing sexuality: Human rights and sexual orientation — A decade of development and denial at the UN. *Health and Human Rights* 7(2): 48-81, 63.

[140] Martin, B. (1988). Feminism, criticism and Foucault. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, p. 10. Northeastern University Press, 1988.

Looking for Sex in All the Wrong Places: The Silencing of Sexuality in the World Bank's Public Discourse

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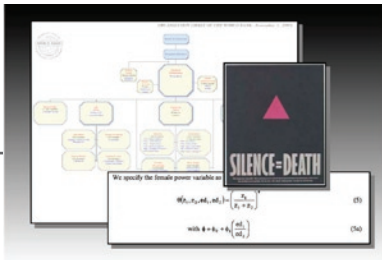
"The time has come to think about sex. To some, sexuality may seem to be an unimportant topic... But it is precisely at times like these, when we live the possibility of unthinkable destruction, that people are likely to become dangerously crazy about sexuality." (Rubin, 1999, p. 143)

Introduction

This paper presents an analysis of the way that the World Bank addresses issues of sexuality and how its approach produces a sanitized discourse, which, through its silences, further contributes to a standardized view of sexuality.

Such discourse has the power to set the agenda for public policies, establishing boundaries and limits to what can and cannot (or must and must not) be addressed in the associated debate. Nevertheless, unexpected and paradoxical results may arise from that process, which do not necessarily lead to the furthering of a comprehensive conservative agenda.

There is a key background assumption to this paper, which will not be detailed here; the conception of sexuality as an intersection of politics, desire, culture and biology, along the

lines discussed by Altman, among others. This conception is an important tool in the struggle for sexual rights, especially when taken as an affirmative right built upon a set of crucial ethical principles (Petchesky, 2000). One part of that struggle is the deconstruction of the received, naturalized view of sexuality.[1] Precisely because of that, a political discourse that silences sexuality is inherently reinforcing the conventional, heteronormative view of sexuality. As we intend to demonstrate in our analysis of an absence, this is precisely the case of the World Bank's public discourse. It follows that a starting point of the discussion is a closer examination of the World Bank's constitution and inner workings, in order to dispel prevailing conceptions of a monolithic and impervious Leviathan.

Theoretical Framework

There are two main conceptual references within this paper: "discourse" and "surface of emergence," both based in Foucault's *Archaeology of Knowledge* (Foucault, 1972). (For a detailed analysis of Foucault's *Archaeology of Knowledge*, see also Gutting (1989). Foucault suggested a process of textual analysis whereby the "discourse" focuses entirely on the words in the text without regard for what he called the "surface of emergence," that is, the social, historical and political context of the authors. In this study, we consider the ensemble of texts made available by the World Bank as the "discourse" and the Bank itself as its "surface of emergence."

To support our inferences regarding the effects of specific types of discourse we relied on concepts from the work of the Polish epistemologist Ludwik Fleck,[2] specifically the "thought

[1] An enterprise that as Altman reminds us extends far into the past at least to Freud and Marx (Altman, 1995, p. 97). Altman criticizes some of the excesses of the "social constructionism" movement when examining sexuality, both with regard to its historical roots and to its apparent denial of extra-textual domains of existence. To a certain extent, his positions are echoed in a broader context by the Canadian philosopher Ian Hacking in his (1999) book, *The Social Construction of What?* But Hacking also makes the point that the common denominator to social constructionism is the political goal (which he apparently endorses) of destabilizing some object or institution or other, strategically demonstrating that that "thing" need not be the way it is since it is not a "naturally occurring" object. This is the tenor of much of the recent literature on gender and sexuality, and quite correctly we would add.

[2] For a detailed account of Fleck's views, see Fleck (1979) and also Cohen & Schnelle (1986), a book that presents some of that author's previous papers and critical assessment and commentary by a variety of authors. On Fleck's relevance to contemporary studies in science, see for instance, Hacking (1999, p. 60) or Kuhn (1979 and 1996, pp. viii-ix).

collective" (*Denkkollektiv*),[3] "a community of persons mutually exchanging ideas or main-taining intellectual interaction," and "thought style" (*Denkstil*), "…the entirety of intellectual preparedness or readiness for one particular way of seeing and acting… a definite constraint on thought." Our underlying assumption is that a specific thought style and thought collective is identifiable in the intellectual work of the bank, characterized and dictated by neo-classical economic theory. This thought style and thought collective frames how problems are perceived, what tools are adequate to deal with them, and, ultimately, what constitutes a solution and thus has a major impact on the various actors involved.

Methodology

We selected material for our analysis from the bank's online database[4] of over 14,000 docu-ments (as of October 11, 2005). A simple interface allowed for searches by specific words, groups of words or expressions, which enabled us to retrieve an adequate set of relevant texts (Table 1).

Table 1: Query results

Search expression	Type of search	Number of hits
Sexual rights	Exact phrase	0
Sexual diversity	Exact phrase	0
Sexuality	–	18
Sexual health	Exact phrase	15
HIV/AIDS sexuality	All words	9

After our initial searches we ended up with a sample of 34 texts. (Although we did not use any quantitative methods we still consider the word "sample" is applicable.) To enhance

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[3] The translations of "*Denkkollectiv*" and "*Denkstil*" to, respectively, "thought collective" and "thought style," were adopted in the 1979 English version of his book, possibly to stress their nature as specific concepts within a general theoretical framework.
[4] At the following address: http://www-wds.worldbank.org.

the odds of finding further relevant material, we conducted another search using the word "gender," yielding 1,256 hits. We read the online abstract of each of those documents and excluded those that were irrelevant to the present discussion, narrowing the selection to 200 documents. After these were downloaded and examined we were left with 38 documents. We do not present the analysis of those documents here, but we do quote from some of them.

The documents used (see page 19) have diverse names in the Bank's taxonomy – reports, working papers, publications, data sheets, and so on – but for the purposes of this paper they are grouped under four broad categories: research papers, commissioned work, policy proposals, and appraisals of results.

These documents are placed in a hierarchy, with the research papers at the bottom and official Bank documents at the top. Research papers are signed by individual authors and in almost every case carry a disclaimer stating explicitly that their views are not the Bank's views. The authorship of official documents is attributed to the Bank itself. Papers at the bottom are much more open to ongoing debate within and outside (and even against) the Bank, being much more attuned to current political thinking and actions. However, these ideas do not necessarily percolate to the top, and contentious points of view are usually expunged from the official bank documents.

Commissioned works are, as the name implies, bodies of text (most frequently books) funded to some limited extent by the Bank through research grants and/or editorial aid. The authors are usually from academia, with a high degree of independence from the Bank. Thus, as with the research papers, they are not branded as "official" documents and have only varying influence.

Policy proposals and appraisals of results have similar editorial inputs: itemized texts, graphs and tables, boxes to highlight important points, and lots of examples from "good practices" or success stories. The appraisals of results usually start out by posing a few questions, followed by responses that are almost invariably positive, and ending with the assertion that further work needs to be done.

It should be noted that the Bank has a very diverse staff, and responds to ever changing political demands – a combination that is reflected in its polyphonic (at times, cacophonic) discourse. As an ensemble the documents constitute thick discursive layers that cross-reference each other, weaving a network of statements that seem impenetrable at first sight.

We faced an additional, and major, obstacle in this analysis – namely, how to write about something that isn't there. We presumed from the start that discussions on sexuality would be, at best, a marginal component in the Bank's discourse but the research proved even that was an optimistic expectation.

The World Bank: Introductory notes[5]

Despite decades of investment supposedly geared towards producing more development and reducing poverty, the economies of most poor and developing countries are in dire condition, fueling an apparently endless cycle of social crises. Much of this can be attributed to the actions of the twin global financial institutions — the World Bank and the International Monetary Fund (IMF) — in tying their loans to unpopular structural adjustment policies, more often than not with catastrophic results.[6]

Both institutions are much maligned around the world as tools of imperialistic domination by the richer countries and in particular the United States. And yet the World Bank has demonstrated, time and again, sensitivity to pressure from organized actions mounted by civil society. For more than 10 years it has consistently demonstrated a commitment to take gender issues into account, at least in the copious literature it produces, and it became a major player in the HIV/AIDS arena. How, then, do we reconcile these seemingly disparate aspects of the oppressive juggernaut crushing Third World economies, and the sensitive international bureaucracy that responds to political pressures from grassroots agents?

[5] The main source for this part of the text is Mattos (2000). Some additional information was provided by Chamberlain (1996) and the Bank's own website. A more detailed account of the inner workings of the World Bank group is presented in the annex at the end of this text.
[6] For local impacts of the bank's policies, see in this publication: Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, p. 138; Beresford, B., Schneider, H. & Sember, R. Constitutional authority and its limitations: the politics of sexuality in South Africa, pp. 211-212; Le Minh, G., & Nguyen, T. M. H. From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, p. 284.

In a nutshell, the Bank is a multinational bureaucratic organ that needs to continually propose and implement loans and projects to certain countries in order to justify its own existence. In order to do so it needs to maintain the delicate balance of being financially and intellectually credible to both lenders and borrowers; it must demonstrate the authority of its knowledge in many fields of expertise while at the same time holding firmly to the economics-based thinking of our times. In the dispute over ideas – on how to preserve the core of the economic rationale that it in a sense embodies, while at the same time responding to widespread criticism – the Bank's task is eased by the hegemonic status that neoclassical economic theory, the scientific ideology of neoliberalism, has achieved.

This prevailing ideological consensus provides the Bank with a fallback position to deal with even the most negative impacts of structural adjustment policies around the world. In terms of economics, much of the debate on public policies has been recast in the last two decades. Economic theory became the *de facto* yardstick to measure good governance, and not just any economic theory, but neoclassical economics dictate the rules,[7] for better, or (as is more often the case) for worse.[8]

Neoclassical economic theory can be briefly described as the encounter of Adam Smith's invisible hand with Newtonian physics (and mathematics), having as its starting point a research program pioneered by Walras and Jevons in the late nineteenth-century (Fullbrook, 2004, p. 71; Ormerod, 1994, p. 41). Neoclassical theory ultimately hinges on the conception of society as a simple sum of individuals as consumers who are constantly competing with each other in order to maximize their gains (Hodgson, 2004). From that axiom it builds a series of deterministic mathematical models to "prove" that, left to themselves, markets maximize social welfare and therefore any intervention is inherently destructive. This picture has two important implications: the *homo economicus* is guided by nothing but self-interest, and the least intervention of the state in the economy, the better. From this latter point stems the technocratic view that politics are a disturbance in the management

[7] This is not to say that the Bank adopts that particular theory as its official discourse; in fact, discussion within the Bank is permeated by other views, such as institutionalism in particular (one could argue that the Bank itself would not make much sense in purely neoclassical terms). But since that is indeed the hegemonic view in economics, by and large, it is bound to have an effect on how the technical arguments are cast.
[8] The effects of decades of adjustment policies were already mentioned at the beginning of this paper; for the catastrophic repercussions on individual lives of this state of affairs, see for instance, Forrester (1997) and Sennet (1998).

of society at large, and thus technically sound policy proposals should be "armored" against such "spurious" interference.[9]

Findings: Looking for clues in a barren landscape

We found three discursive formations that interface with the broad definition of sexuality that we mentioned at the beginning of this paper: "women/gender," "sexual/reproductive rights," and "sex-as-a-risk." For each of those discursive formations we were able to find at least one reference that appears to address the complexity of the underlying issues. But these references are, in fact, systematically omitted from the more official documents.

