



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM



Situation of LGBTI Human Rights in Colombia

**Report submitted to the Committee on Economic, Social and
Cultural Rights**

62nd Session

September 18 to October 6 2017

Report submitted by:

- **Corporación Caribe Afirmativo**
- **Heartland Alliance for Human Needs & Human Rights**
- **Akahatá – equipo de trabajo en sexualidades y géneros**

August 2017

Corporación Caribe Afirmativo, Heartland Alliance for Human Needs & Human Rights and Akahatá – Equipo de trabajo en sexualidades y géneros are honoured to submit the following issues for the consideration of the Committee on Economic, Social and Cultural Rights with the aim of contributing to the review of the implementation of the International Covenant on Economic, Social and Cultural Rights by Colombia.

Suggested issues

Right to equality and non-discrimination (Article 2, para. 2 and Art. 3)

1. During the years of armed conflict in Colombia, different population groups that have been traditionally discriminated against, like women and LGBTI persons, faced differentiated forms of violence. Women, particularly rural women, suffered exclusion, precarious conditions of life, forced displacement and the loss of children, parents and husbands, and being forced to financially sustain their homes in contexts of marginality, fear and violence. LGBTI persons were subjected to acts of violence aimed at eliminating their sexual orientation or gender identity and faced sexual violence, forced displacement and homicide¹. The Final Agreement to End Conflict and Build a Stable and Lasting Peace² (Peace Agreement) acknowledged this fact and included a gender perspective as a key axis to implement the programmes, projects, actions and norms it includes.
2. The Peace Agreement contemplated creating a Commission to Follow-Up, Steer and Verify Implementation of the Final Agreement (CSIVI in Spanish) and, within it, a Women's Space to follow-up on the integration of a gender approach in which one lesbian woman participated. This Women's Space is already operational.
3. Several legal norms that have been passed to implement the Peace Agreement include planning inclusive public policies around a gender and sexual diversity perspective. We can mention the Rural Property Social Ordering Plan that must acknowledge the existence of populations with specific gender and sexual orientation characteristics, and also prioritize rural women who are heads of households³; the Plan of Action for Regional Transformation through which Development with a Territorial Approach Programmes (PDET in Spanish) are instrumentalized⁴; the recognition of a gender approach in the

¹ Centro Nacional de Memoria Histórica (2015) Aniquilar la diferencia. Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano. Bogotá. CNMH – UARIV – USAID – OIM. Available at: <https://www.centrodehistoriahistorica.gov.co/descargas/informes2015/aniquilar-la-diferencia/aniquilar-la-diferencia.pdf>

² Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera (final version) (November, 2016). Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/nuevoacuerdofinal-1479102292.pdf>

³ Presidencia de la República de Colombia. Decreto Ley 902 del 29 de mayo 2017. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%20902%20DEL%2029%20DE%20MAYO%20DE%202017.pdf>

⁴ Presidencia de la República de Colombia. Decreto Ley 893 del 28 de mayo de 2017. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%20893%20DEL%2028%20DE%20MAYO%20DE%202017.pdf>

framework of formulating the National Plan to Build and Improve Housing⁵; and explicit participation of LGBTI persons in the Peace, Reconciliation and Coexistence Councils towards promoting a culture of peace, reconciliation and non-discrimination⁶. However, in most departments and municipalities, Peace, Reconciliation and Coexistence Councils have not yet been implemented as peace-building has not been made a priority in the public agenda.

4. The Interior Ministry created an Observatory against Discrimination and Racism in July 2012⁷. It is undergoing a technical strengthening process to address discrimination from an intersectional perspective taking into account criteria such as sex, gender, sexual orientation, gender identity or its expression, among others. The Observatory is currently focused on monitoring, follow-up, accompaniment and advice in cases of racial discrimination, and leaves aside cases of discrimination based on sexual orientation and gender identity or expression that are nevertheless quite frequent in the country and stop LGBTI persons from fully enjoying their ESCRs.
5. The National Government started developing a public policy for the LGBTI population in 2010. However, up to date this policy has not even been formulated. Implementing this kind of policy is necessary to eradicate discriminatory behaviours and practices towards LGBTI persons, particularly in health, education and work spaces; for the recognition of the diversity in sexual orientation and gender identity; and to consolidate an inclusive society.

