HUMAN RIGHTS WATCH

“I’m Lucky to Still Be Alive”

Violence and Discrimination Against LGBT People in El Salvador

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JANUARY 2021

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Glossary

Bisexual: The sexual orientation of a person who is sexually and romantically attracted to both women and men.

Cisgender: Denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth.

Gay: A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.

Gender: The social and cultural codes (linked to but not congruent with ideas about biological sex) used to distinguish between society's conceptions of "femininity" and "masculinity."

Gender Identity: A person's internal, deeply felt sense of being female or male, both, or something other than female or male.

Heterosexual: The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

Homophobia: Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.

Homosexual: The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

Intersex: An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

LGBT: Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as "sexual and gender minorities."

LGBTI: Umbrella term used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are intersex.

Non-Binary: Gender identity of people who identify as neither female nor male.

Queer: An inclusive umbrella term covering multiple identities, sometimes used interchangeably with "LGBTQ." Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

Sexual Orientation: The way in which a person's sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or other sex, or to both or others.

Sexual Violence: Any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.[1]

Transgender: The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

Transgender Men: Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

Transgender Women: Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

Transphobia: Fear of, contempt of or discrimination against transgender persons, usually based on negative stereotypes of transgender identity.

[1] International Criminal Court, "Elements of Crimes," https://legal-tools.org/doc/3c0e2d (accessed September 17, 2020).

Travesti: A term that has different meanings in different cultural contexts, but in Central America is generally claimed by people assigned male at birth, who transit towards the female gender. *Travestis* do not necessarily identify as women and sometimes use the term to denote a political identity.

Summary

Camila Díaz Córdova, a 29-year-old transgender woman, tried for years to escape the violence that had characterized her life in El Salvador. She made her way to the United States in 2017 to seek asylum, but after four months in immigration detention, in November 2017, she was deported to El Salvador and to her eventual death.

On July 27, 2020, a court in El Salvador convicted three police officers of killing Díaz. Prosecutors alleged that on January 31, 2019, the officers had forced her into the back of a pickup truck, beaten her, and thrown her from the moving vehicle. She died several days later. The judge held that the evidence, including the vehicle's GPS tracking, the location where Díaz was found, and Díaz's autopsy report established the officers' criminal responsibility. It was the first time anyone had ever been convicted for killing a transgender person in El Salvador.

While this ruling represented a much needed first step toward accountability for anti-trans violence in El Salvador, hate crimes against lesbian, gay, bisexual and transgender (LGBT) people have continued.

This report documents violence and discrimination against LGBT people in El Salvador. It is based on 41 interviews with LGBT people from El Salvador who had experienced violence and discrimination and 19 other stakeholders including government officials, nongovernmental organization representatives, United Nations officials, lawyers, and journalists.

Human Rights Watch interviewed LGBT people in and from El Salvador who described the complex web of violence and discrimination that threatens their physical safety, limits their life choices, and in some cases leads them to flee their country. Some described violence at the hands of family members. Others described bullying and discrimination that drove them out of school or limited their academic success. Although no statistics are available on LGBT people's economic situation in El Salvador, many interviewees told us that family rejection and discrimination lead to a higher likelihood of economic marginalization, particularly for trans women, several of whom said they could not find any job other than sex work. Poverty in turn places LGBT people at high risk of violence from

gang members, from other members of the public, and from police and other members of the security forces. And while victims of violence in El Salvador generally face monumental challenges obtaining redress in the face of fragile institutions, corruption, and gang influence, LGBT victims often face an additional barrier in the form of stigma and discrimination from the very law enforcement agents charged with keeping them safe.

Camila Díaz Cordova, among so many others, did not have to die. The government of El Salvador should take additional steps to hold accountable public officials who carry out or are complicit in violence or discrimination on the grounds of gender identity or sexual orientation, and should implement legal and policy reform to protect against discrimination on these grounds in all sectors including employment, education, housing, health care, and access to goods and services. It should strengthen existing systems for tracking and investigating crimes based on anti-LGBT animus and should, where hate crimes statutes exist, prosecute such offenses as hate crimes and hold those responsible accountable. It should establish administrative procedures for legal gender recognition that allow trans people to obtain documents that reflect their gender identity without unnecessary hurdles. El Salvador's leaders should make unambiguous statements of support for the rights of LGBT people, including the right to non-discrimination and the right to be free from violence.

Each day that passes without adequate protection puts the lives of LGBT people in El Salvador at risk of persecution and abuse. El Salvador has an obligation to take steps to protect them.

Recommendations

To the President and the Executive Branch

- Create a specialized office charged with eradicating discrimination against LGBT individuals, promoting inclusive public policies, ensuring equal treatment in the provision of services, and increasing awareness and sensitivity about sexual orientation and gender identity. The government should provide this office with sufficient resources and operating budget to accomplish its aims.
- Engage directly with civil society organizations that promote and defend LGBT rights to discuss how best to improve protection of the rights of LGBT people.
- Rigorously enforce Executive Decree 56 of 2010 that prohibits discrimination in the executive branch, and require all ministries and other government agencies to prohibit discrimination on the grounds of sexual orientation and gender identity in hiring, contracting, and all other activities, and to take steps to counter systemic anti-LGBT discrimination.
- Publicly support the passage of a gender identity law that would provide a simple, inexpensive administrative process by which transgender people can change their name and sex marker on official documents.
- Terminate the Asylum Cooperative Agreement signed with the United States, which would allow the US to transfer asylum seekers, including LGBT people, to El Salvador.

To the Attorney General's Office

- Conduct prompt, thorough, and independent investigations into crimes against LGBT people to hold those responsible accountable.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police and prosecutors, receive training on sexual orientation and gender identity in order to better identify such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

- Train judges and prosecutors on hate crimes, including the elements of a hate crime under Salvadoran law, in order to ensure that bias-motivated crimes are prosecuted as such.

To Congress

- Pass comprehensive civil non-discrimination legislation that explicitly includes sexual orientation and gender identity as protected classes and that covers sectors including, inter alia, education, employment, health, and housing, and ensure that any existing civil non-discrimination legislation is also applicable to discrimination on the grounds of sexual orientation and gender identity.
- Pass a gender identity law that allows people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the Civil Registry. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one's gender.

To the Ministry of Justice and Public Security

- In collaboration with LGBT civil society organizations, train police and other ministry personnel on their obligations to uphold and protect the rights of LGBT people.

To the Ministry of Local Development

- Establish support services for young people, including both children and young adults, who are expelled from their homes for reasons related to their sexual orientation or gender identity, including shelter, counseling services, educational services and job training.

To the Ministry of Education

- Enforce policies that require all schools, public and private, not to discriminate against students on the basis of sexual orientation, gender identity or gender expression.

- Enforce anti-bullying policies that require all schools to take measures to prevent and respond to instances of bullying, including from staff and teachers, based on sexual orientation, gender identity and gender expression.
- Ensure that all curricula, including comprehensive sexuality education curricula, are inclusive of and reinforce acceptance of sexual and gender diversity.
- Provide students who have dropped out before completing high school, including LGBT people, with opportunities to complete their high school education, and reach out to LGBT organizations to ensure that LGBT young adults are aware of such opportunities.

To the Ministry of Labor

- Reopen dialogue with LGBT civil society organizations about programming to provide employment and job training to LGBT people.

To the Department of Statistics and Census

- Ensure the collection of data on discrimination, economic marginalization, and social exclusion on the grounds of sexual orientation and gender identity and the impact of such exclusion on economic development and individual well-being.

To Donors and Development Partners

- Provide adequate financial and technical support to accountability mechanisms in El Salvador aimed at investigating and documenting bias-based crimes, including within offices of the Attorney General and the Human Rights Ombudsperson's Office.
- Provide financial and technical support to LGBT-led organizations in El Salvador in all aspects of their work, including those related to documentation of human rights violations, advocacy, economic empowerment, and service provision.
- Publicly speak out in support the rights of LGBT people and urge the Salvadoran governments to adopt policies to combat violence and discrimination against LGBT people.

- Provide emergency assistance to LGBT people and human rights defenders working on issues related to gender and sexuality in El Salvador when they face security threats.