First discursive formation: women/gender

We found a considerable number of documents referencing "women/gender" mainly in relation to the international mobilization around the 1994 International Conference on Population and Development in Cairo, Egypt, and the 1995 Fourth World Conference on Women in Beijing, China. But the overwhelming majority avoid discussing any issue related to sexuality, concentrating instead on framing the discourse around gender inequalities in terms of income, education, and power as obstacles to development and as such must be contested. "Power" is apparently seen in terms of man/woman relationships in a household, thus reinforcing heteronormative views of what constitutes a family.

Such framing simultaneously reinforces the central role of economics in the political argument while appearing to respond to the organized political pressure of women's movements. It is also a recent transformation of the old "women in development" discursive formation as the following passage suggests:

> "*Gender. Differences created by social (including cultural, religious, and political) constructs that result in different roles for, and power relationships between, men and women. Such roles are learned, vary across different societies, and change over time. However, in this document, it is also used, as commonly understood within the Bank, as a surrogate for 'sex'.*" (The World Bank Group, 2002a)

[9] This discourse is present to some extent, for instance, in the already quoted paper by Williamson (2000). For a more extensive critique of neoclassical theory, see also Keen (2001).

This passage is particularly relevant since it was extracted from a document that assesses the progress of the Bank on gender issues.

The overall economic framing of the argument is demonstrated in two other excerpts that together form a paradigmatic example of the neoclassical capture of gender. Consider first Figure 1, from a series of equations included in one of the papers that supposedly represents female power. (We would also say it reflects the over-mathematization of economics strongly criticized by Ormerod.)

Figure 1: "Female power" according to some economists

We specify the female power variable as follows:

$$\theta(z_1, z_2, ed_1, ed_2) = \left(\frac{z_1}{z_1 + z_2}\right)^{\phi} \qquad (5)$$

$$\text{with } \phi = \phi_0 + \phi_1 \left(\frac{ed_1}{ed_2}\right) \qquad (5a)$$

(Koolwal & Ray, 2002, p. 7)

And then, in pristine economics-speak, the authors state:

> "*This paper extends the collective approach by proposing and estimating a framework where the weights are endogenized and simultaneously determined with the household's expenditure and earnings decisions. Defining a female's 'power' as her endogenously deter-mined welfare weight, the study finds on Nepalese data that the woman's share of household earnings understates her true 'power' in influencing household outcomes.*"
> (Koolwal & Ray, 2002, p. 8)

Or, in other words, women are actually more powerful than previously thought! And note the use of "female" to refer to women, again belittling the whole discussion on the differences between "sex" and "gender." In the desexualized version of gender favored in the Bank's dis-

course the reader is presented with a binary classification system perfectly adhered to the traditional man/woman dichotomy associated with sex (where, curiously, actual sexual expression plays no role), instead of a complex relational system that encompasses a significant part of people's lives and is closely related to sexuality and its expressions.

Second discursive formation: sexual/reproductive rights

With regard to "sexual/reproductive rights" there is a 1998 document that frames precisely that concept and its consequences:

> *"Reproductive health is not merely the absence of disease or disability. It is a state of physical, mental, and social well-being in all matters related to the reproductive system and to its functions and processes. Reproductive health therefore implies that women and men have a right to a safe sex life, and to reproduce if and when they wish. This includes the right of men and women to be informed about, and to have access to, safe, effective, affordable, and acceptable methods of regulating childbearing. The reproductive health approach requires health services that enable women to go safely through pregnancy and childbirth and provide the best chance of having a healthy outcome for both mother and child. It also encompasses information and services to improve reproductive and sexual health through disease control and increasing gender equity."*
> (Tinker, Merrick, Jonas & Adeyi, 1998)

This definition, however, seems to be lost in the bulk of the documents that address the discursive formation. "Sex" is often dropped from the expression. For instance, in a review of gender issues (The World Bank Group, 2002b) there is a heading, Sexual and Reproductive Health, in the section on Haiti but the word "sexual" is not used in corresponding headings in the sections about Jamaica and the Dominican Republic. Moreover, the discursive formation appears captive to its previous history in population control, that is, reducing fertility among the poor as a means of reducing poverty. Despite the fact that demographers and economists of a different persuasion than the neoclassical orthodoxy have over and over again made the point that this is a causal inversion – that it is the reduction of poverty that brings a reduction of fertility rather than the other way round – the notion that birth control is a strategy to reduce poverty is still evident.

Another important feature: "birth control" is almost invariably mapped to women only, dismissing the point made in the quote above about the role of men. Additionally, reproductive health is often conflated with family planning, thus reinforcing the heteronormative versions of sexuality – that is, sex necessarily linked to reproduction and reproduction necessarily linked to "families," a term that no one bothers to qualify. Discourse around this discursive formation is also often linked to the third, placing sexuality into the medical domain.

Third discursive formation: sex-as-a-risk

The "sex-as-a-risk" discursive formation is articulated with the "sexual and reproductive health" theme in relation to the prevention and control of sexually transmitted diseases (STDs) on the one hand, and with HIV/AIDS prevention on the other. The overall argument ties disease prevention and treatment with the recurring theme of promoting development and fighting poverty. This has been one of the key aspects of the Bank's overall discourse at least since its 1993 publication, *Investing in Health*, which covers STDs and HIV/AIDS and more general conditions such as maternal mortality or phenomena like teenage pregnancy. There are at least three aspects to the sex-as-a-risk discursive formation, with poor to non-existent internal dialogue: a discourse on education as a means of prevention, a medicalized approach to sexual activity, and HIV/AIDS.

The most sophisticated discussions on sexuality are found in the overall discourse on AIDS prevention (and even then, with some constraints). The most comprehensive presentation was found in an academic publication on culture and public action co-edited by the Bank and the Stanford University Press. The chapter dedicated to HIV/AIDS presents the following reasoning:

> *"In much of the world, a significant part of what may be called sexual culture is the deliberate withholding of information from youth. Although the discourse of biological reproduction dominates, the majority of sexual acts taking place, anywhere, at any time, are non-reproductive... Linking all erotic behavior to the requirement of a species to reproduce threatens to confine explanatory models and delay understanding of what is really going on. Culture is the primary process by which the human being meets biological needs, both organic and perceived. Thus, sexual cultures can be understood to be those*

constellations of ideas, practices, and artifacts and their meanings and contexts in which people participate, either as a lifelong involvement or at various times of their lives, that are adapted to meet felt erotic needs. The erotic components are linked to the body through gender or role presentations, expectations and actions, larger kinship and social roles and structures, demographic dynamics, economic environments, beliefs and attitudes, political forces, and, as we are becoming increasingly aware, disease and its meaning. Sexual cultures vary through time and place and are thoroughly influenced by a myriad of factors. The HIV pandemic can be counted on to be a major factor influencing changes in various sexual cultures as time passes." (Jenkins, 2004, p. 264)

But again, when we look at the specific literature on education as a means of prevention (for HIV/AIDS as well), it too falls into the "deliberate withholding of information from youth" pattern. Even when acknowledging the need to address, say, sexual education, the policy guides are usually silent on the nitty-gritty details necessary to actual interventions, as can be seen in reference materials produced by the Bank, most characteristically in a 2004 publication, A Sourcebook for HIV/AIDS Prevention Programs (The World Bank Group, 2004b). In a chapter describing experiences in Africa, for example, the general goals and intentions are presented, but little information is forthcoming on how the programs address those goals in daily practice. Moreover, no reference is made throughout the text to the existence of diverse sexual orientations, although one would suppose this would be at the forefront, on several levels, when dealing with HIV/AIDS prevention – as yet another official Bank document makes abundantly clear in these passages on "men who have sex with men" (MSM):

"More importantly, this study confirms other research findings, namely that the sexual identity and sexual behavior of MSM only slightly overlap. In fact, the large majority of MSM do not identify themselves as homosexuals, and furthermore, most of those MSM that were interviewed for this study acknowledge having had sexual relations with a woman during the last month preceding this survey... The homosexual and heterosexual circuits are closely interlinked, and therefore, the cost to society of maintaining the taboo of same-gender sexual practices and marginalizing people engaged in same-gender sexual contact, is very high." (The World Bank Group, 2004a, p. vi)

"In underdeveloped countries, MSM are not integrated in the prevention and treatment strategies for HIV/AIDS. In assessing the inclusion of MSM in prevention strategies, one study notes that only 25 percent of national HIV programs mention MSM as an important target group for prevention campaigns, and a mere nine percent of them mention specific programs targeting male sex workers (Parker et al., 1998)... The exclusion of MSM as a target group in HIV/AIDS programming has led various international organizations, **such as the World Bank** *(our emphasis), to formulate responses that seek to incorporate MSM in the fight against HIV/AIDS."*
(The World Bank Group, 2004a, p. 4)

This seems to indicate a compartmentalized approach within the Bank, where the threads concerning sexuality are never woven in a single narrative. It is particularly visible in this last discursive formation; as the preceding quotes show, despite the presence of specific documents that tackle issues of sexuality comprehensively, they are the exceptions rather than the norm and the documents deemed institutionally more relevant (project appraisals, handbooks, resource guides) are not among them.

Finally, an important common trait is apparent in the last two discursive formations where sexuality is reduced to a set of medical prescriptions. This can be seen in many of the researched documents but particularly in three project reports (The World Bank Group, 2005a; 2005d & 2005e), and especially with regards to HIV/AIDS programs and policies. It is part and parcel of the overall technocratic view of the Bank, in which technical and scientific principles generally dictate norms and priorities, whether in public policy or private lives. A restricted view of "health" – namely, the absence of disease – takes precedence over any consideration of rights or pleasure. Corporations of specialists – medical doctors and, even more powerfully, health economists – are assumed to know "what is best for you," be it the individual or society, thus effectively producing a normatized, de-politicized and de-sexualized (paradoxical as it may seem) view of sexuality, described chiefly through silences and discursive gaps.

