



Situation of Lesbian, Gay, Bisexual, Trans e Intersex People (LGBTI) in El Salvador

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Report presented by:

- Asociación Comunicando y Capacitando a Mujeres Trans con VIH en El Salvador (COMCAVIS TRANS)
- Synergia initiatives for human rights
- Akahatá – Equipo de trabajo en sexualidades y géneros

The Asociación Comunicando y Capacitando a Mujeres Trans con VIH en El Salvador (COMCAVIS TRANS, Association for the Communication and Training of HIV+ Trans Women in El Salvador), Synergia Initiatives for Human Rights and Akahatá – equipo de trabajo en sexualidades y géneros (Akahatá – working group on sexualities and genders), are honored to present the following report to the UN Human Rights Committee with the aim of assisting it in reviewing El Salvador on the implementation of the International Covenant on Civil and Political Rights

List of Issues:

Discrimination based on gender identity and sexual orientation

Right to non-discrimination (Article 2)

Right to equal enjoyment of all civil and political rights (Article 3)

1. In January 2018 there still exist important gaps within El Salvador legal framework, because there are neither constitutional guarantees nor specific protection mechanisms for the civil and political rights of LGBTI people. The three branches of government (judicial, executive and legislative) are competent in the enactment of laws and integral policies aimed at the LGBTI population, but they persist in obstructionism and inaction regarding the creation of favorable conditions for the guarantee of LGBTI people human rights. This situation fosters systematic and institutionalized violence and discrimination from the State and the Salvadoran society, constituting a violation of fundamental rights of the LGBTI population.
2. It would be irresponsible not to recognize that some isolated actions have been taken by the government of El Salvador to acknowledge LGBTI people rights. However, these were only public policies without the backing of a law, which is to say that they are measures taken by civil servants in a scattered way, and as such these affirmative actions disappear once the civil servants are no longer in office.

Violence, torture and murders against LGBTI people, especially against trans people.

Right to non-discrimination (Article 2)

Right to life and to freedom from torture (Articles 6 y 7)

Right to liberty and security of person (Article 9.1)

Guarantees of due process (Article 9.3)

Equality before the law and equal protection of the law (Article 26)

3. Human rights violations based on sexual orientation or gender identity or expression constitute a generalized and deeply rooted phenomenon in El Salvador, one that exposes LGBTI people to murder, torture, ill treatment, attacks, rape, hate crimes, internal displacement, forced migration, persecution, extortion, threats, among other forms of violence.

4. Violations to the right to life have become the most serious dangers and fears faced by LGBTBI people. It is important to note that in many cases this kind of violence is perpetrated by public security officers who commit power abuses and carry out illegal and arbitrary detentions followed by torture and inhuman and degrading treatment.
5. This was the case of A. A. P., a transsexual man and activist, member of the Asociación de Hombres Transexuales de El Salvador (Trans Men Association of El Salvador), who was subjected to an arbitrary detention by 10 agents of the National Civil Police (PNC), who battered him until leaving him unconscious. That happened after A. A. P. took part in the June 27, 2015, march against homo-lesbo-transphobia. After a long and tiresome process, only 2 out of 10 agents from PNC were convicted¹.
6. Horrifying hate crimes against LGBTBI people have been perpetrated in El Salvador during the past years. Those are acts committed with unusual cruelty: mutilations, excesses in violence going so far as several shootings, tied bodies, genital mutilation and systematic actions of torture against the LGBTBI population, which keep being naturalized and invisibilized by the State.
7. According to the “First Situational Report on Hate Crimes against the LGBTBI Population”, produced by the Public Advocate for the Protection of Human Rights, there have been 19 hate crimes against LGBTBI people documented since 2009. Those figures were increased in 2016² and 2017³. In spite of that, the State has taken no action to prevent, investigate, sanction and repair hate crimes and tortures perpetrated against LGBTBI people.
8. The failure to carry investigations out with due diligence on the part of competent authorities has had the consequence of perpetuating the impunity surrounding hate crimes against LGBTBI people. Although the 2015 reform of the Penal Code establishes more severe sentences for hate crimes committed on the basis of sexual orientation and gender identity or expression of the victims, there is no information on the number of cases investigated nor how many were prosecuted applying this reform⁴.
9. Hate crimes, which in most cases remain unpunished, constitute an extreme form of discrimination, lack of access to justice and violation of LGBTBI rights, as is

¹ https://elfaro.net/es/201610/el_salvador/19373/Justicia-absuelve-a-principal-acusado-de-golpiza-al-agente-del-CAM-transexual.htm

² <https://eladagio.files.wordpress.com/2017/07/informe-procuradora-3-anos-de-gestion-presidente-sanchez.pdf>

³ During February 2017, the murders of three trans women whose names were Yasuri, Daniela y Elisa, were registered in Departamento de la Paz. More information in the online newspaper Diario.com, 21/02/2017, “Denuncian asesinatos de odio contra transexuales en La Paz”.

⁴ In its February 2017 report, the Public Advocate for the Protection of Human Rights says it received no information on the subject from the Office of the Attorney General of the Republic, in spite of having asked for it more than a year before.

demonstrated by the statistics of the three last years: 42 LGBTI homicides during 2015; 38 during 2016; 26 during 2017 and 1 in 2018⁵.