Methodology

This report is comprised of the El Salvador-focused sections of a longer, multi-country Human Rights Watch report, *'Every Day I Live in Fear': Violence and Discrimination Against LGBT People in El Salvador, Guatemala and Honduras and Obstacles to Asylum in the United States*, published in October 2020. It is based on primary research conducted in 2019 and early 2020 in El Salvador, Mexico, and the United States.

A Human Rights Watch researcher conducted interviews in San Salvador, La Unión, and San Miguel in May and July 2019. Human Rights Watch researchers also interviewed Salvadoran LGBT asylum seekers and representatives of organizations that provide them with legal representation and other support in the United States (Los Angeles and Washington, DC) in December 2019 and Mexico (Tijuana) in January 2020.

In total, Human Rights Watch interviewed 41 Salvadoran survivors of anti-LGBT abuses: two lesbian or bisexual women, 10 gay or bisexual men, 17 transgender women, nine transgender men, 1 non-binary person and two *travestis*.[2] Eight interviewees were asylum seekers or refugees.

The research focuses on violence and forms of discrimination that contribute to economic marginalization, which puts LGBT people at further risk of violence. For that reason, the report addresses discrimination in education and employment but not in other contexts, such as in medical settings. Although we did document several such cases of discrimination, these incidents did not clearly contribute to economic marginalization or physical violence. The exclusion of such incidents should not be taken to suggest that these are not serious human rights violations that merit further investigation and reporting.

Interviewees who were victims of human rights violations were reached with the support of domestic LGBT rights organizations in El Salvador or immigration lawyers and

[2] Not all interviewees disclosed both their gender identity and their sexual orientation, and there may be some overlap between categories. For instance, a trans woman or man may also be lesbian, gay, or bisexual, but given the nature of the qualitative interviews conducted, some interviewees only identified themselves as trans without discussing their sexual orientation.

organizations providing support services to asylum seekers in Mexico and the United States. Spanish-speaking Human Rights Watch researchers conducted the interviews in Spanish. Most interviews were conducted one-on-one in a private space, while some were conducted with small groups of individuals who knew one another and expressed comfort in speaking together. No compensation was provided to interviewees.

Human Rights Watch sought to interview people from across the LGBT spectrum, but lesbian and bisexual women are underrepresented in this research. There are several possible reasons for this.

First, we intentionally sought out cases of violence, and in many parts of the world, trans women and gay men may be at highest risk of being targeted by perpetrators of violence for violating gender norms. Second, lesbian and bisexual women are often less connected to LGBT rights organizations. Queer women-led organizations receive little donor funding, women may feel alienated or excluded by male-led or dominated groups, and women may have more difficulty securing the independence from families that facilitates participation in LGBT organizing. Some LGBT organizations also have a strong focus on prevention and treatment of HIV, which tends to be most relevant to gay and bisexual men and trans women. The skewed nature of our interview pool should not suggest that lesbian and bisexual women in El Salvador are not victims of violence and discrimination. Such violence may take place in the "private" sphere, be perpetrated by family members or intimate partners, and never be reported to police or to human rights organizations.

Human Rights Watch also interviewed 19 other people who had knowledge of human rights violations affecting LGBT people in El Salvador, including government officials, United Nations officials, human rights activists (including LGBT activists who spoke to the broader context of abuses rather than their personal experiences with violence and discrimination), journalists, and lawyers.

In addition, Human Rights Watch conducted a literature review, including reports published by LGBT organizations in El Salvador, reports by regional and international bodies including the Inter-American Commission on Human Rights and United Nations agencies, US State Department reports, and court rulings.

Human Rights Watch issued information requests to the government of El Salvador in July 2019, asking for available data on the number of cases of violence against LGBT people that had been reported to police, the number prosecuted, and the number resulting in convictions. We again issued information requests in September 2020, asking for further information on efforts to combat violence and discrimination based on gender identity and sexual orientation. The responses are included in annexes to this report. During the drafting of this report, Human Rights Watch further engaged via email with government representatives, who provided feedback on specific cases.

I. Background

> I could no longer endure this situation. I couldn't continue this life; it was no longer a life at all. I was suffering at the hands of my neighbors, gangs, my family, and the authorities of my country.
> —Pricila P., trans woman from San Salvador, Los Angeles, US, December 11, 2019

In 2015, El Salvador had the highest murder rate in the world.[3] Five years later, its homicide rate remains among the world's highest.[4] El Salvador also has thousands of missing persons cases and sexual crimes, according to data from the Attorney General's Office.[5]

Gang-related violence, much of it exported from the United States as a result of past deportations of members of street gangs initially formed in US cities in the 1980s and 90s, is persistent and pervasive.[6] The most dominant gangs are Mara Salvatrucha 13, also known as MS-13, and the 18th Street Gang, also known as Barrio 18, which currently operates as two separate factions.[7] Gang violence presents a danger for Salvadorans from all walks of life but has a particularly strong impact on people living in low-income

[3] United Nations Office of the High Commissioner for Human Rights, El Salvador End of Mission Statement, Agnes Callamard, special rapporteur for extrajudicial, summary or arbitrary executions, February 5, 2018, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E (accessed September 11, 2020).

[4] United Nations Office on Drugs and Crime, "Global Study on Homicide 2019," https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html (accessed December 4, 2020).

[5] Data obtained via public information request to the Salvadoran Attorney General's Access to Public Information Office for crime incidence data throughout El Salvador, data on homicides between 2013-2017 were received November 9, 2018 and data on sexual crimes between 2013-2017 were received November 1, 2018. Homicide data for 2018 were received February 18, 2019, and sexual crime data for 2018 were received February 25, 2019 (on file with Human Rights Watch).

[6] Jonathan Pedneault (Human Rights Watch), "The Long Journey to the US Border," commentary, *Los Angeles Review of Books*, August 31, 2019, https://www.hrw.org/news/2019/08/31/long-journey-us-border; Daniel Denvir, "Deporting People Made Central America's Gangs. More Deportation Won't Help," *Washington Post*, July 20, 2017, https://www.washingtonpost.com/news/posteverything/wp/2017/07/20/deporting-people-made-central-americas-gangs-more-deportation-wont-help (accessed September 10, 2020).

[7] International Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America,* April 6, 2017, https://d2071andvipowj.cloudfront.net/062-mafia-of-the-poor_0.pdf (accessed September 10, 2020).

neighborhoods, many of which are effectively controlled by gangs.[8] Police rarely investigate gang-related violence, and most murders are never prosecuted.[9]

State authorities have historically been largely ineffective in protecting the population from violence perpetrated by gangs, which President Nayib Bukele, elected in 2019, has described as running "a parallel state."[10] Authorities may be unable to help protect Salvadoran citizens who are victimized by violence for reasons including fear for their own security, infiltration of authorities' offices by gangs, and insufficient resources.[11]

At the same time, Salvadoran security forces have themselves committed extrajudicial executions, sexual assaults, enforced disappearances, and torture. Impunity is widespread. The United Nations special rapporteur on extrajudicial executions in 2019 denounced a "pattern of behaviour amongst security personnel, amounting to extrajudicial executions and excessive use of force, which is fed by very weak institutional responses, including at the investigatory and judicial level." Her report referred to abuses by the police and the army.[12] The Salvadoran Ombudsperson for the Defense of Human Rights (PDDH) found that investigations reached hearings in only 14 of 48 cases involving 116

[8] See, for example, Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse,* February 5, 2020, https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and#110b6b, section IV.

[9] Adriana Beltrán, "Children and Families Fleeing Violence in Central America," WOLA, February 1, 2017, https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle (accessed September 10, 2020).

[10] Sharyn Alfonsi, "'Our Whole Economy is in Shatters': El Salvador's Nayib Bukele on the Problems Facing His Country," *CBS News*, December 15, 2019, https://www.cbsnews.com/news/el-salvador-president-nayib-bukele-the-60-minutes-interview-2019-12-15 (accessed September 11, 2020).

[11] Human Rights Watch, *Deported to Danger,* p. 73.