Recommendations for the Colombian State

6. To adopt comprehensive and transformative reparatory measures for LGBTI persons, particularly LGBTI victims of the Colombian armed conflict, in such a way that guarantees them full access to economic, social and cultural rights and not aimed merely to re-establishing the status quo prior to the conflict as they were then excluded and lacked opportunities for their full personal development.
7. To guarantee the functioning of the Women's Space, with participation by LGBTI persons, to follow-up the integration of a gender and sexual diversity approach to all public policies and guarantee women's advocacy in the framework of different programmes, actions, norms and implementation policies around the Peace Agreement.
8. To implement the necessary measures to open up broad political, social and cultural participation spaces for women and LGBTI individuals, leaders, collectives and

⁵ Presidencia de la República de Colombia. Decreto Ley 890 del 28 de mayo de 2017. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%20890%20DEL%2028%20DE%20MAYO%20DE%202017.pdf>

⁶ Presidencia de la República de Colombia. Decreto Ley 885, May 26, 2017. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%20885%20DEL%2026%20DE%20MAYO%20DE%202017.pdf>

⁷ Ministerio del Interior. Resolución 1154, July 23, 2012. Available at: [http://www.mininterior.gov.co/sites/default/files/por la cual se crea el observatorio contra la discriminacion y el racismo.pdf](http://www.mininterior.gov.co/sites/default/files/por%20la%20cual%20se%20crea%20el%20observatorio%20contra%20la%20discriminacion%20y%20el%20racismo.pdf)

organizations across the country. In particular, to promote the creation of Peace, Reconciliation and Coexistence Councils in departments and municipalities.

9. To launch a participatory process to develop LGBTI public policies at the national level, acknowledging the specific needs of this population in terms of economic, social and cultural rights while also implementing effective solutions to the issues it faces, based on the proposals of such broad citizens' participation spaces.

Right to work (Article 6).

10. LGBTI persons, and particularly the trans population, face difficulties in entering the formal labour market. In some cases, they are disqualified from the selection process on the basis of their gender identity in such a way that it is hard to provide legal evidence of the reasons behind their exclusion. Many end up engaging in sex work, an occupation that exposes them to multiple risks, in order to earn a living.
11. The State has statistical data on unemployment rates, thematically disaggregated by different variables such as sex, age and educational level among others, but not considering sexual orientation or gender identity. Thus, available information does not allow for describing the specific situation of LGBTI persons and particularly trans persons with regard to access to work. This information is indispensable for formulating public policies aimed at equality in employment and for promoting access to the formal labour market by LGBTI persons.

Recommendations to the Colombian State

12. To include sexual orientation and gender identity among the thematic disaggregation variables for official statistics in order to be able to draw a realistic landscape of the labour situation of LGBTI persons and particularly trans persons.
13. To draft specific public policies, particularly in the field of labour, for LGBTI persons and particularly trans persons, who face the most severe discrimination and difficulties in this field.

Right to social security (Article 9)

14. In Colombia, many LGBTI persons - and particularly trans women - lack access to the formal labour market as well as to other effective job opportunities and thus lack social security coverage. As stated earlier, most of them engage in sex work and endure violence or death threats from those requesting their services and organized armed groups that are against their activities.

Recommendations to the Colombian State

15. To adopt the necessary measures to grant social security coverage to trans persons and particularly trans women sex workers in the informal economy.

Right to health (Article 12)

16. Women sex workers, being in the informal economy and lacking economic resources, are unable to access health services in a timely manner and on equal conditions with others.
17. In Colombia there are no public prevention or self-care programmes taking into account the specific needs of this population or that provide them with the basic elements to prevent sexually transmitted diseases like HIV. Those suffering from illnesses of which the treatment is costly, like HIV, face serious difficulties in accessing retroviral medicines that are key to avoid the progressive deterioration of their health.
18. Between 2015 and 2016, 17 LGBTI persons with HIV died in the Colombian Caribbean region, and most of them had been abandoned by the State⁸. Also, during the first quarter of 2017, 10 LGBTI persons with HIV who were affiliated to the subsidized health system informed the *Arenosa Vive* Foundation in Barranquilla city that they had stopped receiving the retroviral medicines they used to get, in an regular manner, from the State.
19. Illnesses like HIV increase stigma and discrimination against those affected, particularly the LGBTI population. Thus, discrimination against trans women increases (on account of their being sex workers and of suffering illnesses like HIV), without the State adopting any measures to prevent and stop their marginalization.
20. In the framework of the armed conflict, LGBTI persons suffered different types of violence that considerably affected their health. This included displacement and threats, and sexual violence aimed at eliminating sexual diversity and gender identity⁹.

Recommendations to the Colombian State

21. To include a national health promotion and prevention programme, developed with the participation of trans women sex workers and taking into account their specific needs, that provides effective solutions to guarantee their right to health.
22. To implement specific and comprehensive training programmes on the trans population's health, aimed at all health agents, in the framework of the national health promotion and prevention programme recommended above, in order to eradicate discriminatory practices and behaviours.

⁸ Corporación Caribe Afirmativo (April 6, 2017) Pacientes con VIH denuncian que hace tres meses no reciben medicamentos. Available at: <http://caribeafirmativo.lgbt/2017/04/06/pacientes-vih-denuncian-tres-meses-no-reciben-medicamentos/>

⁹ Centro Nacional de Memoria Histórica (2015) Aniquilar la diferencia. Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano. Bogotá. CNMH – UARIV – USAID – OIM. Available at: <https://www.centrodememoriahistorica.gov.co/descargas/informes2015/aniquilar-la-diferencia/aniquilar-la-diferencia.pdf>

23. To adopt measures aimed at guaranteeing effective, timely and quality access to health services and particularly to psychosocial support for LGBTI persons, and particularly for victims of gender-based violence, sexual violence and forced displacement due to their sexual orientation and gender identity.