10. As already mentioned, the few actions carried out by the State proved to be weak or not implemented at all, which directly or indirectly allows impunity and legal insecurity. As a result, the justification of hate crimes against LGBTI people has been naturalized and disseminated in society, which in turn promotes crimes and naturalizes lack of legislation.
11. Within this framework, and as a result of the combination of several factors, trans people are subjected to multiple violations of their human rights: violence and discrimination within the family, exclusion from education and from society at large, lack of recognition of their gender identity, among other. All this results in marginalization and a tendency among this population to engage in activities and jobs that expose them to a high risk of violence and to increased criminalization.

Lack of a gender identity law – Violation of the right to identity and to personal integrity.

Right to non-discrimination (Article 2)

Access to justice (Article 2.3)

Right to life (Article 6)

Right to freedom of expression (Article 19)

12. Lack of an integral gender identity law creates a legal vacuum in El Salvador and, as a consequence, renders trans people invisible as subjects of law and constitutes, together with the lack of specific legislation on violence and discrimination, one of the major factors allowing the above mentioned violations.
13. A gender identity law is essential for civil rights protection for trans people, including the right to have legal documents (such as de Unique Identity Document, or DUI for the Spanish acronym) with a name in accordance with their gender identity and expression⁶.
14. The creation of the Agency of Sexual Diversity, of the Permanent Table on LGBTI Population Human Rights and the Presidential Decree N 56 –banning discrimination on the grounds of sexual orientation and gender identity in public offices and other entities part of the executive branch– notwithstanding, very unsettling acts of violence are still perpetrated by the national civil police and the military. In addition to that, there are significant institutional barriers to access to justice for people victim of violence at the hands of these corporative institutions.

⁵ <http://cnnespanol.cnn.com/2017/03/07/denuncian-aumento-de-crmenes-de-intolerancia-contra-comunidad-trans-en-el-salvador/>

⁶ *The national legal frame has not been updated with the recommendations received from the UN Human Rights Committee or the international standards in matters of sexual orientation and gender identity.*

15. The Sexual Diversity Hotline (131) provides counselling about how and where to report violations to the LGBTI population rights. However, although initially it operated on a 24hs basis, it has been reducing its availability. The hotline is only a resource from where to get information, but it does not receive denounces nor does it coordinate any immediate action for specific assistance.
16. Non-heterosexual sexuality and a gender expression different from that assigned at birth can be a risk factor leading increasingly to forced migration. Many people from the LGBTI community have been forced to leave El Salvador due to the serious situation of LGBTI human rights and the lack of protection from the State. More than 70 LGBTI people left the country during 2014 and 2015 fleeing from violence, while 50 LGBTI people did so in the three first months of 2017. Among them were 8 trans women from San Luis Talpa, La Paz, motivated by the 3 murders committed there in February 2017.⁷
17. The Permanent Table on LGBTI Population Human Rights was created to develop human rights work and advocacy with social organizations and independent activists. It was created during 2012, under the constitutional mandate of the Public Advocate for the Protection of Human Rights, which supported the work of the Permanent Table. However, during the last past years the Public Advocate has been getting away from LGBTI social organizations, unfulfilling the constitutional mandate which regulates its operation⁸.

Recommendations

The State of El Salvador should:

1. To develop and to implement an Integral Gender Identity Law to guarantee the right to identity for trans people, as well as the other fundamental human rights, allowing the full integration of trans people to society.
2. To develop and to implement proper legislation aimed at eradication of discrimination on several grounds, including socio-economic condition, race, ethnicity, sexual orientation and gender identity or expression.
3. To establish mechanisms guaranteeing that police officers and the military obey the non-discriminatory legislation.
4. To prosecute hate crimes motivated by sexual orientation and gender identity in accordance with due process, to guarantee a proper investigation of them and that

⁷ <http://diario1.com/nacionales/2017/02/denuncian-asesinatos-de-odio-contra-transexuales-en-la-paz/>
<http://elmundo.sv/comunidad-transgenero-del-centro-de-el-salvador-huye-a-mexico-por-asesinatos/>

⁸ February 20, 1992, published in the Official Bulletin, number 45, volume 314, on March 6, 1992. Powers of the Public Advocate for the Protection of Human Rights are basically established by the Constitution of the Republic and by the Public Advocate for the Protection of Human Rights Law.

those found responsible are punished accordingly, in the frame of international standards.

5. To urge the Public Advocate for the Protection of Human Rights to abide by its constitutional mandate and fulfil its role, promoting specific policies for the LGBTI population, in accordance with international human rights standards.
6. To strengthen efforts to end discrimination against LGBTI people, especially against women, including awareness campaigns for society at large and specific ongoing training programs for the military and health care providers.
7. To promote legal reform in order to adjust the legal framework of the State to international standards and to the obligations assumed in the field of human rights.
8. To adopt any necessary measures, including legal reform, to fight against hate crimes and to promote access to justice for LGBTI people, especially for trans people, in order to prevent forced migration, to secure the right to life with dignity and to reduce the number of missing LGBTI people.