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Who Is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders

CYNTHIA SOOHOO* & DIANA HORTSCH**

I. INTRODUCTION

In her 2011 report to the United Nations Human Rights Council,¹ Margaret Sekaggya, the Special Rapporteur on the Situation of Human Rights Defenders,² calls attention to the work of sexual and reproductive rights defenders. This group includes a number of individuals who might not initially be recognized as falling under the umbrella of “human rights defenders”—LGBT³ activists; reproductive healthcare workers who provide access to contraception and abortion; and those providing access to HIV information, prevention services, and treatment, among others.

The recognition of sexual and reproductive rights defenders as human rights defenders is an important and timely step in ensuring that women (and men) have access to the sexual and reproductive health ser-

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1. Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Human Rights Council, U.N. Doc. A/HRC/16/44 (Dec. 20, 2010) (by Margaret Sekaggya) [hereinafter *2011 Report of the Special Rapporteur Sekaggya*].

2. Between 2000 and 2008, Hina Jilani served as the Special Representative of the U.N. Secretary-General on the Situation of Human Rights Defenders. Her mandate was renewed once by the Commission on Human Rights in 2003 and again by the Human Rights Council in 2007. In March 2008, the Human Rights Council continued the mandate for another three years and appointed Margaret Sekaggya the new Special Rapporteur on the Situation of Human Rights Defenders. See *Special Rapporteur on the Situation of Human Rights Defenders*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS., <http://www2.ohchr.org/english/issues/defenders/index.htm> (last visited Apr. 8, 2011). For the purposes of this essay, Jilani will be referred to as “Special Representative Jilani” and Sekaggya will be referred to as “Special Rapporteur Sekaggya.”

3. LGBT is an acronym for lesbian, gay, bisexual, or transgender.

vices they need to protect their health and to decide whether and when to have children. The Special Rapporteur has also made clear that the human rights of all people are protected without regard to sex, sexual orientation, gender identity, or expression, and that the brave individuals working to realize sexual rights are entitled to state protection as human rights defenders.

This essay seeks to mark this important development, to articulate the basis for recognition of defenders of sexual rights⁴ and reproductive rights⁵ as human rights defenders, and to briefly explore some of the

4. Sexual rights refer to a set of human rights related to human sexuality, including equality, privacy, autonomy, integrity, dignity, and freedom from violence and discrimination. *See* SONIA ONUFER CORRÉA ET AL., *THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY* (2007) [hereinafter *YOGYAKARTA PRINCIPLES*], http://www.yogyakartaprinciples.org/principles_en.pdf; INT'L PLANNED PARENTHOOD FED'N, *SEXUAL RIGHTS: AN IPPF DECLARATION*, at vi–vii, 16–21 (2008), <http://www.ippf.org/NR/rdonlyres/9E4D697C-1C7D-4EF6-AA2A-6D4D0A13A108/0/SexualRightsIPPFdeclaration.pdf>; *Declaration of Sexual Rights*, WORLD ASS'N FOR SEXUAL HEALTH (Aug. 26, 1999), <http://www.worldsexology.org/sites/default/files/Declaration%20of%20Sexual%20Rights.pdf>. Although there is no standard definition of sexual rights, a working definition developed during a WHO-convened technical consultation on sexual health in January 2002 defined sexual rights in the following way:

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

WORLD HEALTH ORG., *DEFINING SEXUAL HEALTH: REPORT OF A TECHNICAL CONSULTATION ON SEXUAL HEALTH 28–31 JANUARY 2002*, GENEVA 5 (2006), http://www.who.int/reproductivehealth/publications/sexual_health/defining_sexual_health.pdf; *see also* ALICE M. MILLER, INT'L COUNCIL ON HUM. RTS. POLICY, *SEXUALITY AND HUM. RTS.: DISCUSSION PAPER 9* (2009), http://www.ichrp.org/files/reports/47/137_web.pdf. While related to reproductive rights, sexual rights are a distinct set of rights since not all expressions of sexuality are reproductive.

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

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

International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, *Programme of Action*, ¶ 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD*,

risks these rights defenders face.

II. HUMAN RIGHTS DEFENDERS FRAMEWORK

The past two decades have seen a growing recognition of the crucial role human rights defenders (“HRDs”) play in the struggle to realize universal principles of human rights. HRDs have been lauded for their courage⁶ and for the role they play moving societies toward more just outcomes.⁷

The most concrete international expressions of commitment to

Programme of Action]. Further, the right to reproductive health requires that reproductive health care goods and services, as well as programs, are widely available, economically and physically accessible, culturally acceptable, and of high quality. See Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, annex, arts. 10(h), 12, 16(1)(e), U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46, at 193 (Dec. 18, 1979) [hereinafter CEDAW]; U.N. ESCOR, Comm. on Econ., Soc. & Cultural Rights [CESCR], *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 14 (2000)*, 22d Sess., Apr. 25–May 12, 2000, ¶ 12, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR, *General Comment No. 14*]. The right to reproductive autonomy also includes the rights to information, privacy, and confidentiality when making decisions about one’s reproductive capacity and life. See Convention on the Rights of the Child, G.A. Res. 44/25, annex, art. 17, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, at 166 (Nov. 20, 1989); Comm. on the Rights of the Child, *General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 33d Sess., May 19–June 6, 2003, ¶¶ 10–11, 26–33, U.N. Doc. CRC/GC/2003/4 (July 1, 2003); Fourth World Conference on Women, Beijing, China, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, ¶¶ 106(f), 107(e), U.N. Doc. A/CONF.177/20/Rev.1, annex 1 (1996) [hereinafter Beijing Conference]; see also ICPD, *Programme of Action*, *supra*, princ. 8; *id.* ¶ 7.45. For an overview of the basis of reproductive rights in international law, and the potential for human rights advocacy in the United States, see Cynthia Soohoo & Suzanne Stolz, *Bringing Theories of Human Rights Change Home*, 77 *FORDHAM L. REV.* 459, 479–83 (2008–2009). For a comprehensive review of the statements by U.N. Treaty Monitoring Bodies on reproductive rights, see CTR. FOR REPROD. RTS., *BRINGING RIGHTS TO BEAR: AN ADVOCATE’S GUIDE TO THE WORK OF UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS* (Sept. 2006), http://reproductiverights.org/sites/crt.civicaactions.net/files/documents/pub_bp_BRB.pdf.