[12] United Nations Office of the High Commissioner for Human Rights, El Salvador End of Mission Statement, Agnes Callamard, special rapporteur for extrajudicial, summary or arbitrary executions, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E.

extrajudicial killings committed by police from 2014 to 2018, and only two led to convictions.[13]

An estimated 38 percent of Salvadorans live in poverty, and about 8 percent in extreme poverty.[14] Only about a quarter of households have access to basic services like education, health, and infrastructure, and a quarter of the population is employed in the formal sector.[15] Human Rights Watch identified 138 cases in which people deported by the United States to El Salvador in the past seven years had been killed, and an additional 70 cases in which people suffered severe abuse, including sexual assault or torture, after being deported from the United States to El Salvador.[16]

Sexual Orientation and Gender Identity in El Salvador

El Salvador's laws and policies are rarely overtly hostile to LGBT people. It is the only Central American member of the LGBTI Core Group at the United Nations, a group of countries that since 2008 has advocated for best practices on upholding the rights of LGBT and intersex people.[17] In practice, however, El Salvador's efforts to protect LGBT people's rights at home have been inadequate, and activists say that since President Bukele took office in 2019, initiatives put in place under the previous government aimed at promoting LGBT inclusion have been downgraded or not implemented.

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[13] Human Rights Ombudsperson's Office (Procuraduría para la Defensa de los Derechos Humanos), "Special Report of the Ombuds for the Defense of Human Rights, Attorney Raquel Caballero de Guevara, About Extralegal Executions Attributed to the National Civilian Police in El Salvador, Period 2014-2018: Characterization of Cases of Violation of the Right to Life and Patterns of Extralegal Action" ("Informe especial de la señora Procuradora para la Defensa de los Derechos Humanos, licenciada Raquel Caballero de Guevara, sobre las ejecuciones extralegales atribuidas a la Policía Nacional Civil, en El Salvador, periodo 2014-2018: Caracterización de casos de violación al derecho a la vida y patrones de actuación extralegal"), August 2019, https://www.pddh.gob.sv/portal/file/index.php?dwfile=MjAxOS8xMC9JbmZvcm1lLWVzcGVjaWFsLXNvYnJlLWVqZWN1Y2lvbmVzLWV4dHJhbGVnYWxlcyoxLTEucGRm (accessed May 9, 2020), pp. 87-89. See also Nelson Rauda Zablah and Gabriela Cáceres, "PDDH: Police Executed 116 People Between 2014 and 2018" ("PDDH: La Policía ejecutó a 116 personas entre 2014 y 2018"), *El Faro*, August 28, 2019, https://elfaro.net/es/201908/el_salvador/23592/PDDH-La-Polic%C3%ADa-ejecut%C3%B3-a-116-personas-entre-2014-y-2018.htm?fbclid=IwAR3MMMKRWyebfe1kq8_qR_23R-MKzynnJJmvtrb4jvpc4CqwUbn8MTtp4xI (accessed September 11, 2020).

[14] Economic Commission for Latin American and the Caribbean (ECLAC), *Social Panorama of Latin America 2018 (Panorama Social de América Latina 2018)*, https://repositorio.cepal.org/bitstream/handle/11362/44395/11/S1900051_es.pdf (accessed September 11, 2020), p. 83.

[15] Ibid., pp. 39, 194.

[16] Human Rights Watch, *Deported to Danger*.

[17] UN LGBTI Core Group, https://unlgbticoregroup.org (accessed September 11, 2020).

For example, in 2010 the government established a Directorate of Sexual Diversity, housed within the Secretariat of Social Inclusion. The directorate was charged with training government employees, including police officers, on sexual orientation and gender identity and conducting research on LGBT issues in the country.[18] In 2017, the directorate launched an Inclusion Index aimed at setting standards and evaluating all government ministries and agencies on LGBT inclusion. This seemed to motivate government institutions: several vaunted the scores they received in their first evaluation in public statements.[19] But in June 2019, Bukele dissolved the social inclusion secretariat and subsumed the sexual diversity directorate into an existing Gender Unit in the Ministry of Culture, renamed the Gender and Diversity Unit.

LGBT activists criticized the move, protesting that few of their grave concerns regarding safety and discrimination could be adequately addressed under the ambit of culture.[20] They also cited the lack of follow-through on a set of LGBT awareness trainings conducted by the Ministry of Justice and Public Security in 2018 under the banner of a campaign entitled "I'm Doing What's Right."[21]

Such trainings are essential if El Salvador is to stem anti-LGBT violence: law enforcement officers need to be prepared to treat LGBT people with dignity and respect and refrain from

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[18] Human Rights Watch interview with Cruz Torres, former director of sexual diversity in the Secretariat of Social Inclusion, San Salvador, April 29, 2019.

[19] Cruz Edgardo Torres Cornejo, "El Salvador Institutional LGBTI Inclusion Index" ("Índice de Inclusión Institucional LGBTI El Salvador," undated, https://www.transparencia.gob.sv/institutions/capres/documents/238541/download (accessed September 11, 2020); Ministry of Labor and Social Welfare, "Social Inclusion Secretariat Recognizes MTPS Efforts in Support of the LGBT Community" ("Secretaría de Inclusión Social reconoce labor del MTPS en favor de comunidad LGBTI"), February 7, 2018, https://www.mtps.gob.sv/noticias/secretaria-inclusion-social-reconoce-labor-del-mtps-favor-comunidad-lgbti (accessed September 11, 2020).

[20] Oscar Lopez, "Pressure Mounts for El Salvador to Investigate Wave of LGBT+ Killings," *Reuters*, November 21, 2019, https://www.reuters.com/article/us-el-salvador-lgbt-murder-trfn/pressure-mounts-for-el-salvador-to-investigate-wave-of-lgbt-killings-idUSKBN1XW01G (accessed September 11, 2020); Valeria Guzmán, "LGBTI Federation Questions the New Government's Abandonment of Sexual Diversity" ("Federación LGBTI cuestiona el desamparo a la diversidad sexual en el nuevo gobierno"), *El Faro*, November 4, 2019, https://elfaro.net/es/201911/el_salvador/23760/Federaci%C3%B3n-LGBTI-cuestiona-el-desamparo-a-la-diversidad-sexual-en-el-nuevo-gobierno.htm (accessed September 11, 2020); COMCAVIS Trans, *Flee and Survive: A Look at LGBTI Displaced People in El Salvador and the Risks They Face (Huir y Sobrevivir: Una Mirada a la Situacion en El Salvador de las Personas LGBTI Dezplazadas Internas y los Riesgos que Enfrentan)*, June 2020, p. 9, on file with Human Rights Watch.

[21] "Government of El Salvador Fires LGBTI personnel" ("Gobierno de El Salvador despide a personal LGBTI"), *Agencia Presentes*, September 5, 2019, https://agenciapresentes.org/2019/09/05/gobierno-de-el-salvador-despide-personal-lgbti-y-retrocede-en-derechos-laborales (accessed September 11, 2020); Ernesto Valle, "El Salvador Government Ministry Implements Pro-LGBTI Policies," *Washington Blade*, November 19, 2018, https://www.washingtonblade.com/2018/11/19/el-salvador-government-ministry-implements-lgbti-policies (accessed September 11, 2020); Human Rights Watch telephone interview with Aldo Peña, representative of Hombres Trans El Salvador, August 5, 2020.

violating their rights. In cases like that of Camila Díaz Córdova and other non-fatal incidents described in the section on violence by state security officers below, police officers have been directly responsible for grave human rights violations.[22] In other cases, they have treated LGBT survivors of violence in a discriminatory manner, obstructing their access to justice. A lack of police responsiveness also enables violence against LGBT people in El Salvador by gangs and other non-state actors.

Legal and Policy Context

When it comes to its laws and official policies, El Salvador stands ahead of most Central American nations in recognizing the rights of LGBT people, but its legal and policy environment is still lacking in protections.

Non-Discrimination

The constitutional chamber of the Supreme Court ruled in 2009 that a provision in the country's constitution that protects against discrimination based on "nationality, race, sex or religion" applies to sexual orientation, citing United Nations Human Rights Committee jurisprudence. The ruling does not reference gender identity, although its findings—including that the grounds referred to in article 3 of the constitution are illustrative and not limiting—could be equally applicable to gender identity.[23]

Article 246 of the penal code prohibits job discrimination based on "sex, pregnancy, origin, civil status, race, social or physical condition, religious or political beliefs, membership or lack of membership in a labor union, or relationship with other workers."[24] The term "sex" has been held to be inclusive of sexual orientation and gender identity in some jurisdictions elsewhere in the world, including by the United States Supreme Court.[25] However, in a communication to Human Rights Watch, the Attorney General's Office claimed that article 246 refers to "biological sex," not sexual orientation or gender

[22] Camila Díaz Córdoba also used the first name "Aurora," and is named as "Aurora" or "Camila Aurora" in some media reports about the killing.