Conclusion

"As with other aspects of human behavior, the concrete institutional forms of sexuality at any given time and place are products of human activity. They are imbued with conflicts of interest and political maneuver, both deliberate and incidental. In that sense, sex is always political. But there are also historical periods in which sexuality is more sharply contested and more overtly politicized. In such periods, the domain of erotic life is, in effect, renegotiated."
(Rubin, 1998, p. 143)

As expected, a comprehensive view of sexuality is conspicuously absent from the World Bank's public discourse. In the face of an economicist thought style that permeates the Bank's analysis, and the inherent effects of its institutional arrangements, it is unlikely that an agenda centered on a positive conception of sexual rights, such as fostered by Petchesky (2000) can make headway in its public discourse. To a certain extent, this is a reflection of a process not entirely dissimilar to that analyzed by Petchesky (2000, p. 86); we also encountered an absence that can be traced to a complex drama in which "the fine points of the language become a critical terrain for the contestation of power – and the meanings of sexuality – through endless spirals of domination, resistance, and reconstitution of discourse."

However, there are two important differences; first, as an organization, the Bank is far less open to organized political pressure from civil society, and second, arguments backed by scientific rhetoric (economics, in particular) carry much more weight than in general political discussions within the United Nations. As a consequence, the discursive formations that arise from this "surface of emergence" reinforce an essentialist, biological conception of sexuality, inherently heteronormative. Petchesky (2000, p. 91) provides us with a list of ethical principles that are relevant to a positive agenda concerning sexual rights: "sexual diversity, habitational diversity (diverse family forms), health, decision-making (personhood), and gender equality." We found that only the last three are considered in the World Bank's literature and even then in a limited form (such as sexual health conceived in terms of not having sexually transmitted diseases), and/or in a way that clearly conflicts with other principles – like acknowledging the need for gender equality but framing it as little more than "sex" by another name, shedding all its interactive dimensions and restricting its respect towards women; or in reinforcing the heteronormative conception of family as consisting of a man, a woman, and their offspring.

Given the political strength and epistemic authority that the Bank's discourse wields, this state of affairs constitutes a clear obstacle to the acknowledgment of positive sexual rights. Coupled with that, the technocratic/economicist thought style of the Bank effectively de-legitimizes any claims based on rights or in attributing importance to pleasure, while at the same time conceding even more authority and power to the technical specialists – medical doctors and, even more so, health economists – over "lay people" in matters not only of public policy but of private lives as well.

And this, in turn, helps us to understand the deafening silence on sexuality in the Bank's discourse. As Lützen (1995, p. 27) states, "A researcher ought to keep in mind... that the study of sexuality is not just a study of la *mise en discours* but also of silence. In some instances, silence must be interpreted as silence, and with this silence as a track one must reconstruct the attitude causing the refusal to talk about and touch on certain areas." The Bank's silence on sexuality – or more precisely, *silencing of*, if we consider that these issues and deliberations are present in some bottom tier documents but disappear as the narrative moves up the hierarchical scales – clearly indicates how this whole area of human experience is a non-issue for the *homo economicus*.

This does not mean, however, that the pragmatic consequences of such discourse are necessarily a setback for progressive forces. The reliance on "scientific evidence," despite all the criticism that can be leveraged against it, at least allows room for discussion of a number of issues around sexuality that competing discourses, such as the religion-based, simply prohibit. As activist and researcher Almeida (2005, p. 19) recently wrote:

> "*My trajectory has been that of admitting my undeniable bias in dealing with issues that are part of my own experience and struggle, without ceasing to consider the fascination that the scientific discourse has always exerted on me, precisely because it offers a point of view from a lens that needs not be that of any fundamentalism and, because of that, can promote discussions without disrespecting differing stances.*" (Our translation)

Another example is Brazil's experience with HIV/AIDS Bank-funded projects, which, in addition to frequently including activities that went against some of the Bank's positions, also

became an important element in boosting civil society participation as a (possibly not totally anticipated) consequence of successful demands to include non-governmental organizations from the outset.

We would also add that this text should not be taken as a blanket indictment of Bank-sponsored programs and activities, or demean the relevance of the goals put forth in the documents examined, even when we point out their limitations. But this does mean that the public discourse of the Bank is yet another important arena where the affirmation of a constructive conception of sexual rights has to be fought for, potentially with repercussions on a global scale.

ANNEX – A brief sketch of the World Bank

The World Bank, like the International Monetary Fund (IMF), was born out of the Bretton Woods conference that took place in 1944 while World War II was still raging. It was inspired by a generation of statesmen and economists, led by John Maynard Keynes, who wanted to avoid a recurrence of the events that led to the 1929 crash of the United States economy and which, indirectly, contributed to the rise of fascism in Europe. The purpose of the conference was to design a set of international institutions that would dampen the shocks in international finance; the IMF would act as a sort of global central bank, stabilizing the relationship among different currencies, while what would later become the World Bank would fund the rebuilding efforts in Europe and elsewhere. Over time, these organizations would stray from Keynes' vision but that won't be dealt with in this text.

The World Bank is a conglomerate of five organizations, which together are known as the World Bank Group. Only two – the International Bank of Reconstruction and Development (IBRD) and International Development Association (IDA) — relate directly to this study; thus, in this text all references to the World Bank should be taken to refer to those two branches, unless explicitly stated. In its own words (at its website),[10] the Bank defines its present[11] mission as follows: "Our dream is a world free of poverty." The Bank's basic opera-

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[10] http://www.worldbank.org.
[11] As was previously stated, the World Bank was born as part of the effort to rebuild Europe after the devastation caused by WWII. The inflexion towards poverty is fairly recent.

tional procedure is to provide funds and expertise to countries that require them. Both items are structured around projects (larger programs, called sectoral programs, differ mostly in scope and are also tied to projects) constructed in cooperation (to varying degrees) with the Bank's experts, which, when approved, provide the borrowing countries with the required loans at lower rates than those of the financial markets (in the case of the IDA, the loans are either interest-free credit or grant financing).

As previously noted, this would be one way through which the World Bank could exercise power over borrowers; since they are usually in great need of the loans they would have to comply with the attached strings – "conditionalities" in Bank parlance. But, again, the picture is more complicated than that, and in order to better grapple with these complexities we have to look at where the money comes from not just where it goes.

The money loaned by the IBRD is raised through the sale of World Bank Bonds (the IDA works on a slightly different basis, being financed through a fund created by member countries).

Given its AAA credit rating (the highest possible), the Bank can do this with the lowest interest rates in the market. In order to secure the inflow of resources for new loans, the Bank must be capable of continuously selling the bonds; and in order to achieve the latter, it must constantly reassure buyers of its solidity, that is, it must keep its AAA rating.

Part of that assurance lies in the Bank's capital, which is mainly "virtual" — i.e. it is not real money deposited in a safe somewhere, but rather a potential fund composed of shares (callable capital). These shares are divided as follows: the U.S. is the largest single shareholder[12] with 16.41 percent of votes, followed by Japan (7.87%), Germany (4.49%), the UK (4.31%), and France (4.31%). That assurance, however, is the last line of defense — if the Bank ever had to resort to its own capital to honor its bonds (or even worse, to the virtual callable capital) that would probably be the beginning of its end. The full assurance, then, is backed by

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[12] Due to agreements that date back to their creation, the Bank's president has always been an American, nominated by the U.S. government, whereas the IMF president has always been a European. At the time of writing, the current president (the tenth) is Paul Wolfowitz, who took office on June 1, 2005, after being one of the architects of the controversial Iraq war. He succeeded the 10-year tenure of James D. Wolfensohn, under whom most of the Bank's gender and HIV/AIDS initiatives were fully developed.

three guarantees: the technical quality of the projects; the backing of the borrowing governments; and the Bank's own capital (the shares of the shareholders).

So, in order to run its operations, the Bank must be able to demonstrate at any given time that it does have expertise on the issues it tackles, namely those revolving around economic development, and that its plans do work; if the plans work the situation of the borrowers improves and thus they are able to keep honoring their back payments. The following quote is a paradigmatic example of the Bank's spiel in this regard:

> *"The World Bank makes loans and designs projects in its "borrowing countries" using policies and economic formulas that seek to ensure successful development. However it is the definition of success — the fundamental goals of development — that creates differences between the many parties who are affected by the bank's operations. As an international lending institution, the Bank is unmatched in its ability to maintain financial stability and success. Through sound and innovative economic policies, the ability to consistently collect loans, and the largest developmental experience and research base in the world, the bank can ensure its continued significance — which is reflected in its invariably superior credit ratings"* (Chamberlain, 1996, p. 8).[13]

It turns out, however, that changes in the international economics landscape threatened this virtuous circle; the unilateral decision of the United States to revalue the U.S. dollar in 1979 effectively ignited a recession that dragged in the rest of the world (while reaffirming the U.S.'s economic hegemony). Most of the poorer countries were plunged into economic crises (often with high inflation) and thus had difficulty in keeping up with the payments on their national debts (or even functioning at all), triggering the international debt crisis.[14]

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[13] Another example specific to gender issues can be found in the suggestively titled chapter "The Bank's Comparative Advantage in Gender and Development," (The World Bank Group, 2002a, pp. 61-67).

[14] There is a vast bibliography on the ongoing economic downturns of the last decades of the twentieth century; some of the elements presented here are taken from Tavares (1997, pp. 33-36) and Castells (1996, pp. 119-133). It should be noted that, at that point, the bulk of the debt of the developing countries was due to loans contracted not with the World Bank but with private banks, which had an abundant supply of dollars generated by the added revenue of the oil-exporting countries after the first "oil shock" in 1973.