6. An example of such recognition is the Dutch Government-sponsored Human Rights Defenders Tulip Award, which recognizes “an individual who has shown exceptional courage in protecting and promoting the rights of fellow human beings.” *What Is the Human Rights Defenders Tulip?*, HUM. RTS. DEFENDERS TULIP, http://www.humanrightstulip.org/simplepage/page/What_is (last visited Apr. 8, 2011). Another form of recognition is the Reebok-sponsored Reebok Human Rights Award, which recognizes “young activists who have made significant contributions to human rights causes through nonviolent means.” *RHR Award*, REEBOK HUM. RTS. PROGRAMS, <http://www.reebok.com/Static/global/initiatives/rights/awards/> (last visited Apr. 8, 2011).

7. For example, 2010 Nobel Peace Prize winner Liu Xiaobo was acknowledged for “his long and non-violent struggle for fundamental human rights in China.” *Liu Xiaobo: Biographical*, NOBELPRIZE.ORG, http://nobelprize.org/nobel_prizes/peace/laureates/2010/xiaobo.html (last visited Apr. 8, 2011). The Nobel Peace Prize is awarded to “the person who shall have done the most or the best work for fraternity between nations, for the abolition or reduction of standing armies and for the holding and promotion of peace congresses.” *Facts on the Nobel Peace Prize*, NOBELPRIZE.ORG, http://nobelprize.org/nobel_prizes/peace/shortfacts.html (last visited Apr. 8, 2011).

HRDs came with the United Nations General Assembly's 1998 *Declaration on Human Rights Defenders* (the "Declaration")⁸ and the creation of the post of Special Representative—later reconceived as Special Rapporteur—on the Situation of Human Rights Defenders in 2000.⁹

This section will briefly review three aspects of the international human rights framework that have laid the foundation for the recognition of sexual and reproductive rights defenders: (1) the HRD legal framework (with a focus on antidiscrimination norms); (2) the recognition that individuals who work on "women's rights and gender issues" face unique threats; and (3) the recognition that healthcare professionals can be HRDs.

A. *The Law*

The Declaration was adopted by consensus by the U.N. General Assembly on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights.¹⁰ The Declaration recognizes the central role that HRDs play in promoting the realization of human rights. It sets forth the rights of HRDs to engage in peaceful activities and to promote human rights, as well as government obligations to protect them.¹¹ The rights and obligations in the Declaration are based on human rights standards set forth in a number of international treaties.¹² In order to protect, promote, and implement these human rights, states are responsible for creating the conditions necessary for all persons, including HRDs, to enjoy these rights in practice.¹³

Of particular relevance to sexual and reproductive rights is the legal framework for protection of all people—including sexual and reproduc-

8. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, Annex, U.N. Doc. A/RES/53/144 (Dec. 9, 1998) [hereinafter Declaration on Human Rights Defenders].

9. See *Special Rapporteur on the Situation of Human Rights Defenders*, *supra* note 2.

10. The Declaration was adopted on December 9, 1998, see Declaration on Human Rights Defenders, *supra* note 8, while the Universal Declaration of Human Rights was adopted on December 10, 1948. *Universal Declaration of Human Rights*, OFFICE OF THE HIGH COMM'N FOR HUM. RTS., <http://www.ohchr.org/en/udhr/pages/introduction.aspx> (last visited Apr. 8, 2011).

11. See Declaration on Human Rights Defenders, *supra* note 8.

12. A wide range of rights are relevant to HRDs, including freedom from violence, freedoms of speech, association, and assembly, and the right to an effective remedy. See Declaration on Human Rights Defenders, *supra* note 8; CEDAW, *supra* note 5; International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR], available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR], available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20993/volume-993-I-14531-English.pdf>.

13. See Declaration on Human Rights Defenders, *supra* note 8, art. 2(1).

tive rights defenders—to be free from violence and discrimination. A number of treaties protect individuals from violence, most notably Article 9 of the International Covenant on Civil and Political Rights (“ICCPR”), which guarantees to everyone the right of security of person.¹⁴

The right to be protected from discrimination is set forth in Articles 2(1) and 26 of the ICCPR and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).¹⁵ These sections require governments to ensure human rights without distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁶ States are further obligated under the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and other international human rights instruments to take all appropriate measures to eliminate discrimination against women.¹⁷ In addition, international human rights bodies and experts have affirmed that the principle of nondiscrimination prohibits unequal treatment based on sexual orientation.¹⁸

Increasingly, U.N. treaty bodies and experts are espousing protections from discrimination for diverse expressions of gender identity.¹⁹ These human rights bodies also take into account that not all people experience discrimination in the same way and that those facing multiple

14. ICCPR, *supra* note 12, art. 9.

15. *Id.* arts. 2(1), 26; ICESCR, *supra* note 12, art. 2(2).

16. *See* sources cited *supra* note 15.

17. *See, e.g.*, CEDAW, *supra* note 5, art. 7(c) (“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right . . . [t]o participate in non-governmental organizations and associations concerned with the public and political life of the country.”).

18. *See e.g.*, U.N. ESCOR, CESCR, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, 42d Sess., May 4–22, 2009, ¶ 32, U.N. Doc. E/C.12/GC/20 (July 2, 2009) [hereinafter CESCR, *General Comment No. 20*] (“[o]ther status,” as recognized in Article 2(2) of the ICESCR, includes sexual orientation); CESCR, *General Comment No. 14*, *supra* note 5, ¶ 18 (explaining that the right to non-discrimination under Article 2(2) of the ICESCR includes protected categories of health status (including HIV/AIDS), as well as sexual orientation); U.N. Human Rights Comm., Communication No. 488/1992, ¶ 8.7, U.N. Doc. CCPR/C/50/D/488/1992 (1994) (affirming that the prohibition on discrimination based on “sex” under Article 2(1) of the ICCPR includes sexual orientation); OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, 2008 REPORT: ACTIVITIES AND RESULTS 45 (2009) [hereinafter OHCHR, 2008 REPORT], http://www.ohchr.org/Documents/Press/OHCHR_Report_2008.pdf (quoting U.N. High Commissioner for Human Rights Navanethem Pillay’s explanation that “[t]hose who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family and are entitled to be treated as such.”).