[23] Republic of El Salvador, Supreme Court of Justice, Constitutional Chamber, Decision 18-2004 of December 9, 2009, https://www.comcavis.org.sv/archivos/categorizados/63.pdf?1586958596 (accessed September 11, 2020).

[24] Republic of El Salvador, Código Penal (Penal Code), https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf (accessed December 4, 2020), art. 246.

[25] Ryan Thoreson, "US Supreme Court Ruling A Victory for LGBT Workers," Human Rights Watch dispatch, June 15, 2020, https://www.hrw.org/news/2020/06/15/us-supreme-court-ruling-victory-lgbt-workers.

identity.[26] Article 292 of the penal code criminalizes discrimination by government officials on the grounds of "nationality, sex, race, religion, or any other condition of a person," creating space for prosecutions on the grounds of discrimination based on sexual orientation and gender identity, but the law does not cover abuses by non-state actors.[27] In response to an information request from Human Rights Watch, El Salvador's Attorney General's Office affirmed that no one has ever been convicted for discrimination based on sexual orientation or gender identity.[28] In addition, criminal law should not be the primary framework used to protect against discrimination and to hold those who discriminate to account. To effectively curtail systemic discrimination, states should prioritize outlawing discrimination by adopting comprehensive civil and administrative laws, as discussed in section IV.[29]

Non-criminal anti-discrimination provisions include Executive Decree 56 of 2010, which states that any executive branch policies, activities, actions, omissions that result in discrimination on the basis of sexual orientation or gender identity are prohibited, and that all policies need to be reviewed for compliance with the decree.[30] While an important measure, the decree, which only applies to the executive branch and not to other public or private actors, is of limited application. There is no comprehensive civil law prohibiting discrimination by public and private actors.

Bias-Motivated Crimes

El Salvador's Ministry of Justice and Public Security tracks crimes against LGBT people, including through an "LGBT" box that can be checked on complaint forms, which ought to provide the state with data to help understand patterns and mitigate such crimes.[31]

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[26] Republic of El Salvador, Attorney General's Office, letter addressed to Human Rights Watch, September 30, 2020, DFG-116/2020; see Annex II.

[27] Republic of El Salvador, Código Penal (Penal Code), https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf, art. 292.

[28] Republic of El Salvador, Attorney General's Office, letter addressed to Human Rights Watch, September 30, 2020, DFG-116/2020; see Annex II.

[29] In many countries, including in the Northern Triangle, governments have used the criminal law in ways that disproportionately impact particularly vulnerable or marginalized groups, including LGBT people, raising further concerns about its effectiveness and appropriateness as the primary tool to address discrimination.

[30] Executive Decree 56 led to the creation of the Directorate of Sexual Diversity, described above. Republic of El Salvador, Executive Branch, Decree No. 56 (Organo Ejecutivo, Décreto No. 56), undated, ilo.org/dyn/natlex/docs/ELECTRONIC/86392/97471/F1174021459/SLV86392.pdf (accessed September 11, 2020).

[31] Mariana Arévalo, "LGBT Community Included for the First Time in an Official Report on Violence" ("Incluyen por primera vez a comunidad LGBTI en un informe oficial sobre violencia"), *La Prensa Gráfica* (San Salvador), December 14, 2019,

However, according to an official at the Attorney General's Office, prosecutors are often embarrassed to ask about complainants' sexual orientation or gender identity, leading to likely undercounting.[32]

In 2015, El Salvador passed a landmark hate crimes bill that increased sentences for homicides and threats based on gender identity and expression and sexual orientation, as well as race, ethnicity, religion, gender and political affiliation, although the statute does not extend to other crimes, such as assault and rape.[33] But in the intervening five years, prosecutors have only filed hate crimes charges three times based on gender identity, and never based on sexual orientation. In the 2020 Camila Díaz Córdova murder trial, a judge dismissed the hate crimes charges, apparently as a result of insufficient evidence.[34] Two other cases remained pending at time of writing.[35]

El Salvador's Human Rights Ombudsperson's Office (*Procuraduría para la Defensa de los Derechos Humanos*, PDDH), an autonomous body with the government that receives human rights complaints, refers cases to other government agencies and can call for them to take steps to address human rights abuses, has received a number of complaints from victims of anti-LGBT discrimination and violence. In May 2019, the PDDH published a report on 19 unsolved murders of LGBT people, primarily trans women, that it had been able to document between 2009 and 2016. The report assailed both police and prosecutors' failure to assiduously investigate and prosecute anti-LGBT hate crimes.[36]

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https://www.laprensagrafica.com/elsalvador/Incluyen-por-primera-vez-a-comunidad-LGBTI-en-un-informe--oficial-sobre--violencia-20191213-0800.html (accessed September 11, 2020).

[32] Human Rights Watch interview with Marina de Ortega, director for women, children, adolescents, LGBTI people and other vulnerable groups at the Attorney General's Office, San Salvador, May 2, 2019.

[33] Republic of El Salvador, Legislative Decree 106 of 2015 (Decreto Legislativo No. 106 de fecha 03 de septiembre de 2015), http://www.jurisprudencia.gob.sv/busqueda/showExtractos.php?bd=2&nota=732213&doc=558819&&singlePage=false (accessed September 11, 2020). The reform increases the maximum sentences for homicide, to 30 to 50 years if committed by an ordinary citizen and 40 to 70 years if committed by a public official, if a murder is ruled to be a hate crime.

[34] Cristian González Cabrera (Human Rights Watch), "Justice for LGBT Salvadorans Requires Reckoning with Hate," commentary, *La Prensa Gráfica*, April 11, 2020, https://www.hrw.org/news/2020/04/11/justice-lgbt-salvadorans-requires-reckoning-hate.

[35] Nahomy Alexandra, a trans girl who officials at the Human Rights Ombudsperson's Office said was between 15 and 17 years old, was found strangled in the back of a car in November 2018. The case remains pending, as does a case involving the murder of a trans woman, Tita Andrade, in March 2020. Human Rights Watch interview with Carlos Rodriguez, assistant prosecutor for individual rights, Human Rights Ombudsperson's Office, San Salvador, July 24, 2019; Human Rights Watch email correspondence with Jessica Torres de Cruz, Human Rights Ombudsperson's Office, June 19, 2020.

[36] Procuraduría para la Defensa de los Derechos Humanos, "First Situational Report on Hate Crimes Against the LGBTI Population" ("Primer Informer Situacional sobre Crímenes de Odio Cometidos en Contra de la Población LGBTI"), May 2019, https://www.pddh.gob.sv/portal/wp-content/uploads/2019/05/primer-Informe-crimenes-de-odio.pdf (accessed September 11, 2020).

Legal Gender Recognition

While some branches of government have attempted to address anti-LGBT violence and discrimination, they have not taken one of the steps that could reduce such violations: passing a law that allows transgender people to change their name and gender identity on official documents through a simple, administrative process.[37] The discrepancy between gender identity and official documentation is a source of discrimination and humiliation for trans people, as well as a source of conflict with authorities.[38] For instance, when Maria I., a trans woman, attempted to renew her identity card in 2010, an official at the DUI (identity document) center in Ciudad Delgado, San Salvador, refused to take her photo unless she came back dressed in men's clothing and without makeup on.[39]

A November 2017 advisory opinion issued by the Inter-American Court of Human Rights (IACtHR) stated that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression—as member states, including El Salvador, are obligated to do under the American Convention on Human Rights—states should establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements, such as medical or psychiatric evaluation or divorce.[40] Several Latin American countries have adopted such legislation, but El Salvador has not.[41]

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[37] Other countries and jurisdictions have passed laws that allow name and gender reaffirmation in a simple, inexpensive manner, including Argentina, Colombia and Mexico City. Daniel Berezowsky Ramirez (Human Rights Watch), "Latin America Could Lead the Way for LGBT Rights in 2018," commentary, *Proceso,* February 6, 2018, https://www.hrw.org/news/2018/02/06/latin-america-could-lead-way-lgbt-rights-2018.

[38] Neela Ghoshal and Kyle Knight, "Rights in Transition: Making Legal Recognition for Transgender People a Global Priority," Human Rights Watch, World Report 2016, https://www.hrw.org/world-report/2016/rights-in-transition.