In the years that followed, the World Bank and the IMF created structural adjustment loans, that is, loans that weren't related to specific projects but aimed at recovering the "health" of these "ailing economies" (the medical metaphors are abundant). Most of the affected countries requested help from both the Bank and the IMF to restructure their debt. Throughout the 1980s both institutions sponsored a number of such structural adjustment proposals, offering loans so long as the recipients overhauled several aspects of their organization and economy. It turns out that in many – if not most – of these cases, the heavily recessive "adjustment policies" further compromised the economies of the borrower countries and threatened their political stability. For example, in the case of Latin America, which had recently emerged from a series of right-wing military dictatorships across the continent, the economic downturns produced by the adjustment policies threatened to replace friendly governments with unknown variables. In order to minimize the negative impacts of the adjustment policies, without substantially changing them, the World Bank added another ingredient to the mix: compensatory policies specifically aimed at ameliorating the living conditions of the poorer segments of the population.[15]

At that historical juncture the Bank effectively broke ranks from its lockstep march with the IMF, becoming increasingly more vocal in its criticism of neoliberal orthodoxy, particularly through the voice of Joseph Stiglitz, its chief economist for a brief period from 1997 to 2000 (Stiglitz, 2003, p. ix). During this time the Bank started to call publicly for the cancellation of the debt of African countries, sought to work closely with NGOs from all over the world and redefined its mission of "fighting poverty."[16] As a result, several aspects of public policy gained prominence – one of the earlier and most remarkable products of this shift was the document *Investing in Health* (1993). The results of the "good intentions" of the World Bank aren't as evident, however; the national states have been compromised in their

[15] Williamson, the original architect of what became known as the "Washington Consensus" thus defined the checklist of that policy proposal: "Fiscal discipline; a redirection of public expenditure priorities toward fields offering both high economic returns and the potential to improve income distribution, such as primary health care, primary education, and infrastructure; tax reform (to lower marginal rates and broaden the tax base); interest rate liberalization; a competitive exchange rate; trade liberalization; liberalization of inflows of foreign direct investment; privatization; deregulation (to abolish barriers to entry and exit); secure property rights," (Williamson, 2000, pp. 252-253). Note that only one of the elements (the second) refers to "compensatory policies."
[16] For more on those changes, see Stiglitz, 2003, pp. 241-242.

policy-making capacity,[17] inequality has increased even where economic development was attained, and public infrastructure everywhere has been dismantled and/or privatized.[18]

The Bank acknowledges this critical discourse:

"Some critics move beyond the idea of the bank 'not doing enough' and claim that its programs, policies, and projects impact women negatively. The bank's 'structural adjustment programs,' or SAPs, are an important example. SAPs generate major socioeconomic change by imposing austerity prescriptions on a borrowing country — including fiscal conservatism, decentralization, economic privatization, and market-orientation — and have been widely criticized for disproportionately harming the more disadvantaged and poor members of society, including women. While the bank and the International Monetary Fund (IMF) say these programs are necessary for developing countries to revitalize their failed economies, many critics condemn SAPs and say that their negative social and environmental impacts betray a sustainable approach to development." (Chamberlain, 1996, p. 6)

Note, however, the subtle way the burden of responding to that criticism is shared with the IMF. In any event, with regards to the "adjustment" part of the SAPs, as far as the Bank is concerned the argument is over, as illustrated by the following intervention from one of its staff members:[19]

"There are a number of issues which could be raised as far as structural adjustment is concerned. We all agree that it is important; there is not even a debate now on structural adjustment issues (our emphasis). But it is, like in this country, on balancing the budget: it is how you balance it, not just that you want to balance it."
 [Laughter] (The World Bank Group, 1995b, p. 25).

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[17] The policies were devised to restrict the role of the state, based on a fundamentally technocratic point of view that "politics get in the way" of sound (i.e., in accordance with the hegemonic economic thinking) policies.

[18] See for instance Stiglitz, 2003, p. 259 (note 2).

[19] Mr. Ali Bourhane, World Bank Executive Director, Benin, at a forum thus described: "The program provided a forum to reflect on conference outcomes, their implications for the bank, and the bank's commitment for future action. Through exchange of words and through art and music colleagues from inside and outside the bank explored the themes of Beijing: Equality, Development and Peace." (The World Bank Group, 1995b, cover letter).

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Note: All publications are edited by the World Bank Group unless explicitly stated. With the exception of The World Bank Group (2004e), all documents were obtained from the Bank's website, from the searchable document interface at http://www-wds.worldbank.org/

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Contested Bodies: The Local and Global Politics of Sex and Reproduction

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Introduction

This analysis is based on a comparative examination of the eight country case studies — Brazil, Egypt, India, Peru, Poland, South Africa, Turkey, and Vietnam — and the two essays focused on the United Nations and the World Bank, that form the body of this volume. Our approach to this examination is selective. It is grounded, first, on the particular theoretical perspectives that we bring to this comparative exercise and, second, on our reading of the most important crosscutting themes that emerged from the case studies themselves. There is no way that we can do justice in a paper of reasonable compass to the richness of the material. Our goal is abstraction and generalization. For detail, readers must go to the individual essays, and we hope what we have to say here will be sufficiently intriguing that they will do so.

Comparison between these diverse case studies has been a challenge, even within these limitations. Rather than focusing on a common set of concerns, case study authors identified what they considered the most critical sexuality-related issue or issues in their particular country or institutional setting. The authors then examined these issues from the perspec-

tive they determined would provide the greatest insight. Consequently, the essays are quite disparate in their scope, in the specific topics they address, in their analytic approach, and in the material on which they draw. Turkey, Poland, and Egypt, for example, have almost nothing to say about HIV; India has nothing to say about reproductive health. The UN and World Bank essays offer important context, but are in many ways incommensurate with the eight country papers. Further, the authors are differently positioned in relation to their material: some are academics, some are advocates, and some are both. It is surely possible that our interpretations would be different if the data — and the authors' positioning in relation to the data — were more directly comparable. Nevertheless, we have attempted to make a virtue of this lack of comparability in detail by attempting to extrapolate from these unique and context-specific cases a series of insights about the political construction of sexuality as a concern in itself as well as a venue for the expression of general social processes.

One final prefatory observation: none of these authors is ideologically neutral with respect to the material she or he presents. All are committed to so-called "modern" ideologies of sexuality and reproduction (Wardlow & Hirsch, 2006; Giddens, 1991, 1992; Weeks, 2000) that privilege the sexual and reproductive health and rights of individuals and communities over ideologies that subordinate health and rights to competing interests. In light of this, it is perhaps most appropriate to read each of these analyses as primarily concerned with strategy. Thus, each paper identifies, either explicitly or implicitly, critical points of intervention and the terms of the analysis employed suggest the terms to be used by sexual and gender rights activists and advocates.

Theoretical perspectives

All of these essays — including the two on international bodies — are ultimately about power: destabilization of "traditional" gender and sexual relations threatens established hierarchies of church and state power. Church and state, predictably, fight back, using their considerable resources not only to preserve but also to reinforce existing structures. Why is this destabilization so powerful a threat (evidenced, as we shall see, by the reactions it elicits)? Much of the most important theoretical work in recent years on both gender and

sexuality has sought to answer this question. In her pioneering work on gender and history, for example, Joan Scott answered as follows:

> "Gender is one of the recurrent references by which political power has been conceived, legitimated, and criticized.... To vindicate political power, the reference must seem sure and fixed, outside human construction, part of the natural or divine order. In that way, the binary opposition and the social process of gender relationships both become part of the meaning of power itself; **to question or alter any aspect threatens the entire system** (our emphasis)" (Scott, 1988, p. 49).

Reflecting on the actions of rulers, from Jacobin revolutionaries to the Ayatollah Khomenei, Scott continued:

> "[They] have legitimized domination, strength, central authority, and ruling power as masculine (enemies, outsiders, subversives, weakness as feminine) and made that code literal in laws (forbidding women's political participation, outlawing abortion, prohibiting wage-earning by mothers, imposing female dress codes) that put women in their place... The actions can only be made sense of as part of an analysis of the construction and consolidation of power. An assertion of control or strength was given form as a policy about women." (And, we would add, about gay men.) (Ibid.)

The complex relationship not only of power and gender, but also of power and sexuality, has received similar attention. Michel Foucault, in his pioneering work, *The History of Sexuality,* for example, responded to much the same question by focusing on sexuality as the point of convergence for a wide range of strategies linking knowledge to power, and evident not only in practices of oppression but also in the discursive configurations that have been produced around sexuality in modern life:

> "Sexuality must not be thought of as a kind of natural given, which power tries to hold in check, or as an obscure domain, which knowledge gradually tries to uncover. It is the name that can be given to a historical construct: not a furtive reality that is difficult to grasp, but a great surface network in which the stimulation of bodies, the intensification of pleasures, the incitement to discourse, the formation of special knowledges, the strengthening of con-

trols and resistances, are linked to one another in accordance with a few major strategies of knowledge and power" (Foucault, 1978, pp. 105-106).

Writers such as Gayle Rubin (1975, 1984), Jeffrey Weeks (1995, 2000), R. W. Connell (1987), and others (see, for example, Chafetz, 2002, and the essays in Parker & Aggleton, 2007) have further elaborated on many of the same themes to elucidate the ways in which both gender and sexuality operate — at times independently and at times in conjunction — as axes of inequality and domination in highly diverse social settings. This work has offered important new insights into the ways in which, and the reasons why, gender and sexuality have become contested sites of political struggle throughout the contemporary world. Additional questions — suggested by Sewell's work on the "theory of the event" (Sewell, 2005; see, also, Sahlins, 1987) and by the analysis of social movement scholars of the interplay between movements and "counter-movements" (Meyer & Staggenborg, 1996) — concern the circumstances under which these struggles are most likely to emerge, the form they will take, and how they are likely to play out. The answers to these latter questions, as Scott points out, "can only be determined specifically, in the context of time and place" (Scott, 1988, p. 49). We turn now to those specifics as portrayed in the ten essays that constitute our data.

Substantive hooks/tensions

The authors of each of the 10 case studies chose different substantive hooks and tensions around which to organize their material and tell their story. We will not discuss these in detail, but some description is necessary if the reader is to make sense of our subsequent analysis. For purposes of reference Table 1 gives a summary of each case study's main hooks and tensions.

Table 1. Substantive Hooks/Tensions

Country	Hook	Tension
Brazil	Progress in achieving reproductive and LGBT rights.	1. Value of civil society and state cooperation versus risk of state's cooptation and patronage of civil society groups. 2. Strategic advantages of identity specific agendas and strategies versus collective action in response to crises such as HIV/AIDS.

Egypt	Mobilization and state penetration by Islamist activists over past 30 years, focused on women's sexual rights.	1. Effectiveness of state to control and contain sanctioned Islamist groups is another symbol of the non-democratic context within which to pursue sexual and gender rights. 2. National and international initiatives to advance sexual and gender rights provides opportunities for social conservatives and fundamentalist groups to organize themselves and promote conservative policies.
India	Efforts to overturn 19th century law criminalizing sexual relations between persons of the same sex.	1. Sexuality as a venue for the expression of conflicts between modernist national ambitions and cultural essentialists. 2. The costs and benefits of public health versus human rights based approaches to sexuality.
Peru	Series of struggles between official bodies and rights advocates, 1990–2004.	1. Benefits and limitations of strategic short term gains for particular sexual constituencies versus long-term coalitional approaches to fundamental sexual and gender reforms. 2. Benefits and limitations of cooperation between civil society and state entities, particularly when power shifts are common at the state level.
Poland	Repeal of liberal abortion laws, replacement by highly restrictive ones.	Consequences of state granted versus civil society claimed reproductive rights.
South Africa	Series of constitutional court rulings on sexual and reproductive rights issues.	1. Disjunctures between constitutional, judicial, legislative and popular beliefs about and evaluations of sexuality. 2. The costs and benefits of human rights and social justice approaches to sexual rights.
Turkey	Government effort to criminalize adultery in context of its bid to enter European Union, 2002–2004.	Competing vision of women's sexuality on the part of secular feminists and social conservatives and religious traditionalists.
Vietnam	Government sexual/reproductive policies pre- and post-Doi Moi as manifest in shifting media attention and funding from family planning to HIV/AIDS programs.	1. Advantages of international donor support for development of NGOs constrained by inability of weak civil society groups to hold NGOs accountable. 2. Dominance of government ideology and programs as sites for resistance compared with the construction of a strong and independent civil society.

