



CEDAW Mexico Alternative Report.

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Introduction

Mexico is currently living a terrible human rights crisis; the highest percentages of violence and corruption within the system have been important generators of impunity, insecurity and a lack of justice access environment. This condition is reflected in social inequality, which is a product of discrimination and marginalization in different population sectors.

According to the 2015 census, Mexico has a 119 million 530 thousand 753 population, divided by 61,474,620 women and 58,056,133 men. Considered one of the 12-mega diverse countries, it has a great linguistic, cultural, natural, climate and social diversity, which means it possess a great richness, a condition not reflected in it's population life conditions.

We must recognize that there has been important advances in the normativity and every more the governmental institutions are taking actions to face this major issue, but so far, these have not been enough to move forward into the erasing and an effective protection of the right to have dignity, security and a fulfilled development of all the population.

For lesbian and bisexual women it's very common to face not only gender related violence, but also the one that comes when it's considered they do not fit into the gender system, which puts them in a vulnerability situation. This condition is not registered in the justice system and holds a great invisibility. We could say that trans women face a greater social rejection and discrimination due to their early age visibility. This condition puts them in a high vulnerability condition not only for their personal safety, but also for counting on alternatives for their development and having a dignified life. These elements are also observed in LBT¹ women arriving to our country in search of a refuge as a result of the persecution and violence suffered in their origin countries. Therefore, we identified 3 sectors of concern: violence, LBT women rights and migrant and refugees in Mexico.

INTERNATIONAL LEGAL FRAME

1.- The Political Constitution of the United Mexican States² is the most solid tool that Mexico has to guarantee and protect its citizens. Chapter 1 says:

"Any form of discrimination, based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, opinions, sexual orientation³, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited."

¹ We use the LBT term to refer to lesbian, bisexual and trans women.

² The Political Constitution of the United Mexican States <http://www.sct.gob.mx/JURE/doc/cpeum.pdf>

³ In Mexico, different official papers make reference to sexual preferences in consideration of the sexual orientation.

2.- The General Law on Women's Access to a Life Free of Violence, created in 2007, also has the purpose to:

“Establish the coordination among the Federation, the States and the municipalities to prevent, punish and eradicate violence against women, and to establish principles and modalities to guarantee women's access to a life free of violence, which will favor their development and well-being in accordance with the principles of equality and nondiscrimination, and to guarantee democracy and comprehensive, sustainable development, which will strengthen the sovereign and democratic regime established in the Constitution of the United Mexican States⁴.”

It's established on this Law that any women must not or cannot be a discrimination object, and, on the contrary, it should be guaranteed the respect and dignity of them all.

3.- The Migration Law, Article 2, explicitly establishes the “absolute respect of migrants, nationals and foreigners human rights, whatever their origin, nationality, gender, ethnicity, age and migrant situation is, with special attention to vulnerable groups such as under aged, women, indigenous, teenagers, elderly people and crime victims⁵”.

Also, this Law mentions in Article 30 that:

“It corresponds to the Women's National Institute to promote actions oriented to improve the social condition of the female migrant population and the elimination of every forms of discrimination against them”.

It is important to mention that this Law recognizes and makes an explicit emphasis in forbidding women's discrimination due to their “sexual preference”:

Art. 109: “Not being discriminated by authorities due to their ethnic or national origin, sex, gender, age, disability, social or economic condition, health status, pregnancy, language, religion, opinions, sexual preferences, marital status or any other circumstance that holds the purpose of forbidding or cancelling the recognition or the exercise of human rights and real opportunity equality”.⁶

4.- The Refugee Law, complementary protection and political asylum, is another human rights protection and against discrimination tool:

⁴ Ley General de acceso de las mujeres a una vida libre de violencia. 2007, Diario Oficial de la Federación. http://www.dof.gob.mx/nota_detalle.php?codigo=4961209&fecha=01/02/2007

⁵ Ley de Migración. 2011, Cámara de Diputados del H. Congreso de la Unión. http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_091117.pdf

⁶ Ley de Migración. 2011, Cámara de Diputados del H. Congreso de la Unión. http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_091117.pdf

Art. 8: “The Secretary, without any prejudice of the obligations that correspond to other authorities and in coordination with them, shall adopt the measures in their reach in order to guarantee that the solicitors, refugees and those who receive complementary protection, do not be object of discrimination motivated by their ethnic or national origin, gender, age, disability, social or economic condition, health status, pregnancy, language, religion, opinions, sexual preferences, marital status or any other circumstance that holds the purpose of forbidding or cancelling the recognition or exercise of their rights.”⁷

5. - Also, the Federal Law to Prevent and eliminate discrimination, recognizes and forbids in Article 1st the discrimination due to sexual preferences.⁸

This Law is the one and only on a federal level that recognizes homophobia as a form of discrimination, and is a key tool in terms of LGBT⁹ people rights protection.