[39] Human Rights Watch telephone interview with Maria I. (pseudonym), June 25, 2020; Duicentro de Ciudad Delgado, "Procedure Suspension Act" ("Acta de Suspension de Tramite"), November 30, 2010, on file with Human Rights Watch.

[40] Inter-American Court of Human Rights, Advisory Opinion OC-24/17, November 24, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf (accessed September 10, 2020), pp. 43-72; Neela Ghoshal (Human Rights Watch), "For LGBT Rights, 2018 Will Be the Year of the Courts," commentary, *Advocate*, January 24, 2018, https://www.hrw.org/news/2018/01/24/lgbt-rights-2018-will-be-year-courts.

[41] "OAS Presents Report on the Official Recognition of Gender Identity in the Countries of the Hemisphere," OAS news release, E-058/20, June 2, 2020, https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-058/20 (accessed September 10, 2020).

In 2018, Congressmember Lorena Peña presented a gender identity bill, drafted in collaboration with trans organizations.[42] The bill was discussed by the parliamentary commission on women and gender equality in May 2019, but has not advanced to a full parliamentary debate.[43] In at least two cases, judges have allowed transgender people to legally change their name and sex, but only after lengthy court proceedings and on the basis that they had undergone sex reassignment surgery.[44] Other individual cases are pending, along with a case before the constitutional chamber of the Supreme Court that challenges the legal lacuna under which the Law on the Name of the Natural Person does not provide for transgender people changing their names.[45] Erika Q., a 39-year-old trans woman from San Salvador, said:

> I don't know why governments make it so complicated for people to have names that they are comfortable with. It's unjust that they are denying something that could change the lives of so many people. It's something primordial in one's life—it is how you feel respected. If they approve the gender law, trans people will have a different way of thinking, 'there's a law that validates me.'[46]

Violence against Women

El Salvador has legislated attempts to address violence against women, although they have had limited success in stemming violence.[47] The Special Comprehensive Law for a

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[42] FMLN Parliamentary Group, *Draft Gender Identity Law (Anteproyecto de Ley de Identidad de Género)*, March 22, 2018, https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/C28A646B-453C-48EB-A98F-55E1F6E47C6B.pdf (accessed September 11, 2020).

[43] Marilú Alvarenga, "Draft Gender Identity Law Studied" ("A estudio anteproyecto de Ley de Identidad de Género"), Legislative Assembly of El Salvador, March 13, 2019, https://www.asamblea.gob.sv/node/8874 (accessed September 11, 2020).

[44] OAS, *Panorama of the Legal Recognition of Gender Identity in the Americas (Panorama del reconocimiento legal de la identidad de género en las Américas)*, June 2020, http://clarciev.com/identidaddegenero/public/files/PANORAMA%20DEL%20RECONOCIMIENTO%20LEGAL%20DE%20LA%20IDENTIDAD%20DE%20GENERO%20EN%20LAS%20AMERICAS.pdf (accessed September 11, 2020), p. 41; "Zacatecoluca Judge Authorizes Name Change for Trans Woman," *El Mundo,* April 30, 2019, https://diario.elmundo.sv/juzgado-de-zacatecoluca-autoriza-cambio-de-nombre-a-mujer-trans (accessed September 11, 2020).

[45] Human Rights Watch telephone interviews with representatives of FESPAD and COMCAVIS Trans, November 2020.

[46] Human Rights Watch interview with Erika Q. (pseudonym), Washington, DC, December 5, 2019.

[47] Ciara Nugent, "Violence Against Women in El Salvador Is Driving Them to Suicide — Or to the U.S. Border," *Time*, May 14, 2019, https://time.com/5582894/gender-violence-women-el-salvador (accessed September 11, 2020); Jo Griffin, "'Police Never Turned Up': El Salvador's Devastating Epidemic of Femicide," *Guardian*, June 8, 2018, https://www.theguardian.com/global-development/2018/jun/06/el-salvador-devastating-epidemic-femicide (accessed September 11, 2020).

Life Free of Violence for Women, passed in 2011, establishes severe penalties for femicide, defined as the murder of a woman when motived by "hatred or contempt for her status as a woman," but it does not alter sentences for other forms of physical and sexual violence against women. It prohibits discrimination in its application, including on the grounds of "sexual identity."[48] It is unclear whether the definition of "women" under the law is intended to be inclusive of trans women.

In 2017, El Salvador established specialized courts for violence against women in San Salvador.[49] These courts have jurisdiction over femicide and a number of other crimes included under the Special Comprehensive Law, including obstructing access to justice. They also have jurisdiction over crimes covered by the penal code, including article 292, which criminalizes discrimination by government officials on the grounds of "nationality, sex, race, religion, or any other condition of a person."[50] Because transgender women are not legally recognized as women, it is not clear that they can benefit from these courts. Even lesbians may face exclusion: Andrea Ayala, an activist with the organization ESMULES (*Espacio Mujeres Lesbianas Salvadoreñas por la Diversidad,* Salvadoran Lesbian Women's Space for Diversity), said that in two cases in which ESMULES tried to help victims obtain recourse—one involving domestic violence and the other involving employment discrimination—officials at the court for violence against women said they did not have jurisdiction over the cases because the women were lesbians.[51]

Social Stigma

Violence and discrimination take place in a context of family rejection and social stigma that have a negative impact on the well-being of LGBT people. Despite some progress in attitudes toward LGBT people in El Salvador, social stigma remains pervasive.

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[48] Legislative Assembly of the Republic of El Salvador, Decree No. 520 of 2011, *Special Comprehensive Law for a Life Free of Violence for Women (Ley Especial Integral Para Una Vida Libre de Violencia Para Las Mujeres)*, https://oig.cepal.org/sites/default/files/2011_decreto520_elsvd.pdf (accessed September 16, 2020).

[49] Legislative Assembly of the Republic of El Salvador, Decree No. 286 of 2016, *Decreto para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres*, http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2010-2019/2016/04/B7837.PDF (accessed September 11, 2020); Unidad de Género, Corte Suprema de Justicia, "Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres," Boletín de Género, No. 4, July 2017, http://www.csj.gob.sv/Comunicaciones/2017/07_JULIO/BOLETINES/19.07.17%20BOLETIN%20G%C3%89NERO.pdf (accessed September 11, 2020).

[50] Republic of El Salvador, Código Penal (Penal Code), https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf, arts. 245-246, 292.

[51] Human Rights Watch telephone interview with Andrea Ayala, founder of ESMULES, April 19, 2019.

Those interviewed by Human Rights Watch described churches and families as significant sources of stigma. Erika Q., a 39-year-old trans woman from San Salvador, emphasized the influence of churches on social norms in a country embattled by insecurity and weak rule of law:

> You're insulted on a daily basis. Much of this comes from the churches, where verbal harassment is constant. It's the churches that have the power. I have nothing against churches, but they are the source of much anti-LGBT discrimination and hate. People don't feel protected by the police or the government, but they feel protected by religion. But some churches use this against us. They focus on us as part of the problem.[52]

In some cases, churches practice conversion therapy, attempting to change people's gender identity or sexual orientation. Ricardo S., a 28-year-old gay man, described an experience at a church youth retreat when he was 17:

> They threw me on the ground, held me down, and put a crucifix on my penis and another one on my buttocks, and the priest shouted, 'I order this demon to leave your body!' Then, a spiritual guide came [to San Salvador] from Sonsonate who continued to follow my case. They obliged me to dress differently and said that if I felt like I wanted to fall in love with a man, that I had to start praying hard. I thought I was possessed by a demon of homosexuality. That lasted for three years.[53]

Octavio M., a 25-year-old trans man, was subjected to conversion therapy, in his case in a mental health setting, by personnel at the Christian-affiliated orphanage where he was raised:

> When I was between 15 and 17 years old, they made me go to a psychologist. We did exercises, I had to draw things. And they had dolls that represented a family and said that a man couldn't be with a man, and a

[52] Human Rights Watch interview with Erika Q., Washington, DC, December 5, 2019.

[53] Human Rights Watch interview with Ricardo S. (pseudonym), San Salvador, April 30, 2019.