UN	Two "cases" centered on "whether or not to recognize 'sexual rights' as a concept, and to name 'sexual orientation' in UN documents."	1. Strategic compromises to advance specific agendas are likely to weaken attempts to advance specific causes in the future. 2. Value of including precise and specific terms and definitions in UN documents compared with the strategy of creating more general statements that will support varied interpretations.
WB	Analysis of gender ideology and policy based on document review.	1. Presumed scientific and economic basis of bank programs advances narrow, homogeneous, and ideologically conservative views of gender and sexuality.

At the most general level (with the possible exceptions of Egypt and Vietnam) the eight country cases are narratives of struggle — in most instances between the state and its allies (most often religious bodies) and non-state groups that seek to advance sexual and reproductive health and rights agendas. In the case of Egypt and Vietnam, however, while such conflicts are intimated, the focal struggle is of a different order. In Egypt, it is the tension between the state and ultra-conservative groups for whom sexuality is but one of many sites for anti-government activism. This case concerns the mobilization of Islamic activists — over the past 30 years, but particularly since the 1994 UN conference on Population and Development (ICPD) held in Cairo — in support of highly conservative gender ideologies and practices, the roots of which reach deeply into pre-colonial, colonial, and post-colonial nationalist and religious histories. And in Vietnam, the struggle is within the state between its modernization initiatives (*Doi-Moi*, that is, the opening up of Vietnam to neoliberal economic policies in the early 1990s) and its desire to ensure continuity with old socialist approaches to social problems. Progressive activists in both countries pursue their agendas with apparently minimal visibility.

The Turkish story is organized around the government's effort to criminalize adultery in the context of Turkey's bid to enter the European Union, and women's struggle against that effort. Through this analysis we come to appreciate how debates about sexuality are entwined with the country's faltering commitment to secularism, and a national identity that crosses the imagined and experienced cultural divide between "East" and "West." The India case

focuses on popular efforts to overturn a nineteenth-century, colonial-era law criminalizing sodomy, defined as "carnal intercourse against the order of nature with any man, woman, or animal" (Ramasubban, this volume, p. 92). It is a struggle that provokes highly polarizing debates concerning Indian culture and history. The view that sexuality manifests essential qualities of cultures and even nations is one we find at play in most of the cases. This helps explain the political potency of debates concerning sexuality and gender, for both are sites for the enactment of disputes over identity and power. Thus, in Poland the recent repeal of liberal abortion laws following the overthrow of communism and their replacement with more restrictive laws is considered by those responsible as necessary for the reclamation of the country's true identity, which communism had corrupted and perverted. This is similar to the situation in Vietnam, where nationalist visions are conflated with very particular and highly restrictive definitions of the "proper" Vietnamese women. Women's sexuality also lies at the crux of competing visions of Egypt's future. While the remaining country case studies are more wide-ranging they echo these profound debates. The South Africa analysis employs a series of constitutional court rulings on sexual and reproductive rights to measure the development of the post-apartheid state, revealing, in the process, significant contradictions within and between state institutions, the young democracy's constitutional vision, and the beliefs and life-conditions of its citizens. The Peru and Brazil studies describe a similar, but longer (20-30 years), series of struggles between sexual and reproductive rights advocates and various official bodies. These latter three cases provide a clear demonstration that advancing sexual and reproductive rights involves complex social processes, requiring interventions at multiple levels of state and civil society. More often than not these different processes do not play out synchronously or in a complementary fashion thus creating multiple opportunities for conservatives to contest newly articulated rights claims.

For at least the past 20 years, the United Nations and, to a much lesser (or perhaps merely less visible) extent, the World Bank, have been among the principal global stages on which the dramas portrayed in each country case have been enacted. The UN essay narrates two instances, separated by about 10 years, of intense partisan struggle over document language that allegedly would — or would not — affirm sexual rights. The power of words is central, as well, to the review of World Bank documents, for their definition and use can inspire visions of more equitable and liberated societies or, as is more often the case, constrain our imagina-

tions and actions. Thus, while "gender" and "sexuality" have entered the bank's lexicon, they are couched in narrowly economistic, purportedly scientific, and/or technocratic terms.

Events and opportunities

In the "eventful sociology" proposed by William Sewell, historical events "are happenings that transform structures" (Sewell, 2005, p. 218). Whether and how the transformative potential of mere "happenings" is realized depends on how these happenings are interpreted by interested actors and on the extent to which those actors possess the material and symbolic resources necessary to grasp the political opportunities such happenings present. The past quarter-century has witnessed a series of arguably transformative events at the global level and in each of the countries with which we are concerned. (Events on these two levels are not, of course, independent of one another.)

Globally, the HIV/AIDS epidemic that made its appearance in the early 1980s is perhaps the most obviously relevant of these events, creating whole new discursive spaces and categories of political actors and in the process changing the meanings attached to gender and sexuality almost beyond recognition. Perhaps never before have sexuality and gender been so publicly discussed and problematized, literally on a global scale, in relation to such a wide range of social, cultural, economic, and political issues as has been the case in relation to HIV and AIDS over the course of the past 25 years. Only somewhat less important in the present context were a series of UN conferences (see Françoise Girard, this volume), in particular the International Conference on Population and Development, mentioned above, and the 1995 Fourth World Conference on Women, held in Beijing.

These conferences gave international visibility and legitimacy to dissident views on questions of reproductive and sexual health and rights, and they were powerful catalysts for social movement and NGO organization, both cross-nationally and within countries, in support of — and in opposition to — those views. The impact of other "happenings" in the same period — the fall of the Berlin Wall in 1989, pressure from global economic actors beginning in the mid-1980s and leading to widespread adoption of neoliberal economic policies (by the countries of concern to us here, among others), the attacks on the World Trade Center in

New York in September, 2001 — is more ambiguous. Perhaps the main relevant effect of these events — suggested by several of the country cases — has been to destabilize existing structures of power, leading the beneficiaries of those structures to search for order in the affirmation and/or restoration of traditional gender and sexual norms and practices.

During the period in question, each of the countries examined here has experienced momentous political and social upheavals with potentially transformative consequences for society and the state. The most important of these consequences has been the opening of opportunities for new social actors — not necessarily progressive — to make their mark on the political scene. These openings vary substantially from the proliferation of NGO and other civil society organizations in Brazil and South Africa, for example, to the far more constrained field of possibilities in a country like Vietnam where one must read more closely to observe these opportunities, such as the difference in approach between the functioning of NGOs in the north and south of the country — more technocratic in one area and more interventionist in the other. From the perspective of advancing health and rights, the results have been contradictory — almost always forcing an end to longstanding silence about issues of sex and reproduction, but mixed in their impact on the ground.

In Table 2 we summarize these events and the opportunities they created. Following a slightly more detailed description of each event, we focus our analysis, first, on the (remarkably parallel) words and actions of the eight nation-states as they responded to the challenges posed by those events; and, second, on their impact on reproductive and sexual health and rights debates in each country.

Table 2. Country Cases: Events and Opportunities

Country	Events	Opportunities
Brazil	Transition from military dictatorship to civilian rule. Promulgation of the "Citizen's Constitution" (1988).	Strong pre-existing social sector seizes opportunities to advance reproductive and sexual health and rights.

Egypt	1970s – Sadat releases Islamic activists from jail; 1994 – ICPD held in Cairo.	Cairo conference creates opportunities for Islamic activists to mobilize internationally and to acquire sophisticated mobilization techniques/strategies.
India	Advent of HIV/AIDS (mid-1980s); increasing militancy of Hindu Nationalists.	Advocacy groups against AIDS discrimination and for sexual rights emerge. Mounting challenge to traditionalists and breaking silence for multiple sexualities.
Peru	Multiple shifts in government: • Fujimori (1990–2000) • Toledo (2001–2006).	Opportunities shift with political winds in context of weak sexual minorities sector and powerful Catholic Church.
Poland	Overthrow of communist government (1989) and reorganization of civil rights so that they are no longer exclusively state administered.	Mobilization of Catholic Church to capitalize on new political opportunities. Weak feminist movement.
South Africa	Demise of apartheid and establishment of democratic system that includes a participatory constitutional development process (1994); Advent of HIV/AIDS (mid-1980s).	Multiple voices legitimized, with conflicting claims; Constitutional authority and judicial independence.
Turkey	Islamic party political victories (1994); Islamic government proposes to criminalize adultery (2004).	Pre-existing feminist/sexual minority organizations seize opportunity created by government over-reaching and EU politics.
Vietnam	Communist government installed in mid-1970s. Opening to neoliberal economic policies (*Doi Moi*) in mid-1990s.	Civil society very weak. Opportunities exist primarily for NGO and government actors based outside the country.

NOTE: The UN and World Bank create opportunities by their very existence. They are targets of opportunity and, insofar as they are perceived to respond in various ways, they encourage further mobilization and further pressure. They would not be targets unless their words, documents they produce, and their actions were perceived to carry weight.

Five of these eight countries have, within the past 35 years, experienced seismic shifts in government — from dictatorship to democracy, from secular to religious, from communist to non-communist. Peru has experienced multiple such shifts in a relatively short time span as the political pendulum has swung from one ideological system to another. In Egypt it appears only a matter of time before such a shift occurs as the current regime employs increasingly repressive measures to maintain power and threatens to lose control of the oppositional space it created in an attempt to control Islamist activists. Among the eight, only India's government has remained relatively stable, although the rise of Hindu fundamentalists, ongoing conflicts with its Muslim neighbors, internal tensions between Hindu and Muslim activists, and rapid economic and, consequently, cultural changes among its middle and upper classes, provide a political momentum that can be difficult to predict. The enormous political changes experienced by most of the countries examined were often — but not inevitably — transformative in their impact, particularly in the opportunities they opened for new sets of actors to exercise political and policy influence.

Opportunities must be grasped, however, and the capacity to take advantage of openings as they occurred was unevenly distributed across issues and across countries. Turkey, Brazil, Poland, and Egypt provide excellent — if very different — illustrations of this point. Turkey has a long history of feminist movements and so, despite a period of fragmentation immediately following the 1994 Islamic political victories, feminist groups from around the country were able to unite behind reform of inequitable gender provisions of the Turkish Penal Code, holding mass protests and campaigning through a sympathetic media. In Brazil, as well, social movement actors who mobilized around the promulgation of the new Constitution in 1988 were well positioned to seize the political opportunities to advance sexual and reproductive rights offered under a democratic regime. The advent of the Solidarity government in Poland created political opportunities as well, but rights advocates were poorly positioned to seize them while the Catholic Church — lying in wait during the communist regime and emboldened by a Vatican under the leadership of John Paul II, the "Polish Pope" — was able to march right in. Islamic conservative activism had been building in Egypt since Anwar Sadat's government came to power in the early 1970s. However, it was the Cairo and Beijing conferences that triggered organized mobilization by Muslim religious fundamentalists against sexual and reproductive rights as they were interpreted by leading feminist advocacy

groups. (We will explore this mobilization further in the context of Girard's essay on the United Nations.)