Context

6.- The 2010 National survey on Discrimination in Mexico revealed that more than 40% says that the homosexual people rights are not being respected, followed by the indigenous’ people rights and in third place the migrant’s rights¹⁰.

7.- On the other side, this survey researches about the discrimination against LGBT people, acknowledging that the 43.7% of people are NOT willing to live with a homosexual person, 26.6% are NOT willing to live with a foreigner, and the 23.4% are NOT willing to live with someone from other culture.

8.- Mexico holds the second place worldwide in hate crimes due to homophobia, lesbophobia, and transphobia. Only in a month, from September to October 2016, 10 transsexual women were murdered¹¹. The case documentary of lesbian and bisexual women harmed and murdered has been much more difficult to collect because of the great invisibility of this sector. Nevertheless, when it comes about a defender or an activist, there are some chances to be identified¹².

9.- The inquiries made by organizations about the treatment received by LGBT people related to their needs¹³ allows to see that the possibility of access to the basic health, education, work, and justice needs, are generally limited by the

⁷ Ley sobre refugiados, protección complementaria y asilo político. 2011, Cámara de Diputados del H. Congreso de la Unión. http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf

⁸ Ley Federal para Prevenir y Eliminar la Discriminación. 2003, Cámara de Diputados del H. Congreso de la Unión. http://www.diputados.gob.mx/LeyesBiblio/pdf/262_011216.pdf

⁹ We use the acronym LGBT to refer to lesbians, gays, bisexuals and trans people.

¹⁰ Encuesta Nacional sobre Discriminación en México. 2010, Consejo Nacional para Prevenir la Discriminación. http://www.conapred.org.mx/userfiles/files/Enadis-MIGRANTES-Web_Accss.pdf

¹¹ <https://noticieros.televisa.com/especiales/crimenes-odio-transexuales-mexico>

¹² <https://www.dosmanzanas.com/2018/03/un-estudiante-gay-en-un-posible-crimen-de-odio-y-una-activista-lesbiana-asesinados-en-mexico-entre-otros-episodios-de-homofobia.html>

¹³ <http://www.ceav.gob.mx/wp-content/uploads/2016/06/Investigaci3n-LGBT-Documento-Completo.pdf>

discrimination faced. These make a clear reference about the discrimination faced by LBT women and puts on evidence that trans women have less opportunities for their proper development, since they are expelled from the scholar system on an early age, leaving them with few opportunities to access a job. Including the discrimination related with their physical appearance. The President's 2016 declaration about the LGBT rights¹⁴ opened the possibility of co working between several institutions in favor of the LGBT population, however, this sector does not forms part of the National Development Plan.

10.- Over 70% of people who answered the survey believe that the Central Americans' rights are being respected few or none at all. So, "discrimination" is the second problem for migrant people in Mexico. 15% of the total migration groups are women. However, Mexican government hasn't answered the CEDAW¹⁵ recommendations about the asylum and refuge request register disaggregated by sexual orientation and gender identity and the violence conditions faced. In 2016, 8,781 refuge request were received but only 2,772 were granted and 1,632 humanitarian visas were given. So far, there are no statistics about how many were granted due to sexual orientation or gender identity¹⁶.

11.- The LGBT migration people, specially trans women, in the south border of Mexico has experienced a significant rise. Coming from the so-called North Triangle countries such as Guatemala, Honduras and El Salvador, they are running away from the violence and a killer persecution. From 2008 to 2016, 1,834 murderers in Center America and South America have been registered, being 290 from Mexico¹⁷. And so, the safety searched when they are running away from their countries is not found in our country, where they are equally assaulted, raped, murdered or tracked by the same gangs they ran away from. Authorities sometimes deny information and some trans women have suffered sexual assault from the authorities¹⁸.