> woman couldn't be with a woman. Eventually I told them the things I thought they wanted to hear.[54]

Cruz Torres, then-director of sexual diversity in the Secretariat of Social Inclusion, told Human Rights Watch that churches were the source of a vocal campaign against so-called gender ideology, a catch-all term that religious fundamentalists and others use to refer to a supposed gay and feminist-led movement to subvert traditional families and social values.[55]

Many trans women interviewed by Human Rights Watch survived by doing sex work, and their work exposed them to particularly high levels of social stigma. Serafina N., a trans sex worker based in the Hospital Benjamin Bloom area of San Salvador, said people in passing cars frequently threw trash, stones, and mangoes at sex workers in the area.[56]

Interviewees said social rejection, family rejection and bullying contributed to depression, including suicidal ideation. Xavier H., a trans man, described becoming aware of his gender identity as a boy at age three. The severe bullying he endured, he said, led him to attempt suicide at age six.[57] Two other trans men and a trans woman interviewed by Human Rights Watch in El Salvador also said that they had seriously considered or attempted suicide.[58]

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[54] Human Rights Watch interview with Octavio M. (pseudonym), San Salvador, May 3, 2019.

[55] Human Rights Watch interview with Cruz Torres, San Salvador, April 29, 2019.

[56] Human Rights Watch interview with Serafina N. (pseudonym), San Salvador, July 13, 2019.

[57] Human Rights Watch interview with Xavier H., San Salvador, May 3, 2019.

[58] Human Rights Watch interviews with Alek D., San Salvador, May 3, 2019; Navas F., San Salvador, July 24, 2019; and Laura I. (pseudonym), San Salvador, July 24, 2019.

II. Violence Against LGBT People in El Salvador

"My life has never been happy," Maria I., a trans woman in San Salvador told Human Rights Watch. "My mother died in the earthquake in 1986. My father didn't want me and left me with my grandmother. The first time I was raped, I was nine." At age nine, Maria would have been perceived as a young boy. A stranger plied her with a toy doll—"first he tried to give me a ball, but I didn't like it"—and then pushed her into a bathroom and raped her while her grandmother was out buying food. Maria, who described herself as "pretty, and feminine," threw out her bloody underwear, thinking her grandmother would blame her. She did not tell anyone. At age 14, Maria left home due to her grandmother's rejection of her transgender identity. On the streets, she was raped again.[59]

Maria was raped again as an adult, this time by gang members, in 2015. By then, El Salvador had on the books its hate crimes law, with harsh penalties for violence based on sexual orientation and gender identity. It had established institutions like the Sexual Diversity Directorate, which opened their doors to people needing services like Maria, a trans woman who sometimes did sex work to survive. Still, to Maria's knowledge, despite her filing a complaint, no one was ever arrested for the assault.

The Salvadoran government acknowledges the violence and discrimination that confront LGBT Salvadorans. The Attorney General's Office in El Salvador released statistics in January 2020 indicating it had tabulated 692 cases of violence against LGBT and intersex people in five years.[60] Importantly, the government has also acknowledged violations at the hands of security officials. A 2017 Ministry of Justice and Public Security report minced no words:

> It cannot be denied that the country is marked by high levels of violence and criminality, which, in addition to generating restrictions on people's freedom, also violates fundamental rights such as the right to life and

[59] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

[60] Eduardo Sosa, "Prosecutor's Office Reports 692 Cases of Violence Against the LGBTI Population in Five Years" ("Fiscalía reporta 692 casos de violencia contra población LGTBI en cinco años"), ElSalvador.com, January 2, 2020, https://www.elsalvador.com/eldiariodehoy/fiscalia-reporta-692-casos-de-violencia-contra-poblacion-lgbti-en-cinco-anos/673637/2020 (accessed September 11, 2020).

> physical integrity. In general terms, the country presents high levels of social exclusion and vulnerability, within which cultural practices reproduce violence and discrimination.
>
> One of the populations that are most affected by this situation is that composed of LGBTI people, who, in addition to suffering from widespread discrimination, also face multiple forms of violence, including acts of torture, inhuman or degrading treatment, excessive use of force, illegal and arbitrary arrests and other forms of abuse, much of it committed by public security agents.[61]

UNHCR's 2016 guidelines for asylum applications of Salvadorans stated that LGBT people have "consistently been targeted for attacks and murder by the gangs and other sectors of society, including by the police and other public authorities" and that El Salvador's gangs have demonstrated "virulent hatred and ill-treatment of persons based on of their perceived sexual orientation and/or gender identity," particularly against trans women.[62] The Inter-American Commission on Human Rights reported similar concerns.[63]

As seen above, several policy initiatives suggest good will on the part of government institutions to make policy inclusive of people of diverse gender identities and sexual orientations. But for many LGBT people, daily life on the streets is controlled not by the state but by criminal gangs, including the two factions of the 18th Street Gang, or Barrio 18, and Mara Salvatrucha 13, or MS-13. LGBT people, especially trans women, face violence at the hands of gangs that can be motivated by anti-LGBT animus or opportunism related to LGBT people's perceived or actual social and economic vulnerability. LGBT people also face violence from the police, and activists have pointed out that putting more police on the streets—a key feature of the Bukele administration's approach to crime—is not

[61] Ministry of Justice and Public Security, Ministry of Justice and Public Security Policy Regarding the LGBT Population (Política deL Ministerio De Justicia Y Seguridad Pública Para la Atención de la Población LGBT), December 2017 (on file with Human Rights Watch), p. 9.

[62] UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, HCR/EG/SLV/16/01, March 2016, https://www.refworld.org/pdfid/56e706e94.pdf (accessed September 11, 2020), pp. 38-39.

[63] Inter-American Commission on Human Rights, *Violence against LGBTI persons*, OAS/Ser.L/V/II.rev.1, http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf, para. 279.

necessarily beneficial for LGBT people.[64] The case of Camila Díaz Córdova, in which three police officers have been accused of killing a trans woman in January 2019, discussed below, is illustrative of the various forms of violence and discrimination LGBT people experience.

Between October 2019 and March 2020, at least seven transgender women and one gay man were murdered in El Salvador.[65] Several cases bore clear indications of being anti-LGBT hate crimes.[66] Relentless violence, and threat of violence, cause many trans people, and in some cases lesbian, gay, and bisexual people, to live on the run. In 2019, the transgender rights organization COMCAVIS Trans reported having assisted 84 people who suffered internal displacement due to their sexual orientation or gender identity.[67] According to COMCAVIS, most flee their homes because of threats from gangs or because of attempted murder based on their gender identity or sexual orientation.[68] Others leave the country: between January 2007 and November 2017, at least 1,228 asylum seekers from El Salvador filed asylum claims in the United States based on sexual orientation or gender identity, making El Salvador the source of the largest absolute and per capita number of LGBT asylum seekers in the US.[69]

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[64] Carmen Valeria Escobar, "For LGBTI People the Territorial Control Plan Doesn't Exist: Bianka Rodríguez" ("Para las personas LGBTI no existe el Plan Control Territorial: Bianka Rodríguez"), *Gato Encerrado*, December 13, 2019, https://gatoencerrado.news/2019/12/13/para-las-personas-lgbti-no-existe-el-plan-control-territorial-bianka-rodriguez (accessed September 11, 2020).

[65] The women's names are Anahy Miranda Rivas, Jade Camila Díaz, Victoria Pineda, D. Rosa Granados, Cristi Conde Vásquez, Briyit Michelle Alas, and Tita. Cristian González Cabrera, "Murder Trial for El Salvador Transgender Woman to Proceed," Human Rights Watch dispatch, March 11, 2020, https://www.hrw.org/news/2020/03/11/murder-trial-el-salvador-transgender-woman-proceed; Paula Rosales, "Gay Youth Murdered: Two Hate Crimes Against LGBTI+ People in One Week in El Salvador" ("Asesinan a joven gay: dos crímenes de odio a LGBTI+ en una semana en El Salvador"), *Presentes,* March 20, 2020, http://agenciapresentes.org/2020/03/20/asesinan-a-joven-gay-dos-crimenes-de-odio-a-lgbti-en-una-semana-en-el-salvador (accessed September 11, 2020).

[66] Cristian González Cabrera (Human Rights Watch), "Justice for LGBT Salvadorans Requires Reckoning with Hate," commentary, *La Prensa Gráfica*, https://www.hrw.org/news/2020/04/11/justice-lgbt-salvadorans-requires-reckoning-hate. Pineda was found naked with her face disfigured and covered in logs and a car tire in an apparent enactment of crucifixion while Andrade was found 90 percent burned. Such symbolic and brutal murders are often committed against people accused of "moral crimes."