19. *See e.g.*, CESCR, *General Comment No. 20*, *supra* note 18, ¶ 32 (recognizing gender identity as a protected ground of discrimination); OHCHR, 2008 REPORT, *supra* note 18.

forms of discrimination are particularly at risk of rights abuses.²⁰

International and regional human rights bodies have also noted the connection between discrimination and violence. In particular, they have condemned violence as a manifestation of discrimination against women.²¹ There is also increasing recognition that discrimination against people based on their perceived or actual sexual orientation or gender identity, their self-identification as LGBT, or their engagement in same-sex sexual practices and relationships can lead to violence.²²

20. See e.g., CESCR, *General Comment No. 20*, *supra* note 18, ¶ 17 (recognizing that individuals may face discrimination on more than one of the prohibited grounds); CESCR, *General Comment No. 14*, *supra* note 5, ¶¶ 20–27 (urging States to address the needs of certain groups, including women, children, persons with disabilities, and indigenous people, who face unique barriers to exercising their right to health); Report of the Comm. on the Elimination of Discrimination Against Women, 20th Sess., Jan. 19–Feb. 5, 1999, ch. I ¶ 6, at 5, U.N. Doc. A/54/38 (Part I); GAOR, 54th Sess. (May 4, 1999) (“special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups”); Report of the Comm. on the Elimination of Racial Discrimination, 56th Sess., Mar. 6–24, 2000, 57th Sess., July 31–Aug. 25, 2000, ¶ 1, at 152, U.N. Doc. A/55/18, Annex V; GAOR, 55th Sess., Supp. No. 18 (2000); see also YOGYAKARTA PRINCIPLES, *supra* note 4, princ. 2, at 11 (“Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.”).

21. See e.g., Report of the Comm. on the Elimination of Discrimination Against Women, 11th Sess., Jan. 20–30, 1992, ¶ 1, at 1, U.N. Doc. A/47/38; GAOR, 47th Sess., Supp. No. 38 (1993) (“Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”); Beijing Conference, *supra* note 5, ¶ 118 (“Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.”); see also Organization of American States [OAS]: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women *pmb.*, *opened for signature* June 9, 1994, 33 I.L.M. 1534 (entered into force Mar. 5, 1995) (expressing concern “that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men”).

22. See OAS, *Human Rights, Sexual Orientation, and Gender Identity*, at para. 5, AG/RES. 2435 (XXXVIII-O/08) (June 3, 2008), available at http://www.oas.org/dil/general_assembly_resolutions_38_regular_session_colombia_june_2008.htm (follow “AG/RES. 2435” hyperlink) (expressing concern about “acts of violence and related human rights violations perpetrated against individuals because of their sexual orientation and gender identity”); Permanent Representative of Argentina et al., Letter dated Dec. 18, 2008, from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway addressed to the United Nations addressed to the President of the General Assembly, ¶ 5, U.N. Doc. A/63/635 (Dec. 22, 2008) (recognizing that “violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses”); *Message by Ms. Navanetham Pillay, U.N. High Commissioner for Human Rights*, NETHERLANDSMISSION.ORG (Dec. 18, 2008) [hereinafter *Pillay Statement*], <http://www.netherlandsmission.org/files/pdf/unhchrpillay.pdf> (claiming that “[n]o human being should be denied their human rights simply because of their perceived sexual orientation or gender identity [and no] human being should be subject to discrimination, violence, criminal sanctions, or abuse simply because of their perceived sexual orientation or gender identity” and applauding the “considerable body of decisions [by human rights treaty bodies] affirming that discrimination on the basis of sexual orientation is contrary to international human

B. Gender

A crucial component of the evolution of the concept of HRDs has been the recognition of the special role played by women and women's rights defenders, who in many cases face increased risk because of the nature of their work and/or their status as women.²³ A number of voices within civil society, such as the Women Human Rights Defenders International Coalition ("WHRD IC"),²⁴ have articulated how women's rights work can make HRDs subject to attack and have argued for "gender-sensitive mechanisms for their protection and support."²⁵

Hina Jilani, the first Special Representative on HRDs, explained in her 2002 report, "Promoting and protecting women's rights can be an additional risk factor, as the assertion of some such rights is seen as a threat to patriarchy and as disruptive of cultural, religious and societal mores."²⁶ Women defenders may be targeted with violations, such as sexual violence, that are specific to women's gender, sexuality, or gender identity.²⁷ According to Jilani, women's rights defenders "face stronger resistance to their work, are more vulnerable and, therefore,

rights law."); *see also* G.A. Res. 63/182, ¶ 6(b), U.N. Doc. A/RES/63/182 (Dec. 18, 2008) (calling for an end to "killings committed for any discriminatory reason, including sexual orientation"); YOGYAKARTA PRINCIPLES, *supra* note 4, princ. 5, at 13 ("Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.").

23. *See 2011 Report of the Special Rapporteur Sekaggya, supra* note 1, ¶¶ 23–31.

24. The WHRD IC

is a resource and advocacy network for the protection and support of women human rights defenders worldwide. An international initiative created out of the international campaign on women human rights defenders launched in 2005, the Coalition calls attention to the recognition of women human rights defenders. It asserts that those advocating for women's human rights—no matter what gender or sexual orientation they claim—are in fact human rights defenders. Their gender or the nature of their work has made them the subject of attacks, requiring gender-sensitive mechanisms for their protection and support. The Coalition involves women activists as well as men who defend women's rights and lesbian, gay, bisexual, and transgender (LGBT) defenders and groups committed to the advancement of women's human rights and sexual rights.

Women Human Rights Defenders International Coalition, DEFENDINGWOMEN-DEFENDINGRIGHTS.ORG, <http://www.defendingwomen-defendingrights.org/about.php> (last visited Apr. 10, 2011)). The authors note that the Center for Reproductive Rights is a member of the WHRD IC.

25. *Id.*

26. Special Representative of Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders*, Comm'n on Hum. Rts., ¶ 94, U.N. Doc. E/CN.4/2002/106 (Feb. 27, 2002) (by Hina Jilani) [hereinafter *2002 Report of the Special Representative Jilani*].

27. *See id.* ¶¶ 80–94; *see also 2011 Report of the Special Rapporteur Sekaggya, supra* note 1, ¶¶ 23–24.

more threatened.”²⁸ The regional human rights systems have echoed the U.N.’s focus on the role of women’s rights defenders in advancing women’s rights.²⁹

Special Representative Jilani also used her U.N. mandate to call attention to attacks against those working toward sexual rights, including LGBT individuals,³⁰ and to acknowledge sexual minorities as a group of people who can be “unwillingly relegated to the margins of society.”³¹

In 2008, upon the tenth anniversary of the Declaration, Special Rapporteur Sekaggya and a number of colleagues put out a Joint Statement on HRDs that acknowledged the similar situation of women’s rights defenders, LGBT defenders, and other groups who, “due to the

28. 2002 Report of the Special Representative Jilani, *supra* note 26, ¶ 115.