The picture in the remaining four country cases is less clear. In Vietnam, at one extreme, the existing political space is almost fully occupied by the state, leaving little or no room for actors without state sponsorship, and the state relies heavily on external (non-Vietnamese) donors, governments, and non-governmental organizations to shape its sexual and reproductive health policies. Peru and South Africa do not lack local NGOs, but in both places the highly contested politics of reproduction and sexuality appear to have resulted in scenarios of uneven and fragmented progress in some social sectors while others stagnate or regress. HIV/AIDS has created space in India for the emergence of advocates for sexual rights, for the visibility of multiple sexualities, and for a greatly expanded discourse on the topic. Yet arcane judicial processes and indifference, or at best ambivalence, on the part of political leaders muffles momentum on the ground.

More generally, although social and political crises create the potential for positive social transformation, whether or not that potential is realized is highly dependent on the larger local, national, and even global context at the moment when those crises occur. Peter Evans in his analysis of the conditions for environmental protest argues that the two most important dimensions of that context in recent years have been, first, the transition to a global economy — that is, the opening of economic markets on a global scale — and, second, a gradual transition to electoral democracy, opening significant spaces for citizen action in the countries where this transition has occurred (Evans, 2002). A similar argument could be made concerning sexuality and gender for increasing flows of information globally and the development of transnational activist networks have developed significant force in some arenas, the UN being among the most notable of these. Nevertheless, without local freedoms and a certain level of economic empowerment it is difficult for these efforts to result in significant changes in the lives of many communities.

Ideologies and interests of state

These eight countries differ on almost every imaginable dimension: political, economic, social, and religious. More striking than their differences, however, are the commonalities

in response when the stability of established gender and sexual hierarchies is perceived as threatened. Reaching into imagined pasts, powerful elites in each country draw upon readily available gender, sexual, and reproductive ideologies to oppose progressive reforms, equating — as Scott's analysis would predict — the preservation of "traditional" gender norms and sexual morality with the preservation of the nation-state. Consequently, a key venue for engagement on the part of sexual and gender rights activists is national narratives, for these are used by the empowered to justify the status quo (Bhabha, 1990; Ashcroft, Griffiths & Tiffin, 1989). That is, these narratives naturalize inequality by erasing historical contradictions and giving the appearance of teleological authority to the state's current organization. What they attempt to claim is that "this is who we are and this is what we were always meant to be." Every case supplies illustrations of this point. Those that follow are by no means exhaustive.

The most paradoxical case, perhaps, is that of India where the "modern Indian state" has come to the defense of a nineteenth-century anti-sodomy law imposed by the imperial British, arguing that "the security of the 'Indian nation' is at stake" and that repeal would violate an "essential 'Indian culture'" ("norms of universal marriage, monogamy, and procreative heterosexuality involving chaste women and masculine men, enforced by the triumvirate institutions of patriarchal family, caste, and community") (Ramasubban, this volume, p. 94).[1] Polish national identity is equated with the historic figure of the "Mother Pole" raising children as a "patriotic act for the nation" in the context of Poland's nineteenth-century struggle for independence against Russia, Prussia, and Austria. "Any attempt by a woman to liberate herself from family roles was treated as a betrayal of the nation and [much the same thing] the [Catholic] religion" (Nowicka, this volume, p. 178). Turkey's early twentieth-century modernizers, despite their abolition of Islamic law and rhetorical emphasis on women's "liberation" as symbolic of the modern state, regarded women's sexuality as a "potential threat to public order and morality." A "foundational premise" of Turkey's 1926 Penal Code was that "women's bodies and sexuality are the property of men, family, or society" (Ilkkaracan, this volume, p. 252) In communist Vietnam pre-*Doi Moi*, "…the state continued to exalt women's 'traditional' virtues of endurance, faithfulness, compassion, and self-sacrifice as invaluable to the national cause of building a modern and industrialized nation. Therefore,

[1] Heather S. Dell, in "'Ordinary' sex, prostitution, and middle-class wives: Liberalization and national identity in India" (2005) makes very similar points about sex, gender, and national identity in India.

while the Vietnamese woman provided a ready-made 'emancipatory subject' for the newly established socialist order, her emancipation started with her subjugation to the new nation" (Le Minh & Nguyen, this volume, p. 296).

Post-*Doi Moi*, "women again play a key role since they bear the responsibilities for the welfare of the family and therefore, by extension, also the welfare of the nation" (ibid., pp. 298-299). Women's bodies are, in each case, construed as subordinate to the projects of the state. It is important to emphasize — and Vietnam with its rapid urbanization and industrialization and embrace of neoliberal economic policies illustrates this point particularly well — that none of these countries reject "modernity" wholesale. They reject it in ways that protect established structures of power without, as they see it, threatening critical economic interests.[2] There is a problem, of course, when these two projects clash, as in the case of Turkey.

National identity has been conflated with progressive policies as well, but with a more fragile hold. This point emerges with particular poignancy in the case of South Africa. On the one hand, there is constitutional court Justice Albie Sachs' "rhetorical harnessing of sexual rights to the country's core national narrative...'The right [for same-sex couples] to get married ...represent[s] a major symbolic milestone in the long walk to equality and dignity.' The phrasing of this final sentence echoes the title of Nelson Mandela's autobiography, *Long Walk to Freedom*, a 'sacred' metaphor in the liberation story" (Beresford, Schneider & Sember, this volume, p. 217). On the other hand, "the cultivation of 'Africanness'" — associated with "anti-modernist commitments to essential, timeless, and stable moral beliefs and practices" — is "very much a part of the country's current nationalist discourse" readily appropriated by ambitious politicians (ibid.). But South Africa is certainly not alone in this regard. Brazil has also shown a willingness to link progressive policies in sexual and reproductive health with its own national image, taking regional and international leadership roles, for example, in relation to global movements such as those leading up to both the Cairo and Beijing Conferences, or in the more recent introduction of the ultimately unsuccessful Brazilian resolution, entitled Human Rights

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[2] A recent book on how nation-states negotiated issues of sovereignty at UN conferences makes the point that "sovereignty compromises are more likely when the potential for material gain is high (e.g., when they can bargain for economic resources in exchange for accepting environmental regulation) and less likely when states perceive core identity issues, such as values asserted by governments as central to particular national or cultural ways of life, to be at stake. In other words, for states seeking resource concessions on certain issues, sovereignty is used as a bargaining chip" (Friedman, Hochstetler, & Clark, 2005, p. 102). Where there is little to gain except increased legitimacy in the eyes of international and/or local NGOs, sovereignty is less likely to be bargained away.

and Sexual Orientation, in the United Nations Commission on Human Rights. Perhaps even more clearly, Brazil's highly regarded HIV/AIDS program has increasingly become a featured part of Brazilian foreign policy, touted by the Brazilian government at intergovernmental events such as the United Nations General Assembly Special Session (UNGASS) on AIDS, and written into bilateral cooperation agreements between Brazil and strategic foreign partners such as China, South Africa, and the other Latin American countries. While some of this attention has been due to the technical successes of Brazil's antiretroviral treatment access program, this success has been firmly grounded in the long-term commitment to the defense of human rights in relation to gender and sexuality that has provided the foundation for the Brazilian program (Berkman et al., 2005).

Population and reproductive health

Women's bodies have long been a site of political contest between the state, the church, and the occasionally strong, but more often weak and fragmented, voices of women themselves. Given the remarkable and consistent conflation of control over women's bodies — in particular, over their reproductive powers — with the identity and power of the nation-state, the level of state investment in these contests is unsurprising. Where religious groups and the state have joined forces, as in parts of South America, and in Egypt and Poland, or where the state occupies the entire civic space, as in Vietnam, reproductive rights discourses have gained little purchase.[3] In Egypt, for example, the official National Council on Women (chaired by first lady Suzanne Mubarak) felt it necessary to refer legislation criminalizing female genital cutting to religious authorities for their opinion. Rejected by those authorities, the legislation promptly died.

On this contested landscape, birth control occupies an ambiguous position. Although Western feminist movements have generally seen access to the means of fertility control as central to women's liberation, fertility control imposed by the state (or advocated by agencies of other states) to advance projects of population control in the service of economic development is quite another matter. In Peru, for example, Fujimori "used the global feminist discourse [from Cairo and Beijing] to 'cloak' his coercive population control policy" (Cáceres,

[3] Advocates for reproductive rights are active in India (see Ramasubban & Jejeebhoy, 2000). Their absence from this discussion reflects their absence from Ramasubban's essay in this volume. The Turkey narrative is focused exclusively on women's civil rights.

Cueto, & Palomino, this volume, p. 139). In so doing, he coopted and confused Peru's relatively weak feminist movement and paved the way — once his actions were disclosed — for the Catholic Church and its allies (including United States based religious conservatives) to demand an end to all family planning programs (a project endorsed by Fujimori's successor, Toledo). Vietnam's promotion of family planning programs (pre- and post-*Doi Moi*) has been driven almost entirely by its nationalist aspirations: "After *Doi Moi*, the emphasis of family planning shifted from building socialist subjects and socialist nation to constructing small-size, prosperous, and happy families as foundation for a strong and modern nation" (Le Minh & Nguyen, this volume, p. 298). Critical voices have been almost entirely absent. Perhaps the larger point is that insofar as birth control services are available in these eight countries — and we have no quantitative data as to whom they are available and under what conditions — this availability is as often the outcome of state policies and actions as it is of demand from women's movements or other progressive forces.

However initiated, birth control pales by comparison with abortion in the emotional intensity of the controversy it evokes. Vianna and Carrara (Brazil) note, "[Media] coverage was on abortion as an isolated issue disconnected from the broader sphere of sexual and reproductive rights." This is a remarkable statement that is nevertheless applicable well beyond Brazil. Even in Brazil, with a strong feminist movement dating from the 1970s and a Constitution that incorporates family planning as a reproductive right, legislation aimed at legalizing or extending the circumstances for abortion has been systematically rejected by the National Congress, most recently in 2005. Taking full advantage of its access to parliamentarians and other political elites, the Catholic Church (and its allies in other religious bodies) was able to defeat a policy change that emerged initially from the Brazilian government itself. Yet even this conflict should call our attention to the complex intersections that exist between civil society and the state, since such a policy would never have been elaborated in the first place if feminist activists had not come to exert important influence on governmental policy. Indeed, in Brazil, as in a number of other countries, the role of social movement elites — feminists involved in reproductive health and population programs, AIDS activists working in the HIV/AIDS Program, and so on — has been one of the most effective strategies for seeking to implement gradual but ultimately far-reaching policy changes related to gender and repro-

ductive and sexual health and rights (a similar point has been made by Rosalind Petchesky in her study of global feminism and health and human rights movements [Petchesky, 2003]).