[67] COMCAVIS Trans, *Huir y Sobrevivir,* p. 9.

[68] Brot fur die Welt (Bread for the World), *What El Salvador Does Not Recognize: Report on Cases of Forced Displacement due to Violence 2017-2018 (Lo que El Salvador no reconoce: Informe de las Organizaciones de la Sociedad Civil sobre los Casos de Desplazamiento Forzado por Violencia 2017-2018)*, July 11, 2019, https://www.fespad.org.sv/lo-que-el-salvador-no-reconoce-informe-de-las-organizaciones-de-la-sociedad-civil-sobre-los-casos-de-desplazamiento-forzado-por-violencia-2017-2018 (accessed September 11, 2020), p. 28.

[69] Tim Fitzsimons, "Trump Proposals Threaten LGBTQ Asylum-seekers' Hopes of Refuge in U.S.," *NBC News*, August 20, 2020, https://www.nbcnews.com/feature/nbc-out/trump-proposals-threaten-lgbtq-asylum-seekers-hopes-refuge-u-s-n1236736 (accessed September 10, 2020).

Violence against transgender women in some parts of Latin America, including El Salvador, is of such magnitude that activists have coined the term "transfemicide" or "transfeminicide," referring to the murder of trans women because of their gender, as female, and gender identity as trans women.[70] The term acknowledges the intersectional violence and discrimination that trans women face under patriarchal social structures built around rigid gender norms and roles.

Domestic Violence

For too many LGBT people in El Salvador, violence begins at home, sometimes from a very young age, especially for those who breach gender norms.

Michelle S., a 25-year-old trans woman who grew up on a ranch in Zacatecoluca municipality, La Paz department, told Human Rights Watch that she was severely beaten by her father from when she was five or six years old. Michelle said:

> My father beat me because of the way I walked. It got to the point that he hung me by my feet from the ceiling, for up to an hour. He did this many times. He hit me with ropes that he'd run through sand to make it hurt more. He also hit me with a rubber whip, the kind you use to hit horses…. When he would beat me, he would tell me that he wished I had never been born, that I was an embarrassment. He never beat my siblings.[71]

The beatings worsened when Michelle was 11 or 12 years old:

> I had a friend who was like me, and a friend of my father's told him 'Your son is going around with another faggot,' and he beat me on the legs. The teacher saw [the marks] and called the police. Police came to the school, and they brought me home and spoke to him. They knew my father. They didn't do anything, because of their friendship with him and because he was a sergeant in the army.[72]

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[70] Transfemicide/transfeminicide has been recognized officially as a category of violence by the governments of Argentina and of Mexico City, both of which have among the world's most rights-respecting gender identity laws.

[71] Human Rights Watch interview with Michelle S., Washington, DC, December 6, 2019.

[72] Ibid.

Michelle's father's response was to tie her to the gate to prevent her from running away to her grandmother's house. Twice, Michelle said, her father hit her so hard that she vomited blood and had to seek medical treatment. Michelle told Human Rights Watch researchers that she told doctors she had fallen down, fearing that if she told the truth, her father would beat her again. At around this time, reacting to the violence, Michelle began to cut herself. She eventually fled home at age 15 and turned to sex work for survival, leading to further vulnerability to violence, as discussed further below.[73]

Maria I., a trans woman San Salvador, described being beaten by an uncle as a child:

> An uncle lived with us. He was a biker [motorcyclist] and was really machista, and humiliated me. When he saw changes in me, for instance when I grew my hair longer and powdered my face, he beat me.[74]

Laura I., a 27-year-old trans woman, said that when she was 13 and started to develop a feminine gender expression, her father threatened to kill her:

> My father always treated me badly. I still hadn't told him about my gender expression [identity], but I think he already had a sense of my expression. At the end of 2005 [my father] said: 'If you turn out to be a faggot I'll beat the shit out of you and kill you.'[75]

At age 15, Laura came out to her father as trans. He did not beat her, but tried to force her to have sex with a female sex worker, telling her it was "so you are made into a man." Laura told Human Rights Watch she still felt traumatized by this incident years later.[76]

Navas F., a trans man, said his family members beat him when he first had a relationship with a woman, around ninth grade. His aunt took him for an exorcism with a woman

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[73] Ibid.

[74] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

[75] Human Rights Watch interview with Laura I., San Salvador, July 24, 2019.

[76] Ibid.

considered to be a witch. Navas said his inability to "change" and his family's refusal to accept him led to a deep depression and a suicide attempt.[77]

Violence and Harassment by State Security Forces

Maria I., a trans woman from San Salvador, was living in fear when Human Rights Watch interviewed her in July 2019. Maria's best friend, Camila Díaz Cordoba, had been murdered in January. Three police officers had been arrested and charged with Camila Díaz's murder earlier in July. Maria was afraid that they had not acted alone, and that other police officers could be coming for her.[78]

Maria I. told Human Rights Watch about Díaz's life, and about her death at 29 years old. According to Maria I., Díaz moved to San Salvador at age 17, escaping a family that rejected her gender identity and tried to "change" her by enrolling her in a military institution. Díaz started doing sex work to make a living, and befriended Maria I. The two women fled to Mexico together in March 2016, escaping from a violent environment in which gang members had murdered their close friend Mónica, had raped Maria, and had threatened Camila. But they found life in Mexico dangerous and economically unsustainable, and they returned to El Salvador. Díaz fled again in 2017, this time reaching the United States and turning herself in to immigration authorities in August. But in November, she was deported back to El Salvador. She returned to sex work. Fourteen months later, she was dead.

In July 2020, three police officers were convicted of Diaz's murder.[79] According to prosecutors, they picked up Díaz at around 3 a.m. on January 31 after receiving reports of someone creating a disturbance in the street. They handcuffed her, placed her face down in the back of a police pickup truck, and severely beat her before throwing her out of the moving vehicle.[80] Díaz died at Rosales Hospital on February 3, 2019.

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[77] Human Rights Watch interview with Navas F., San Salvador, July 24, 2019.

[78] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

[79] "El Salvador: Police Officers Convicted for Transgender Murder," Human Rights Watch news release, July 31, 2020, https://www.hrw.org/news/2020/07/31/el-salvador-police-officers-convicted-transgender-murder.

[80] Cristian González Cabrera, "Murder Trial for El Salvador Transgender Woman to Proceed," Human Rights Watch dispatch, https://www.hrw.org/news/2020/03/11/murder-trial-el-salvador-transgender-woman-proceed.

It is remarkable in El Salvador to see a conviction for the murder of a trans woman, and police records indicate that international pressure played a significant role in advancing investigations.[81] But it is unremarkable for trans people, and in some cases other sexual minorities, to experience serious violence at the hands of the security forces.

Pricila P., a trans woman from San Salvador, recounted how in February 2018, on her way home from work in the evening, four police officers assaulted her after a "routine stop" in which they required all men to alight from a public minibus and searched them for drugs:

> When everyone else got back in, they didn't let me, they told the driver to go on. They asked me if I was gay, and I said, 'Yes,' because I never liked to hide that. They said, 'You don't understand that you are a man?'
>
> One of the police officers grabbed my testicles and squeezed. I said to let go. He said, 'You're realizing you're a man because you feel pain. If you were a woman you wouldn't feel pain.' The pain threw me to the floor. One of them stepped on my hand with his boot. He said that I would become a man by force. They beat me, and they left me there.
>
> I arrived at home, bathed, and changed. I realized I couldn't feel safe with the police in my country.[82]

An activist from a trans rights organization accompanied Pricila P. to the central police station to file a complaint, but the police refused to accept it, she said:

> They saw we were people from the [LGBT] community. The man at the reception said that if it was mistreatment of a gay, there was no point in filing a complaint. He said it was my fault, that maybe I had disrespected the police, that I deserved this… We had to give up and go home. I remember that [the activist] said 'That's why there are so, so many deaths.'[83]

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[81] A Human Rights Watch researcher viewed the case file, which included a document in which a police investigative body urgently requested information about the case from another organ, citing "international pressure."

[82] Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

[83] Ibid.