29. The 2004 European Union Guidelines on Human Rights Defenders called on member states “to apply a gender perspective when approaching the issue of human rights defenders.” COUNCIL OF THE EUROPEAN UNION, ENSURING PROTECTION—EU GUIDELINES ON HUMAN RIGHTS DEFENDERS ¶ 6 (June 2, 2004), <http://register.consilium.europa.eu/pdf/en/04/st10/st10056.en04.pdf>. The EU’s review of the implementation of these Guidelines, undertaken in 2006, reiterates the need for states to pay special attention to the needs of women’s rights defenders. *See* COUNCIL OF THE EUROPEAN UNION, DRAFT COUNCIL CONCLUSIONS ON THE FIRST REVIEW OF THE IMPLEMENTATION OF THE EU GUIDELINES ON HUMAN RIGHTS DEFENDERS 7, 9, 14 (June 7, 2006), http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news67.pdf. The Inter-American Commission on Human Rights, working with the U.N. Special Representative on Human Rights Defenders, established a Human Rights Defenders Unit within the Office of the Executive Secretary. *See The Inter-American Commission’s Human Rights Defenders Unit*, INT’L SERVICE FOR HUM. RTS. (Sept. 4, 2008), <http://www.ishr.ch/protection-mechanisms/inter-american-commission>. In 2006, the Unit released a report on human rights defenders in the Americas in which it called on states to take special measures to address the security of those advancing women’s rights. *See* Inter-American Commission on Human Rights [IACHR], *Report on the Situation of Human Rights Defenders in the Americas*, at 82–83, OEA/Ser.L/V/II.124, Doc. 5, rev. 1 (Mar. 7, 2006), available at <http://www.cidh.oas.org/countryrep/Defenders/DEFENDERS.ENGGLISH.pdf>. The Inter-American Commission also held a thematic hearing on the risks and vulnerabilities facing women’s human rights defenders across the Americas, including those working on sexual and reproductive rights. *See* 133rd Period of Sessions of the Inter-American Commission on Human Rights [IACHR-OAS], *Discrimination Based on Gender, Race, and Sexual Orientation in the Americas*, ORG. OF AM. STS. (Oct. 24, 2008), http://www.oas.org/en/media_center/videos.asp?sCodigo=08-0345&videotype=&sCollectionDetVideo=3 (follow “Discrimination based on gender, race, and sexual orientation in the Americas” hyperlink); *see also* Margaret Sekaggya et al., *Joint Statement, ORG. FOR SECURITY & CO-OPERATION IN EUROPE* (Dec. 9, 2008) [hereinafter *2008 Joint Statement*], <http://www.osce.org/odihr/35561> (discussing a joint statement made by the Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples’ Rights, the Commissioner for Human Rights of the Council of Europe, the Director of the OSCE Office for Democratic Institutions and Human Rights, and the Executive Secretary of the Inter-American Commission on Human Rights, explaining that “[o]f particular concern for the signatories of this joint statement is the plight of defenders who, due to the sensitivity of their work, are most exposed to attacks and abuses These include women defenders [and] defenders working . . . on rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons”).

30. *See* 2002 Report of the Special Representative Jilani, *supra* note 26, ¶¶ 51, 61, 83.

31. *Id.* ¶ 83.

sensitivity of their work, are most exposed to attacks and abuses.”³²

Charged by the Human Rights Council to “integrate a gender perspective” and pay “particular attention to the situation of women human rights defenders,”³³ Sekaggya’s 2011 report focusing on women’s rights defenders takes a broad scope to “integrating a gender perspective.”³⁴ The report acknowledges that women who are HRDs, women’s rights advocates, and those advocating for sexual rights (referred to as those “working on . . . gender issues”³⁵) can be understood together as a group that faces unique threats due to their work challenging societal gender norms.³⁶

C. Health Care Professionals

Human rights bodies and experts have made it clear that healthcare professionals can and should be recognized as HRDs in some circumstances. Both Special Rapporteur Sekaggya and Special Representative Jilani have recognized that those advocating for the right to health can be HRDs.³⁷ Jilani has also identified healthcare providers as HRDs where those individuals are targeted for their work providing healthcare.³⁸

32. 2008 Joint Statement, *supra* note 29.

33. In 2008, when the Human Rights Council appointed Margaret Sekaggya as the Special Rapporteur on the Situation of Human Rights Defenders for three years, it instructed her “[t]o integrate a gender perspective throughout the work . . . paying particular attention to the situation of women human rights defenders.” Rep. of the Hum. Rts. Council on its 7th Sess., Mar. 3–Apr. 1, 2008, ch. 7/8, ¶ 2(e), U.N. Doc. A/HRC/7/78 (July 14, 2008).

34. 2011 Report of the Special Rapporteur Sekaggya, *supra* note 1, ¶ 30.

35. *Id.*

36. *Id.* ¶¶ 23, 30.

37. See Special Representative of the Secretary-General on Human Rights Defenders, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council,”* Hum. Rts. Council, ¶ 73, U.N. Doc. A/HRC/4/37 (Jan. 24, 2007) (by Hina Jilani) [hereinafter *2007 Report of the Special Representative Jilani*] (“Many defenders who promote the right to health are working on issues connected to combatting HIV/AIDS. The Special Representative is aware of the fact that such defenders are faced with challenges in terms of having their work recognized as human rights work in addition to the stigma attached to this health issue.”); Special Representative of the Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders: Addendum: Mission to Nigeria*, Comm’n on Hum. Rts., ¶ 86, U.N. Doc. E/CN.4/2006/95/Add.2 (Jan. 30, 2006) (by Hina Jilani) [hereinafter *2006 Report of the Special Representative Jilani*] (expressing concern that in Nigeria, “[o]rganizations working on reproductive rights and health issues have been subjects of slander campaigns and attacks against them”); *2002 Report of the Special Representative Jilani*, *supra* note 26, ¶ 92 (“[W]omen’s professional integrity and standing in society can be threatened and discredited in ways that are specific to them, such as the all too familiar pretextual calling into question of their probity when—for example—women assert their right to sexual and reproductive health, or to equality with men, including to a life free from discrimination and violence.”).