However, a constitutional right to abortion does not, in and of itself, ensure that this procedure will be available and safe. Abortion was made legal in South Africa in 1994. Nevertheless, it is highly contentious (74% of Black South Africans think that abortion in the case of "economic hardship" is always wrong), political parties are deeply divided on the issue, and there is a large gap between law and practice, in part because of community and medical provider opposition: "access to official abortion services is extremely limited for the majority of the female population." Fundamentalist churches are increasingly powerful in South Africa, and a highly stratified and fragmented women's movement, many of whose leaders have been coopted by the government and political parties, has not sustained the "pro-choice" momentum of the early 1990s, when it played a key role in the development of the country's constitution and initial legislative agendas. Anti-choice groups, on the other hand, are increasingly active and are building what promises to be a very influential base of popular support.

The extreme case, of course, is Poland. Under the communist regime abortion was available essentially upon request — not (as the essay emphasizes) because women fought for it but because the government decided it should be so, attributing high rates of maternal mortality to unsafe "underground" abortions. The matter generated little public debate. In 1993, following accession of the Solidarity government to power, however, abortion "on social grounds" was criminalized, making legal abortion unavailable to most women. Abortion was identified with communism. To be in favor of abortion rights was not only to be pro-communist but also to be anti-Catholic, a position in which no post-communist politician wanted to find him- or herself. The Catholic Church in Poland, identified with the overthrow of communism and with the country's beloved "Polish Pope," dominated political consideration of "social," i.e. sexual and reproductive, issues following the fall of communism. The Polish women's movement — strong before World War II — essentially disappeared under communism. Solidarity was disinterested in what it defined as "women's issues." Although the Solidarity government's actions on abortion stimulated the creation of an opposition women's movement, it has been fragmented and politically divided, no match for the all-powerful Catholic Church.

HIV/AIDS

Among the most important social transformations sparked by the HIV/AIDS epidemic have been its role, first, in catalyzing social movement organization around the disease itself, and second — perhaps more important — in forcing the acknowledgment of multiple sexualities and creating space for organizing around these sexualities. The road has not been smooth, however, and in some countries — illustrated in the present context by Vietnam — even finding a path is hard. It is useful to begin with a brief synopsis of the state of play in each of the five countries where relevant information is available, and then identify some sticky issues these narratives raise.

Effective organization — meaning politically influential organization — in both domains (AIDS and multiple sexualities) is furthest advanced in Brazil. AIDS-related advocacy groups were formed in the mid-1980s, before the promulgation of the Brazilian Constitution, and established strong links with the movement for political reform. Much like the Catholic Church in Poland (however far-fetched this analogy may seem) these groups were strategically positioned to capitalize on pre-existing political ties once the new regime took power. The accomplishments of the Brazilian AIDS movement — government-supported media campaigns to promote condom use and (recently) against homophobia, free medication for persons with AIDS, support for the creation of lesbian, gay, bisexual, transgender (LGBT) groups, not to speak of the Brazilian government's high profile on the international stage in the domains of AIDS and of sexual rights — are attributable (we would argue) to these early connections. This assertion finds support in the essay's allusion to the "remarkably large numbers of professionals working within NGOs and state organs" (Vianna & Carrara, this volume, p. 38; see also, Parker, 2003; Berkman et al., 2005). Friends in court are the key to advances in public health (Nathanson, 2007).

In no other country was the political context so favorable. Cáceres and colleagues argue that in Peru the "visibility and legitimacy of those who are sexually different has significantly improved in the last two decades" (this volume, p. 159) and that "public perceptions of persons living with HIV/AIDS have also improved" (this volume, ibid). The level and quality of attention to the AIDS epidemic and its many related issues appears, nevertheless, to have

been highly sporadic, dependent on the shifting political fortunes of the country's political leaders, on the whims of international donors, and on the rise and fall of various advocacy groups. In sharp contrast to Brazil, neither the Peruvian public nor Peru's politicians have any real engagement with questions of sexual (or reproductive) rights.

The governments of both India and South Africa — from very different political starting points — long delayed or interrupted serious confrontation with HIV/AIDS, and even now the extent and effectiveness of their commitment is unclear. "Both the Indian state and civil society were in denial [until the mid-1990s], apparently convinced that a sexually transmitted disease like AIDS could not possibly spread in a country which had the protective effect of 'Indian culture'" (Ramasubban, this volume, p. 98). Strikingly (and, again, in contrast to Brazil) for the Indian political left "sexuality was of little concern and homosexuality was a 'capitalist aberration,' an elitist and imperialist import" (ibid., p. 106). Without a solid structural base on which to build collective action, voices of protest against these hegemonic discourses were muted. Recently, Ramasubban argues, this situation has begun to change: erstwhile fragmented sexual rights and AIDS-related groups have joined to demand the repeal of India's anti-sodomy law and in 2006 the government's AIDS office — in its first publicly stated position on the issue — "supported the decriminalizing of alternative sexualities" (this volume, p. 118). Whether or not the law will in fact be repealed, and how its repeal will contribute to addressing India's HIV/AIDS epidemic, are as yet unknown.

The South African story is more familiar, and we will comment on it only briefly. First, South Africa's problems in this domain did not begin with President Mbeki's questioning of the scientific consensus on the cause of AIDS. A "well-reasoned and affordable plan" to deal with the AIDS epidemic was discussed in the years leading up to the collapse of the apartheid government and was available in the early 1990s. It was not implemented for lack of infrastructure and leadership from Mandela and the African National Congress (ANC). This vacuum continued and was exacerbated under Mbeki. Despite numerous dramatic episodes involving legal disputes with pharmaceutical companies (with positive outcomes for the South African government and activist groups) and the efforts of activist groups such as the Treatment Action Campaign (TAC), the majority of South Africans living with HIV/AIDS do not have access to life-saving resources: "Over the past seven years, the government

has initiated a number of programs to address the epidemic but the results have always been disappointing" (Beresford, Schneider, & Sember, this volume, p. 237).

Second, the gap between legal rights and popular endorsement of those rights, identified earlier with respect to abortion, exists throughout. Gays and lesbians, for example, have been transformed from criminals (under apartheid) to full citizens under the government of the ANC. Nevertheless, 81 per cent of black South Africans believe that same-sex adult sexual relationships are "always wrong," and at least one mainstream politician (and potential future president) has stated publicly "same-sex marriages are 'a disgrace to the nation and to God'" (Beresford, Schneider, & Sember, this volume, p. 220). Third, the Treatment Action Campaign has, like many social movements in the country, oscillated between cooperative and oppositional relationships with government with mixed results: it has embarrassed the government into action on occasions only to find that jointly heralded breakthroughs are either unrealized or implemented piecemeal. Nevertheless, South Africa now has the largest antiretroviral treatment program in the world. Given the size of its HIV-positive population, however, this still only represents a fraction of those in need of care and falls far short of what activists have long demanded.

Finally, "economic hardship and crime-induced fear," along with the contradictions embedded in the South African government's HIV/AIDS policy, have made the country "ripe for the absorption of conservative initiatives and programs" (ibid., p. 238). "Many South Africans have distanced themselves from the political and labor organizations they formerly supported and are turning to the rapidly growing number of evangelical and Pentecostal churches established with spiritual, intellectual, and financial help from the evangelical right in the United States" (ibid., p. 223). Together with fundamentalist religion, the United States has exported to South Africa the full armamentarium of approaches to sexuality favored by its current administration — delay sexual debut, abstain, be faithful — to an audience that, in the absence of attractive alternatives, has become increasingly receptive to conservative ideologies.

At one point in their essay on Vietnam, Le Minh and Nguyen describe Vietnamese discourse on population as "a two-way discussion between the state and its experts [on the one hand] and the donor community [on the other]" (this volume, p. 292). People affected by govern-

ment policies had no voice. These statements apply with equal force to the discourse on HIV/AIDS. Doing what it "knew best," the state initially (in the 1990s) gazed at HIV/AIDS through a socialist lens, construing the epidemic as the result of "social evils" (prostitution and drug use) to be eradicated by reeducation of female sex workers (and drug users) to become "proletarian subjects." (As we have seen, "socialism" has no lock on such discourses.) Under pressure from international donors, the state has recently (at least publicly) abandoned this approach in favor of a medical one: sex workers are now described as "an imminent threat to the health of the nation" (Le Minh & Nguyen, this volume, p. 302). Wives — again coopted as servants to the state — are urged to "provide class-appropriate pleasure to their husbands" in order to insulate them "against the lure of prostitutes" (ibid., p. 303), a risky strategy (for wives) at best. Insofar as there is a civil society voice in these state projects — *Doi Moi* was followed by an explosion of local NGOs — it is almost exclusively state and (to a greater extent) international donor sponsored and funded.[4] On the evidence of this essay, there has been little impact at the grassroots and, in consequence, little impact of the grassroots on policy.

This review of countries' responses to HIV/AIDS raises a number of questions. First, there is the potentially fraught relationship between governments and social movement organizations (SMOs). These organizations obviously benefit from government recognition and funding, but there is considerable evidence in these essays that with recognition and funding may come cooptation, loss of militancy, and depoliticization. This has clearly happened in Peru — although the situation there is so fluid that it could "un-happen" with the next change of political regime. In South Africa there is some indication that TAC is similarly vulnerable given that its leaders have a history of strong support for the ANC and have even suspended activist campaigns prior to national elections as a tacit signal of solidarity with the ANC government. Despite this inclination, TAC remains strongly independent and is vocally opposed to government concerning its AIDS policies and related issues. State and

[4] Western-type NGOs are, in fact, illegal in Vietnam and current efforts to legalize them are making little headway in parliament. The only legal associations are "technical" with stated aims of research and/or evaluation. Vietnam's approach to the question of associations is illustrated by the country's experience with associations of people with AIDS. Returning from an international AIDS meeting, the prime minister informed the health minister that the country had to have such an association. A plan was drawn up that included individuals from various state ministries, but no one with HIV/AIDS. Vietnam was determined to possess the trappings of a player on the international AIDS stage, but was obviously clueless as to how to go about it.

donor funding of NGOs in Vietnam renders it almost impossible for SMOs to have a strong political voice. Even in Brazil, where activist and civil society involvement in the response to HIV and AIDS has been seen as a model that others might emulate, the movement of activists back and forth between NGOs and the state, and their on-going involvement in implementing program activities sometimes at the expense of political advocacy, has occasionally led to both cooptation and de-politicization (Berkman et al., 2005; Parker, 2003). A second related issue is the shift in meanings of HIV as it goes from being a moral/political issue to a medical/chronic disease issue. What are the consequences of this turn for AIDS-related and sexual/human rights organizations that have grown up around, or in response to, earlier definitions? Third, with the growth of groups focused on sexual/human rights rather than on AIDS exclusively, there is the great potential for identity fragmentation and competition for recognition and resources. (Girard cites many examples of this competition in the United Nations context.) Where a clear common goal has been identified (as in India around the demand for repeal of its anti-sodomy law) this problem can — at least temporarily — be overcome, but it will continue to lurk in the shadows.