Right to education (Article 13 and 14)

24. Law 1620 of 2013¹⁰ created the National System of School Coexistence and Training on Human Rights, Sexuality Education, Prevention and Mitigation of School Violence. It involves setting up institutions aimed at promoting the eradication of discrimination and violence within school communities.
25. However, a survey on the school experiences of LGBTI persons in Colombia, conducted by civil society organizations *Sentiido* and *Colombia Diversa* in 2016 showed that more than half the LGBTI students (67%) had felt unsafe in school because of their sexual orientation and/or gender identity.
26. LGBTI students feel discriminated against for the way in which they express their gender (54.8%); avoid bathrooms and locker rooms as well as attending Physical Training classes and sport facilities as a whole, because of the fear of harassment and abuse. An important percentage of this population (23.3%) has missed class at least once a month for fear of suffering physical and verbal violence. 15.9% have suffered actual physical attacks and 70.2% have endured verbal attacks related to their sexual orientation and/or the way in which they express their gender¹¹.
27. The Constitutional Court has taken on an important role in dealing with cases of school discrimination based on a student's sexual orientation or gender identity. Court jurisprudence has re-affirmed the right to sexual and gender identity and the prohibition to discriminate against sexual orientation in educational facilities. A few examples of these decisions are Decision T-565 (2013), Decision T-804 (2014), Decision T-478 (2015) and Decision T-363 (2016)¹².
28. Decision T-478 (2015) had ordered the Ministry of Education to review school coexistence manuals to ensure that they respect gender identity and sexual orientation, and also to verify that school coexistence committees had been created across the

¹⁰ Congreso de la República de Colombia. Ley 1620 (2013). Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley_1620_2013.html

¹¹ Colombia Diversa (2016) Encuesta Nacional Sobre Clima Escolar en Colombia 2016, p. 18. Available at: <http://sentiido.com/wp-content/uploads/2016/11/Sentiido.-Colombia-Diversa.-Encuesta-de-clima-escolar-2016-FINAL.pdf>

¹² Examples of these decisions include: Decision T-565, 2013 (Corte Constitucional de Colombia (2013) Decision T-565 August 23, 2013. M.P. Luis Ernesto Vargas Silva. Available at: <http://corteconstitucional.gov.co/relatoria/2013/t-565-13.htm>); Decision T-804, 2014 (Corte Constitucional de Colombia (2014) Decision T-804 November 4, 2014. M.P. Jorge Iván Palacio Palacio. Available at: <http://www.corteconstitucional.gov.co/RELATORIA/2014/T-804-1>); Decision T-478, 2015 (Corte Constitucional de Colombia (2015) Decision T-478 August 3, 2015. M.P. Gloria Stella Ortiz Delgado. Available at: <http://www.corteconstitucional.gov.co/relatoria/2015/t-478-15.htm>); and Decision T-363, 2016 (Corte Constitucional de Colombia (2016) Sentencia T-363 July 11, 2016. M.P. Gloria Stella Ortiz Delgado. Available at: <http://www.corteconstitucional.gov.co/relatoria/2016/t-363-16.htm>)

country within a year after the decision was issued. The Ministry has not yet implemented any of these decisions.

29. In 2015, civil society organization *Caribe Afirmativo* accompanied 38 young students in cases of discrimination in school facilities. In 2016, it provided accompaniment in 35 such cases. Recently, in July 2017, the principal of Villanueva Agricultural Technical School restricted the right of a trans adolescent to continue attending school.
30. In several departments across the country, Education Secretariats have no project or programme to prevent and address discrimination based on sexual orientation, gender identity or gender expression¹³. This is the case with the Córdoba, Chocó, Quindío, Cundinamarca, San Andrés and Providencia departments.
31. Many Education Secretariats across the country also fail to properly document bullying and discrimination cases in school facilities, including providing disaggregated data on the affected persons' sexual orientation and gender identity.

Recommendations to the Colombian State

32. To implement mechanisms to guarantee effective application of Law 1620 (2013) and the implementation of decision T-478 (2015) that ordered the Ministry of Education to review the country's coexistence manuals.
33. To develop and implement programmes to prevent, address and eradicate discrimination against LGBTI persons in school facilities in the framework of LGBTI public policies at the national level.
34. To guarantee that departmental Education Secretariats and the National Ministry of Education maintain disaggregated data on discrimination and bullying cases in school facilities, taking into account sexual orientation and/or gender identity variables.

¹³ Data obtained through petitions submitted to the Education Secretariats of those departments.