38. See Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders*, Hum. Rts. Council, ¶¶ 283–88, 1080–83, U.N. Doc. A/

Jilani has noted that those who promote women's sexual and reproductive health are women's HRDs because they enable women to exercise their human rights to reproductive health and reproductive autonomy.³⁹ The right to health requires that healthcare be "available, accessible, acceptable, and of good quality."⁴⁰ The Special Rapporteurs on violence against women,⁴¹ and the right to health,⁴² have also acknowledged that reproductive health services, including in some instances abortion, are a crucial part of women's healthcare.⁴³ The European Court of Human Rights and the Human Rights Committee have also recognized in the litigation context that access to abortion can be an essential human rights concern.⁴⁴

HRC/7/28/Add.1 (Mar. 5, 2008) (by Hina Jilani) [hereinafter *2008 Report of the Special Representative Jilani*] (summarizing urgent appeals the Special Representative made to governments in 2007 regarding a physician who works with especially vulnerable populations, including people living with HIV/AIDS, and a physician who provides access to healthcare for victims of sexual abuse); *2007 Report of the Special Representative Jilani*, *supra* note 37, ¶¶ 70–74 (explaining that since the establishment of her mandate, the Special Representative has sent thirty-six communications to countries in all regions concerning the right to health and has raised issues ranging from threats to health providers treating civilians in the Occupied Territories to those assisting people living with HIV/AIDS in China).

39. See *2006 Report of the Special Representative Jilani*, *supra* note 37; *2002 Report of the Special Representative Jilani*, *supra* note 26.

40. Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Economic, Social and Cultural Rights*, Comm'n on Hum. Rts., ¶ 41, U.N. Doc. E/CN.4/2004/49 (Feb. 16, 2004) (by Paul Hunt) [hereinafter *2004 Report of the Special Rapporteur Hunt*] (describing the four components of the right to health, which necessarily includes the right to reproductive health).

41. Yakin Ertürk, Special Rapporteur on Violence Against Women, Its Causes and Consequences, between August 2003 and July 2009, has stated that denial of proper medical care may violate women's reproductive rights. See Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Intersections of Violence Against Women and HIV/AIDS*, Comm'n on Hum. Rts., ¶ 70, U.N. Doc. E/CN.4/2005/72 (Jan. 17, 2005) (by Yakin Ertürk).

42. Paul Hunt, the former Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, stated clearly that "human rights law places obligations on [governments] to do all they can to dismantle the barriers to sexual and reproductive health." *2004 Report of the Special Rapporteur Hunt*, *supra* note 40, ¶ 15.

43. See *id.* ¶ 30 ("Where abortions are legal, they must be safe: public health systems should train and equip health service providers and take other measures to ensure that such abortions are not only safe but accessible.").

44. See, e.g., *Tysiäc v. Poland*, Appl. No. 5410/03, 45 Eur. H.R. Rep. 42 (2007), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=814538&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (finding Poland in violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms for failure to allow access to a therapeutic abortion and further finding that where abortion is legal it must be accessible); Hum. Rts. Comm., Views: Communication No. 1153/2003, ¶ 6.6, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005) (finding Peru in violation of Articles 2, 7, 17, and 24 of the ICCPR for denying a therapeutic abortion to a 17-year-old Peruvian woman carrying an anencephalic fetus). National high courts have also acknowledged abortion as a human rights issue. See, e.g., *WOMEN'S LINK WORLDWIDE, C-355/2006: EXCERPTS OF THE CONSTITUTIONAL COURT'S RULING THAT LIBERALIZED ABORTION IN COLOMBIA* (2007),

In her 2011 report, Special Rapporteur Sekaggya recognizes that reproductive health care providers can be HRDs because of the role that they play in enabling women's access to reproductive healthcare and ensuring women's ability to exercise reproductive autonomy.⁴⁵ Where healthcare providers continue to provide medical services despite being targeted, harassed, and faced with threats of physical violence because of their work, they are recognized and protected as HRDs.⁴⁶

III. THE SITUATION OF SEXUAL AND REPRODUCTIVE RIGHTS DEFENDERS

HRDs face a range of threats as a result of their work. Special Rapporteur Sekaggya acknowledges the types of risks faced by HRDs working on "gender issues," including threats; death threats and killings; arrest, detention, and criminalization; and sexual violence and rape.⁴⁷ She also discusses the role stigma plays in these types of attacks.⁴⁸ This section begins by discussing the stigma faced by sexual and reproductive rights defenders and then looks at the nature of the threats they face.

A. Stigma

Despite recognition of sexual and reproductive rights under international law,⁴⁹ these rights remain socially and politically contested in many places. Discrimination and stigma persist against those protecting, enforcing, and effectuating these rights.⁵⁰ Stigma can both lead to, and be reinforced by, government laws and policies that discriminate against individuals or certain reproductive or sexual choices or identities.⁵¹ Stigma can also encourage attacks and harassment by non-state actors

http://www.womenslinkworldwide.org/pub_c3552006.html (follow the "C-355/2006: Excerpts of the Constitutional Court's Ruling That Liberalized Abortion in Colombia" hyperlink) (discussing a 2006 decision of the Constitutional Court in Columbia ruling that abortion should not be considered a crime under certain specified circumstances).

45. See *2011 Report of the Special Rapporteur Sekaggya*, *supra* note 1, ¶¶ 44–45.

46. See *id.* ¶ 45.

47. See *id.* ¶¶ 37–54 (discussing the range of groups who work on women's rights and gender issues, including journalists, witnesses, and those in conflict situations, as well as the threats the groups face); *id.* ¶ 65 (discussing killings and attempted killings of women's rights activists in the Americas); *id.* ¶¶ 73–74 (discussing criminalization of defending religious and women's rights in China and Iran, respectively); *id.* ¶¶ 86–88 (discussing sexual violence and rape of women defenders).