Capture the flag

The "flag" in our subheading is the United Nations and — and to a lesser extent because it is not so open to capture — the World Bank. The flag in the former case is almost wholly symbolic — words and phrases in documents and resolutions — but nonetheless powerful in its ability to confer legitimacy on one vision of the global social order as compared with another. Capture of the World Bank has not only symbolic but significant material value as well: the vision it adopts drives how the bank's money is allocated and how its programs are shaped. As their respective positions in the global social structure have evolved over time, these two institutions have become increasingly inviting — indeed obligatory — targets in struggles for power and ideological hegemony in the arenas of reproductive and sexual health and rights. The opportunities they present are, however, very different.

As the vignette that introduces Girard's paper makes clear, the United Nations has limited ability to keep out uninvited guests (e.g., members of the Lesbian Caucus) and, at the same time, offers unprecedented opportunities for media exposure ("everyone in the [Beijing]

plenary, including government delegates from 189 countries had [seen the banner and] got the message" [Girard, this volume, p. 311]). Much like the typical "weak state," the UN combines multiple venues (i.e., not only the actual conference but multiple preparatory and follow-up conferences where non-state as well as state actors can make their case and struggle to have their views prevail) with an incapacity to impose resolutions on the combatants. Indeed, the UN is, by definition, a forum for the public exchange of views. The World Bank has a very different mission: to lend money in support of projects for economic development of poor or economically struggling countries. Although it "has demonstrated, time and again, sensitivity to pressure from organized actions mounted by civil society" (de Camargo, & Mattos, this volume, p. 363) ". . . the bank [by virtue of its structure and economic leverage] is far less open [than the United Nations] to organized political pressure from civil society" (ibid., p. 371).

Girard's essay gives ample testimony to the importance of the Cairo and Beijing conferences (along with the related UN conferences that preceded and followed these two critical events) in mobilizing feminist activists and, more recently, LGBT activists around the world on behalf of sexual and reproductive health and rights.[5] "Mobilization was key to success in Beijing, and will be key to future successes at the Human Rights Council and elsewhere. North/South alliances are especially important....the leadership provided by Southern activists effectively counters the claim that [sexual and reproductive rights] are Northern/Western issues" (Girard, this volume, p. 355). As an internationally recognized global forum, the UN has been able to legitimize discourse on a set of highly contentious issues and, by extension, the groups that advocate on those issues. Indeed, one of the questions raised by Girard's essay, particularly in light of the country case studies (see, in particular, Ramasubban's essay on India), is the relationship between advocates' status and visibility at the United Nations and their status and visibility in their home countries. To what extent and under what circumstances does successful advocacy at the UN translate into successful action at home? There is insufficient evidence in the country studies to answer these questions, a symptom perhaps of the paucity of connections between the global activist domain and local struggles and organizations, even if a set of activists is able to move easily from one arena of engagement to another.

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[5] Much has been written about these events and their impact. The value of Girard's essay lies in her interviews with key participants and in her in-depth analysis of the, sometimes agonizing, trade-offs necessary to produce agreed-upon documents and resolutions.

Among the more striking testimonials to the impact of the movement Girard so effectively describes is its success in generating a full-fledged countermovement. If a social movement consists of "'collective challenges by people with common purposes and solidarity in sustained interaction with elites, opponents, and authorities,'" a "'countermovement' is a movement that makes contrary claims simultaneously to those of the original movement" (Meyer & Staggenborg, 1996, p. 1631). Conventionally, nation-states are the targets of social movements. They appear quite willing, however, to adopt social movement — or, in this case, countermovement — forms when the occasion requires, as documented by Bahgat and Afifi's wonderfully detailed description of Egypt's response to the Cairo conference. Unhappy with what they perceived as "defeat" at Cairo (i.e., the ICPD Program of Action's "groundbreaking language on sexuality, particularly on the right to have a 'satisfying and safe sex life'" [Bahgat & Afifi, this volume, p. 59]), Egypt's religious authorities (by now fully identified with the state) swung into action, copying almost to the letter the strategies and tactics of their opponents. Not only did Egypt rectify its perceived mistakes at Cairo by participating fully in preparations for Beijing and in the proceedings of the conference itself, Egypt's religious activists were instrumental in formation of an Islamist women's NGO (the International Islamic Committee for Women and Children [IICWC]) "to counter the influence of progressive feminist and pro-women[!] NGOs at the international level," (Bahgat & Afifi, this volume, p. 60). Bahgat and Afifi argue that since Beijing this international coalition of Islamic women's organizations "has become the Islamists' most powerful tool in the struggle over gender issues and sexual and reproductive rights" (ibid.).

These accounts suggest that international bodies such as the United Nations play a major role in sustaining protest and conflict. However much they might like to do so, nation-states cannot shut protest down because these bodies provide forums for the airing of dissent. Under circumstances where the international body lacks authority to resolve the conflict — as in the case of conflict over reproductive and sexual health and rights at the UN — partisan struggle is likely to continue indefinitely.

The World Bank has considerably greater capacity not only to resolve conflict but also to suppress it, although even its capacity is not unlimited, as recent events have shown. What de Camargo and Mattos contribute to our appreciation of this capacity is the fact that in

addition to the power of its financial economy is the power of the Bank's discursive economy. In combination, these two economies have the authority to shape not only government's economic policies but also their framing of social initiatives. To understand how this works, it is not sufficient to point out that "a comprehensive view of sexuality is conspicuously absent from the World Bank's public discourse," (Camargo & Mattos, this volume, p. 371); it is also necessary to trace how this silence itself is manufactured, for sexuality issues "are present in some bottom tier documents but disappear as the narrative moves up the hierarchical scales" (Ibid., p. 372). As a case study of these practices of discourse construction and their translation, or failure to translate these into economic policies and assistance programs, this analysis encourages us to pay attention to the issue of what is spoken about and how and what is made silent in all venues. A substantial aspect of the struggle over sexuality and gender is the dialectical relationship between envisioned sexual and gender regimes and material transformations. Vision is able to guide action while shifts in resources and practices can stimulate a vision of what gender and sexuality systems may be possible. As Camargo and Mattos conclude, "the public discourse of the bank is yet another important arena where the affirmation of a constructive conception of sexual rights has to be fought for, potentially with repercussions on a global scale" (this volume, p. 373). The affirmation of constructive conceptions of sexual rights is no less important in the numerous other arenas to which these cases lead us.

Conclusion

The many differences between these various case studies make it difficult to develop controlled comparisons between them. Nonetheless, we hope that this discussion has highlighted some of the crosscutting issues that emerge from a careful reading of these stories about the many struggles taking place in the early twenty-first-century with regard to gender and sexuality. While we want to resist the temptation to try to draw any overarching or definitive conclusions from this brief excursion through some of the issues that the case studies have raised, we do want to close by calling attention to a number of points that we think these studies tend to illustrate or confirm — and to highlight a number of new questions which they raise even if they are unable, within their understandable limitations, to fully answer.

In particular, it appears to us that in the field of sexual and reproductive health and rights, as has been the case in the analysis of a number of other areas of social activism in recent years, it is possible to identify two major trends in recent history that have had an especially important influence in shaping both local struggles and transnational processes — what Peter Evans has analyzed as the transition to a global economy, with an unprecedented opening of economic markets on a global scale, and a gradual (but for the most part sustained) transition to electoral democracy, which has opened important opportunities for citizen action and social movement organization in the countries where this transition has occurred (see Evans 2002). Although these factors, which appear to be key elements of the broader process of globalization in the late twentieth and early twenty-first centuries, open up significant possibilities for change, it is difficult to predict the precise direction of such change. Depending on a range of social, cultural, economic, and political conjunctures it is just as possible for change to unleash conservative and even reactionary forces (as in the many forms of religious fundamentalism that have made their influence felt in nearly all the cases that we have examined) as it is to encourage what we view as more positive social transformations that might increasingly guarantee human freedom and dignity through the extension and expansion of sexual and reproductive rights. Whether or not that potential for positive social change is realized in any specific setting is thus very much dependent on local, national, and even global contexts within which changes take place.

There is no question, in our view, that the global transformations of recent decades have opened up important new spaces in almost all societies and institutions (and certainly those examined in these case studies) for advocacy and activism in defense of gender equity and sexual freedom. Increasingly extensive global flows — not merely of capital, but of people, technologies, images, and ideas (what Arjun Appadurai has usefully identified as the landscapes of contemporary globalization [Appadurai, 1996]) — have made possible not only the spaces of local struggle in which the politics of contested bodies have increasingly taken place, but also the emergence of important and growing transnational movements and activist networks. These networks have begun to have a major impact on changing the contemporary landscape of sexual and reproductive health and rights (networks that have themselves perhaps made possible the space of the collaborative research project that provided the context for the case studies we have examined

here). These transnational movements have opened up new arenas for dialogue and debate — in the United Nations system, for example — which hold important potential for the future.

At the same time it is also clear that without being built upon a foundation of local freedoms — including social and economic inclusion at levels that are still far from being guaranteed anywhere in the contemporary world — progress made in transnational settings may be almost irrelevant for the sexual and reproductive lives of many (women, men, and children) in local communities. Indeed, one of the key priorities for the future, and one of the areas that this set of case studies only begins to open up, is a fuller understanding of the ways in which the new transnational language of sexual rights impacts the lives of people at the grassroots (see Parker, 2007). For example, what does the notion of sexual rights mean for impoverished women struggling to escape domestic violence in their daily lives? Or for female and transvestite sex workers, or the poor youth of the communities that ring the modern metropolitan urban centers in virtually all of the countries we have examined? How are emerging gay and lesbian communities in relatively peripheral social and economic settings creating and re-creating their own understandings of citizenship and empowerment that may or may not have the same terms of reference as LGBT and queer activism as it evolved in the centers of economic and political power — and that may have very little to do with the transnational activism focusing on sexual rights in arenas such as the United Nations? How can notions of sexual citizenship, and of erotic justice, be constructed in ways that will make them meaningful for those in the front lines of on-the-ground struggles, typically waged at the local level or in state or national political arenas?

The case studies that we have examined here, and the broader collaborative project within which they were crafted, only begin to offer answers to many of these questions. But that they do, in fact, begin to offer such answers, is nonetheless a remarkable achievement for which we are indebted to their authors. In this brief comparative analysis of the key crosscutting themes emerging from the case studies our primary goal has been to highlight some of these themes and issues in the hope that readers of this essay will be interested enough to go to the individual case studies for their more detailed analyses. We very much hope that what we have said here has been sufficiently intriguing and thought provoking that they will feel compelled to do so.

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