12.- The measures to identify the needs of the LBT migrant and refuge requester population has been minimum. On the contrary of the stated by the government in its response to the CEDAW¹⁹ indications, evidences show that LBT people are facing serious violations of their human rights and remained unregistered. Even so, the coordinated work between different sectors – academic, social organizations and

¹⁴ <http://www.eluniversal.com.mx/articulo/nacion/politica/2016/05/18/presenta-eqn-iniciativa-pro-matrimonios-gay>

¹⁵ Para 21. <https://undocs.org/CEDAW/C/MEX/Q/9>
[https://outlook.office365.com/owa/?realm=unam.mx&exsvurl=1&llcc=3082&modurl=0&path=/attach
mentlightbox](https://outlook.office365.com/owa/?realm=unam.mx&exsvurl=1&llcc=3082&modurl=0&path=/attachmentlightbox)

¹⁶ <http://www.conacytprensa.mx/index.php/reportajes-especiales/17256-cuando-huir-es-la-unica-salida-para-sobrevivir-migrantes-transgenero-en-mexico-reportaje>

¹⁷ <https://transrespect.org/es/tdov-2017-tmm-update/>

¹⁸ <http://desastre.mx/mexico/discriminacion-y-violencia-extrema-esto-viven-inmigrantes-lgbti-en-mexico/>

¹⁹ Para. 180-181 <https://undocs.org/CEDAW/C/MEX/Q/9/Add.1>

authorities- it's not always easy. The lack of information and the little support for LBT women in a refuge situation puts them in a high vulnerability condition.

13.- The human rights labor defense done by activists it is blocked due to the lack of support, the non recognition from authorities and the continuous violence environment in the country. Moreover, lately, the LBT defenders have been the target of criminal attacks in which lesbian and trans friends have lost their lives. Unfortunately, the impunity and corruption, as being told by the Special Relator's report²⁰ about the situation of human's rights defenders has made that this crimes remained uninvestigated and unpunished. In some occasions, in spite of requesting protection to the proper institutions, like it is stated by the Special Relator about the extrajudicial executions, summaries or arbitrariness in his report ²¹.

14.- In spite of the Presidential initiative and the definition of the National Supreme Justice Court²² above the constitutionality of equal marriage for all the country, less of the half of States have done a proper harmonization to guarantee this right to all the people through the country. Also, in spite of the Presidential initiative, the gender identity recognition remains to be a challenge in the whole country, and it's only legal in three States.

RECOMMENDATIONS

In this scenario, it is very important to consider for this check-up the incorporation of lesbian, bisexual and trans women and those who decide to request refuge or are migrants through our country because of their sexual orientation, gender identity and expression. It is necessary that the government start initiatives to protect their rights and impulse actions through a cultural change to prevent and erase discrimination. Therefore, we are recommending:

15.- Establish a lesbian, bisexual, transphobic crime observatory that helps obtaining real data about the homicide numbers in this population. Also, to evaluate the justice access guarantee mechanisms in order to properly research and punish the violence and hate crimes against LBT women. Recognize the LGBT rights defenders as such and provide them the necessary protections for the effective fulfillment of their tasks.

16.- Related with the Comprehensive Regional Protection and Refugee Solutions framework impulse by the UN Refugee Agency and adopted by the Mexican government, within the National Action Plan of the Comprehensive Regional Protection and Refugee Solutions framework, in a collaboration with COMAR (Mexican Commission for Refugee Assistance), to strength the asylum systems and the integration process and also, define an action line reinforcing their public policy efforts and attention to prevent and eradicate discrimination and violence against

²⁰ For 74-75 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/51/Add.2&Lang=S>

²¹ For 86-87 <http://undocs.org/es/A/HRC/26/36/Add.1>

²² https://www.scjn.gob.mx/sites/default/files/derechos_humanos/articulosdh/documentos/2016-12/IGUALDAD%20Y%20DIVERSIDAD.pdf

LBT women. It is also important that the Mexico's National Center for HIV/AIDS Prevention and Control (CENSIDA) recognizes and incorporates refugee trans women in order to be considered a population in a highly vulnerability situation inside the national politic and strategy for HIV attention and prevention in Mexico.

17.- Request the Mexican government, particularly the National Migration Institute and COMAR, to disaggregate the information by sexual orientation and gender identity.

18.- Create and strength campaigns against xenophobia and discrimination from a gender, human rights and diversity perspective.

19.- The legislative harmonization with the international instruments to include the terms sexual orientation, expression and gender identity in the 1st Constitutional Article, and also the national legislative harmonization that guarantees the marriage right for all the people, their family registry and protection, including the gender identity law and the mechanisms for the legal documentation registry free from obstacles.

20.- The typing of sexual orientation, expression and gender identity as an aggravate in hate crimes.