48. See *id.* ¶¶ 24, 43, 68, 85, 107.

49. See *supra* note 5.

50. See *2011 Report of the Special Rapporteur Sekaggya*, *supra* note 1, ¶ 45.

51. See *id.* ¶ 85; see also CENTER FOR REPROD. RTS., DEFENDING HUMAN RIGHTS: ABORTION PROVIDERS FACING THREATS, RESTRICTIONS, AND HARASSMENT 37 (2009) [hereinafter HRD REPORT], <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/DefendingHumanRights.pdf>.

and in some cases leads to impunity.⁵² Finally, stigma in some contexts can make it difficult for individuals to realize rights. For example, in the United States, women's right to reproductive autonomy and access healthcare is significantly burdened by stigma surrounding abortion.⁵³

Government laws and policies can create or reinforce existing stigma against marginalized groups.⁵⁴ In the context of criminalization of same-sex sexual contact, which we will address later in this essay,⁵⁵ stigma is reinforced by laws that differentiate between the consensual sexual practices of different groups.⁵⁶ In the context of reproductive health services, criminalization and unnecessary targeted regulation of reproductive health facilities can also increase stigma.⁵⁷ Stigma further encourages selective enforcement of existing laws in some cases.⁵⁸ For example, in the context of abortion in the United States, local officials may use zoning regulations to harass or prevent clinics from locating in their towns.⁵⁹

Stigma can also legitimize or encourage private harassment of HRDs and individuals seeking their help—in some cases allowing it to continue with impunity.⁶⁰ Advocates working to combat discrimination against LGBT individuals and to prevent HIV/AIDS⁶¹ are frequently

52. See *2011 Report of the Special Rapporteur Sekaggya*, *supra* note 1, ¶ 45; see also HRD REPORT, *supra* note 51.

53. See HRD REPORT, *supra* note 51.

54. See *2011 Report of the Special Rapporteur Sekaggya*, *supra* note 1, ¶ 85 (“[W]omen defenders often find themselves and their work subjected to stigmatization by both State and non-State actors. A common accusation directed in particular at those working on women’s rights, gender issues, and LGBT rights, is the assertion that these defenders are somehow advocating or attempting to import ‘foreign’ or ‘Western’ values which contradict national or regional culture. State agents or representatives are often alleged to be responsible for such stigmatization.”).

55. See discussion *infra* Part III.C.

56. See *Pillay Statement*, *supra* note 22.

57. See HRD REPORT, *supra* note 51, at 52; see also *Nepal Supreme Court: Abortion Is a Right*, CTR. FOR REPROD. RTS., <http://reproductiverights.org/en/feature/nepal-supreme-court-abortion-is-a-right> (last visited Apr. 12, 2011) (explaining the Supreme Court of Nepal’s decision in *Lakshmi Dhikta v. Nepal*, in which “the Court makes it clear that a woman’s reproductive capacity cannot be used against her, and can in no way be grounds to punish her. Based on the fact that the court has not recognized the fetus as a human life, the Court states that legal provisions on abortion must be contained in a separate law and disassociated from discussion of murder.”).

58. See HRD REPORT, *supra* note 51, at 60.

59. *Id.* at 18.

60. See *id.* at 34 (“Like other human rights defenders throughout the world, abortion providers face intimidation, harassment, and violence in the course of carrying out their work, which government at all levels, contrary to its obligations, often permits with impunity.”).

61. See *2008 Report of the Special Representative Jilani*, *supra* note 38, ¶¶ 283–88 (expressing concern about lack of government protection in China for individuals working to promote access to treatment for hemophiliacs infected with HIV/AIDS and hepatitis); *id.* ¶¶ 1076–78 (describing the transmission of a letter of allegations to the Indian government concerning a transgender peer educator who was detained and beaten by police for her outreach work on HIV/AIDS); *2007 Report of the Special Representative Jilani*, *supra* note 37.

stigmatized and subject to attack by non-state actors due to the social and political controversy that can surround these issues.⁶² Navanethem Pillay, the U.N. High Commissioner on Human Rights, has noted that criminalization of same-sex sexual contact can serve to worsen stigma, and as a result, “violence and discrimination often go unpunished, as victims dare not report their cases and the authorities do not pay sufficient attention to those who do.”⁶³ More discussion of attacks by non-state actors follows.⁶⁴

Finally, stigma can make it difficult for individuals to realize their rights. In the United States, stigma impedes access to reproductive health services in many regions, particularly the South.⁶⁵ Abortion providers located in rural areas are often isolated and can face multiple barriers to establishing and maintaining services. Given the degree of stigma in many communities, some clinics have difficulty finding and retaining staff, or even providing for basic upkeep of their facilities.⁶⁶ In Mississippi, the sole abortion clinic in the state finds it difficult to procure medical equipment, as well as computer assistance and heating/cooling services.⁶⁷ Often, suppliers of these services do not themselves have objections to abortion but are afraid of the possible consequences of being associated with a stigmatized group.⁶⁸

Stigma around abortion, and fear of stigma around abortion, has reached such a level in the United States that it is even reflected among healthcare professionals. For example, many medical practices do not allow physicians to perform abortions for fear of loss of referrals and other harassment.⁶⁹ This is one cause of the serious lack of access to abortion services in many parts of the country.⁷⁰

62. See *Pillay Statement*, *supra* note 22 (explaining that laws criminalizing homosexuality make HRDs “particularly vulnerable” to violations).

63. *Id.*

64. See *infra* Part III.B.

65. See HRD REPORT, *supra* note 51 (documenting the challenges faced by abortion providers in six states: Texas, Mississippi, Alabama, Pennsylvania, North Dakota, and Missouri).

66. See *id.* at 52–53.

67. *Id.* at 52.

68. See *id.* at 52.

69. See *id.* at 43.

70. In many states, physicians and clinics are either absent or few (for example, in Mississippi, Missouri, and North Dakota), or concentrated unevenly in a few areas within a state (for example, in Alabama, Pennsylvania, and Texas). *Id.* at 38.

Most clinics rely on a very small number of physicians, and often share doctors on a part-time basis both with other clinics providing abortions and with the physicians’ own private or hospital-based practices. With few new, young doctors entering the field, the supply of physicians is dwindling almost across the board, with a few exceptions where clinics have been able to initiate partnerships or collaborate with residency programs at local hospitals

Id. “In a 2006 survey, only about half of OB/GYN program directors reported routine instruction

B. *Threats, Death Threats, and Killings*

Human rights activists have reported multiple threats and even murders of sexual and reproductive rights defenders.⁷¹ One such example is the case of abortion providers in the United States.

In the United States, there is a long history of violence, death threats, and murder of physicians who perform abortions.⁷² These actions are undertaken with the express purpose of preventing physicians from providing abortions.⁷³ Since 1993, four physicians and two clinic workers in the United States have been killed by anti-abortion extremists.⁷⁴ Five other physicians or clinic workers have been seriously injured in such attacks.

Most recently, Dr. George Tiller, owner and Medical Director of Women's Health Care Services in Wichita, Kansas, was assassinated on May 31, 2009. Dr. Tiller was killed in the foyer of his church, where he was serving as an usher for Sunday morning services. Dr. Tiller was one of only a few doctors in the United States who performed legal abortions in the third trimester of pregnancy in order to preserve a woman's health or life. His work made him the target of anti-abortion violence for over three decades—and yet he continued to provide women in need with reproductive health services.⁷⁵

Before his murder in 2009, Dr. Tiller survived a previous assassination attempt in 1993, when he was shot in both arms by an anti-abortion extremist. He was also the victim of severe intimidation and harassment,

in elective abortion; 39 percent reported optional training and ten percent reported no training." *Id.* at 23.

71. In 2008, 72 percent of the 274 clinics participating in a national survey conducted by the Feminist Majority Foundation reported being subjected to intimidation tactics. See Nikki Border et al., *2008 National Clinic Violence Survey*, FEMINIST MAJORITY FOUND., 5–6 (Feb. 2009), http://feminist.org/research/cvsurveys/clinic_survey2008.pdf. For 2008, the National Abortion Federation compiled reports of thirteen bomb threats, eight clinic blockades, nineteen stalkings, 193 incidents of trespassing or vandalism, and 396 incidents of harassing phone calls or hate mail, though the actual number of incidents for most categories is likely underreported. *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada* [hereinafter *NAF Statistics*], NAT'L ABORTION FED'N, http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/violence_stats.pdf (last visited Apr. 12, 2011).

72. See *NAF Statistics*, *supra* note 71.

73. See *Anti-Choice Violence and Intimidation*, NARAL PRO-CHOICE AM. FOUND. (Jan. 1, 2011), <http://www.prochoiceamerica.org/media/fact-sheets/abortion-anti-choice-violence.pdf>.

74. See *History of Violence: Murders and Shootings*, NAT'L ABORTION FED'N, http://www.prochoice.org/about_abortion/violence/murders.asp (last visited Apr. 12, 2011).

75. See Letter from Katrina Anderson, Human Rights Attorney, U.S. Legal Program, to Secretariat, Human Rights Tulip Award, Inst. of Soc. Studies, CTR. FOR REPROD. RTS. (Aug. 29, 2008), http://reproductiverights.org/sites/crr.civicactions.net/files/documents/Dutch%20Tulip%20_FINAL-corrected_pdf (nominating Dr. Tiller for a Human Rights Defender Award for his defense of women's right to access safe abortion care).

including being featured in “most wanted” posters put up by private anti-abortion extremist groups that offered a \$1000 reward for stopping physicians from performing abortions.⁷⁶ Despite these unrelenting threats, U.S. law enforcement failed to provide effective and consistent protection to Dr. Tiller.⁷⁷

Sadly, the threats and harassment that Dr. Tiller faced are not uncommon. Although most cases do not end in murder, many abortion providers in the United States are subject to shocking levels of threats, intimidation, and violence.⁷⁸ In addition, in many U.S. states there is a disturbing pattern of under-enforcement or non-enforcement of the legal protections that exist to protect healthcare providers from harassment.⁷⁹

Recognizing human rights violations of these kinds for the first time within the HRD framework, Special Rapporteur Sekaggya noted, [M]edical and health professionals, by providing sexual and reproductive health services, ensure that women can exercise their reproductive rights. In certain countries, these health professionals, as a result of their work, are regularly targeted and suffer harassment, intimidation and physical violence. In some countries these attacks perpetrated by non-State actors have led to killings and attempted killings of medical professionals.⁸⁰

C. Arrest, Detention, and Criminalization

Reproductive and sexual rights defenders are also subject to a range of legal charges leading to arrests and detentions.⁸¹ Often states pass laws targeting the activities of HRDs or selectively enforce laws to harass them. Of particular concern is the criminalization of same-sex sexual contact, which can be used to target sexual rights defenders,⁸² and criminalization of comprehensive sexuality education, including information related to HIV and other sexually transmitted infections.

Those advocating for comprehensive sexuality education or access to health care for LGBT individuals also often face prohibitive government restrictions on their work.⁸³ One recent case from Uzbekistan is illustrative. In 2009, Maxim Popov, a twenty-nine-year-old psychologist and founder of Izis, an HIV/AIDS prevention organization, was sen-

76. See *id.*

77. See Scott Roeder News, N.Y. TIMES, http://topics.nytimes.com/topics/reference/times-topics/people/tr/scott_roeder/index.html (last updated Apr. 2, 2010) (providing news articles about Dr. Tiller's convicted killer).

78. See HRD REPORT, *supra* note 51, at 25.

79. See *id.* at 34, 41.

80. 2011 Report of the Special Rapporteur Sekaggya, *supra* note 1, ¶ 45.

81. See *id.* ¶¶ 70–84.

82. See *id.* ¶ 43.

83. See *id.* ¶ 73 (noting that family planning workers in China face threats).

tenced to seven years in prison for, among other offenses, the distribution of a sexuality education booklet entitled *Healthy Lifestyles, the Guidance for Teachers* and a brochure entitled *HIV and AIDS Today*.⁸⁴ The brochure provided detailed information on the correct use of condoms and disposable syringes and was funded by U.N. and bilateral agencies.⁸⁵ Distribution of this pamphlet was deemed an “indecent assault without violence against . . . minor[s].”⁸⁶ Although the Special Rapporteur on the situation of HRDs, together with the Special Rapporteur on freedom of expression and the Special Rapporteur on the right to health, sent a letter of allegation concerning Popov’s sentence to the government of Uzbekistan,⁸⁷ Mr. Popov remains in prison and Isis is now defunct.

Of course, HIV and sexuality education is just one area where criminalization is a serious problem. The Special Rapporteur has noted that “the criminalization of homosexuality has in some countries led to alleged arrests, torture and ill-treatment, including of a sexual nature, while in other countries it effectively prevented defenders from engaging in any advocacy for LGBT rights.”⁸⁸ The Special Procedures of the Human Rights Commission and the Human Rights Council have also recognized that defenders working on same-sex sexuality and HIV/AIDS rights claims are driven underground by laws that criminalize same-sex relations.⁸⁹ This in turn exposes the defenders to harassment and violence; they may be subject to arbitrary detentions and ill-treat-

84. See Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, Hum. Rts. Council, ¶¶ 2371–88, U.N. Doc. A/HRC/16/44/Add.1 (Feb. 28, 2011) (by Margaret Sekaggya) [hereinafter *2011 Report of the Special Rapporteur Sekaggya: Addendum*]; see also Paul Canning, *Uzbekistan’s Aids Shame*, GUARDIAN.CO.UK (May 12, 2010), <http://www.guardian.co.uk/commentisfree/2010/may/12/uzbekistan-aids-shame-maxim-popov>; Mariya Yanovskaya, *The International Campaign in Protection of Maxim Popov is Launched*, FERGHANA.NEWS INFORMATION AGENCY (May 12, 2010), <http://enews.ferghananews.com/article.php?id=2631%20%20http://enews.ferghananews.com/article.php?id=2631>. It should be noted that while Mr. Popov was also alleged to have committed financial irregularities, the core of his prosecution appears to revolve around the distribution of sexuality- and HIV-related literature. See *2011 Report of the Special Rapporteur Sekaggya: Addendum*, *supra*, ¶ 2374, 2386–88.

85. See *2011 Report of the Special Rapporteur Sekaggya: Addendum*, *supra* note 84, ¶ 2373; Canning, *supra* note 84; Yanovskaya, *supra* note 84.

86. *2011 Report of the Special Rapporteur Sekaggya: Addendum*, *supra* note 84, ¶ 2372.

87. *Id.* ¶ 2371. A letter of allegation is a mechanism by which a special rapporteur can notify states of allegations and ask states to “take all appropriate action to investigate and address the alleged events and to communicate the results of its investigation and actions.” *Special Rapporteur on the Situation of Human Rights Defenders—Methods of Work*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS., ¶ 1(d), <http://www2.ohchr.org/english/issues/defenders/methods.htm> (last visited Apr. 13, 2011).

88. *2011 Report of the Special Rapporteur Sekaggya*, *supra* note 1, ¶ 43.

89. See *supra* notes 61–62 and accompanying text.

ment or even killed.⁹⁰

Selective enforcement of criminal laws and other regulations is also a serious problem for sexual and reproductive rights defenders. As noted

90. See U.N. Secretary-General, *Human Rights Defenders: Rep. of the Secretary-General*, ¶ 7, U.N. Doc. A/55/292 (Aug. 11, 2000); Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Economic, Social and Cultural Rights: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, Comm'n on Hum. Rts., ¶ 50, U.N. Doc. E/CN.4/2005/51/Add.1 (Feb. 2, 2005) (by Paul Hunt); Special Representative of the Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders*, Comm'n on Hum. Rts., ¶¶ 27, 46, 94, U.N. Doc., E/CN.4/2005/101 (Dec. 13, 2004) (by Hina Jilani); Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, Comm'n on Hum. Rts., ¶¶ 238, 481, 487, U.N. Doc. E/CN.4/2004/94/Add.3 (Mar. 23, 2004) (by Hina Jilani); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Civil and Political Rights Including the Questions of: Torture and Detention: Addendum: Summary of Information, Including Individual Cases, Transmitted to Governments and Replies Received*, Comm'n on Hum. Rts., ¶¶ 1878, 1899, U.N. Doc. E/CN.4/2004/56/Add.1 (Mar. 23, 2004) (by Theo van Boven); Special Representative of the Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders: Addendum: Communications to and from Governments*, Comm'n on Hum. Rts., ¶ 284, U.N. Doc. E/CN.4/2003/104/Add.1 (Feb. 20, 2003) (by Hina Jilani); Special Representative of the Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders: Addendum: Mission to Colombia (23–31 October 2001)*, Comm'n on Hum. Rts., ¶ 172–74, U.N. Doc. E/CN.4/2002/106/Add.2 (Apr. 24, 2002) (by Hina Jilani); 2002 Report of the Special Representative Jilani, *supra* note 26, ¶¶ 51, 61, 83, 104, 115; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions*, Comm'n on Hum. Rts., ¶ 63, U.N. Doc. E/CN.4/2002/74 (Jan. 9, 2002) (by Asma Jahangir); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, transmitted by Note of the Secretary-General*, ¶ 25, U.N. Doc. A/56/156 (July 3, 2001); Special Representative of the Secretary-General on Human Rights Defenders, *Promotion and Protection of Human Rights: Human Rights Defenders*, Comm'n on Hum. Rts., ¶ 89(g), U.N. Doc. E/CN.4/2001/94 (Jan. 26, 2001) (by Hina Jilani); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Civil and Political Rights Including the Questions of Torture and Detention*, Comm'n on Hum. Rts., ¶ 1153, U.N. Doc. E/CN.4/2001/66 (Jan. 25, 2001) (by Nigel Rodley); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, Comm'n on Hum. Rts., ¶ 31, U.N. Doc. E/CN.4/2001/9/Add.1 (Jan. 17, 2001) (by Asma Jahangir); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Civil and Political Rights, Including the Question of Disappearances and Summary Executions*, Comm'n on Hum. Rts., ¶ 48, U.N. Doc. E/CN.4/2001/9 (Jan. 11, 2001) (by Asma Jahangir); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Civil and Political Rights Including Questions of Torture and Detention*, Comm'n on Hum. Rts., ¶ 151, U.N. Doc. E/CN.4/2000/9 (Feb. 2, 2000) (by Nigel Rodley); Special Rapporteur on the Independence of Judges and Lawyers, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment*, Comm'n on Hum. Rts., ¶ 43, U.N. Doc. E/CN.4/1998/39 (Feb. 12, 1998) (by Param Cumaraswamy); World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Geneva, Switz., May 21–June 1, 2001, *Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference*, ¶ 5, U.N. Doc. A/CONF.189/PC.2/19/Add.1 (Mar. 14, 2001).

previously, in the United States, abortion clinics have been subject to selective enforcement of state health regulations, and some states regulate medical facilities that provide abortions more stringently than those that provide similar medical procedures.⁹¹

IV. CONCLUSION

The work of the Special Rapporteur on the situation of HRDs to mobilize the international community, governments and civil society is crucial to keeping rights defenders secure so that they are able to continue their work.

The Special Rapporteur's recent explicit acknowledgment of sexual and reproductive rights defenders reflects the understanding that women's rights, sexual rights, and reproductive rights are central human rights issues and that individuals working to realize these rights—including medical professionals—face unique threats as HRDs. Recognition of sexual and reproductive health providers as HRDs also reflects the crucial role they play in ensuring the right to health and allowing women and men to realize their reproductive and sexual autonomy.

As such, it is incumbent upon governments and civil society to protect these brave individuals and to challenge the underlying discrimination and stigma (even when it comes under the color of law) that provide the foundation for attacks on sexual and reproductive rights defenders.

91. See HRD REPORT, *supra* note 51, at 49. Abortion providers in Alabama and Texas, for example, report that inconsistent and arbitrary health inspections by the state (which they believe to be politically motivated) have significantly burdened their ability to provide healthcare. *Id.* at 51.