In November 2018, a police patrol stopped Pricila P. as she was coming home in the early morning, wearing makeup. Police officers asked, "Why are you like this? You're a man," and threw a bottle of water in her face, she said. They grabbed her purse which contained her antiretroviral medication. According to Pricila P.:

> I said not to take it because it was medicine that I had to take daily. They realized it was for HIV, and they said, 'Oh, you're going to die…. you don't need this, you're already approaching death.'[84]

Pricila P. went without antiretroviral therapy for two months after the incident: it was difficult to get an appointment to get her prescription refilled, and the hospital was in a neighborhood controlled by a rival gang, dangerous for residents of MS-13-controlled neighborhoods. She told Human Rights Watch: "My health deteriorated, the virus became detectable, from not taking my medicine for two months."[85]

Aldo Peña, a 35-year-old trans man, was the only person interviewed by Human Rights Watch who successfully brought charges against state security agents for anti-LGBT violence. Peña was on a bus returning home from the LGBT pride march in San Salvador on June 27, 2015, when he got into a verbal altercation with the driver, who had skipped his stop. The driver ordered Peña and his friend off the bus, dropping them off in front of three police officers, whom Peña recognized as officers who had harassed him in the neighborhood in the past, demanding to see his ID and deriding him for being transgender.[86]

Peña said one police officer grabbed him by the shirt, causing Peña to respond, "I'm not a criminal." The police officers started beating both Peña and his female friend, the beating worsening when Peña asked why they were beating her. Peña said police knocked him to the ground, jumped on him, and hit him with a gun, causing him to briefly lose consciousness. When he awoke, he said, he was handcuffed and on his stomach on the ground.[87]

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[84] Ibid.

[85] Ibid.

[86] Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019, and by telephone, April 10, 2020.

[87] Ibid.

Police took Peña and his friend to the nearby station, where he could hear her screams as she was beaten with a belt. According to Peña, police shouted at him, "You're always going around with that dyke!" The police hit Peña, jumping on him, he said, "as if I was a trampoline… One officer said, 'Come touch this son of bitch and see what he is.'"[88] About twelve police officers were beating him. Peña said:

> They told me that I was going to wake up in a ditch, and that they would say it was the gangs. [They said:] 'If you're a man, you can take it.' I thought it was my last day to live.[89]

Activists from LGBT organizations including Entre Amigos and Comcavis Trans mobilized national and international attention to Aldo Peña's case, attracting support from people including then-mayor of San Salvador Nayib Bukele—the current president—and then-First Lady Margarita Villalta de Sánchez, eventually resulting in Peña's release.[90] After hospitalization for his injuries, Peña filed a complaint against the police officers, which advanced to trial.[91] It was not easy, he said: "The prosecutor in my case was bullied by her peers for being on my case; they told her that it's the case of a faggot, of a dyke." The interim pretrial judge was also hostile: **"**The pretrial judge always referred to me as faggot." Eventually, Peña obtained a rare outcome in El Salvador: two of the police officers who had attacked him were sentenced to four years in prison.[92]

Peña concluded, "The [police] violence was the worst thing that happened to me. I'm lucky to still be alive."[93]

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[88] Ibid

[89] Ibid.

[90] Mitch Kellaway, "Salvadoran Trans Man Says He Was Brutalized by Police After Pride Parade," *Advocate*, July 14, 2015, https://www.advocate.com/violence/2015/07/14/salvadoran-trans-man-says-he-was-brutalized-police-after-pride-parade (accessed September 11, 2020); Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019.

[91] The trial is described by journalists who attended it. Maria Luz Nóchez, Nelson Rauda Zablah and Jimmy Alvarado, "The Invisible Deaths of Trans Women and Men" ("Las muertes invisibles de las mujeres y los hombres trans"), *El Faro,* January 25, 2016, https://www.elfaro.net/es/201601/el_salvador/17819/Las-muertes-invisibles-de-las-mujeres-y-los-hombres-trans.htm (accessed September 11, 2020).

[92] Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019, and by telephone, April 10, 2020; Nelson Rauda Zablah, "Court Acquits Principal Defendant in Beating of Transsexual CAM Agent" ("Justicia absuelve a principal acusado de golpiza al agente del CAM transsexual"), *El Faro*, October 9, 2016, https://www.elfaro.net/es/201610/el_salvador/19373/Justicia-absuelve-a-principal-acusado-de-golpiza-al-agente-del-CAM-transexual.htm (accessed September 11, 2020).

[93] Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019.

Maria I.'s experience, on the other hand, demonstrates why few trans victims of police violence bother to file complaints at all. Maria I., a trans woman living in San Salvador, said that in 2016 a friend was dropping her off at home when police stopped the friend's car at a checkpoint. Maria recounted:

> They were asking for my friend's documentation, normal things, and then they asked where she was going. She said, 'I'm going to drop off my *amiga* [female friend].' One of the police looked in the window at me and said, 'Ah, but this thing is not a woman.' They made me get out of the car and wanted to make me strip in the street to see if I was a woman. I refused, and said 'You're violating my rights.' He said to me 'Your rights, to me, are in the garbage.' They asked for my ID and I said I didn't have it. They said if I didn't have my ID it was probably because I was a criminal, and they started taking pictures of me, saying they were going to put them on the internet to see if I had committed some crime. I felt powerless, they in their uniform are the authority.[94]

Since the driver of the car did have her papers, Maria said she asked police, "On what basis are you going to fine me?" Instead of responding, she said, "They kicked me."[95]

Maria I. spoke with a friend who encouraged her to file a complaint.

> Two days later I went to the police to file a report, [but] the person who was going to register my report told me that it was better not to file a report because it was against police officers. 'We are the law and you can't file a complaint against the law. We can't accept your report.' And he said to another person there, 'Can you believe that this gentleman came to file a complaint against [our] comrades? And they started to make fun of me, they were laughing. So I said that I was going to look for help elsewhere, that I would go to the human rights office to file a report, and that I would file one

[94] Human Rights Watch telephone interview with Maria I., June 25, 2020.

[95] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

> against them at the same time because they wouldn't take my report. And they said: 'I wipe my ass with your rights.'[96]

Maria also filed a complaint with the Human Rights Ombudsperson's Office, but she said that to her knowledge there was no follow-up. She said, "The hardest thing was filing a complaint, because I knew it exposed me to more danger."[97]

Police abuse of authority was not limited to beatings. In the case of Yadira Q., a trans woman, police used their power to extort sex, a form of sexual assault. Yadira Q. said that in November 2017 she was sitting with a group of trans and cisgender friends in an outdoor area when four male police officers approached them, searched them all, and found one person in possession of marijuana. The police officers pulled aside three trans women in the group and asked them to get into the police vehicle. They drove them to a remote area, where they said they could detain the entire group of friends for "association" with the man who had marijuana, or that the trans women could provide them with oral sex as a "solution." Fearing arrest, Yadira and her two friends complied.[98]

Others described threats, harassment, and discrimination from the police. Mario L., a 26-year-old gay man, said police threatened him in January 2018 when he was standing in the street with his boyfriend:

> A few police officers came up to us and asked what we were doing. We said that we were just talking. They said that someone called them [to say] that we were engaged in immoral acts. There were four police officers…. They asked if we were gay and we said yes, but that we hadn't even kissed [on the street].… One started getting annoyed and said, 'To rid them of this, you have to beat the shit out of them.' … He said: 'Aren't you embarrassed to be doing this? Are you really gay or are you gang members and are trying to brainwash us? Let's see if you can kiss each other to see if it's true.' We

[96] Ibid.

[97] As part of the complaint, Maria authorized the sharing of her case with the oversight division within the police, which she understood to be risky. She never heard from the police. Human Rights Watch telephone interview with Maria I., June 25, 2020. A copy of the complaint is on file with Human Rights Watch.

[98] Human Rights Watch interview with Yadira Q. (pseudonym), La Unión, July 19, 2019.

> didn't do it. And then they said that we were disrespecting them and that we had to get into the [police] car…
>
> My friend who was inside the house came out and asked if they had an order to take us. They told her to stay out of it [and] pointed their gun at her… Then one of the police officers [who had not participated in the intimidation] got in the car to leave, and the others then got in too.[99]

While most cases Human Rights Watch documented of violence and discrimination by security forces involved the police, three cases involved harassment by soldiers.

Nelson V., a 25-year-old trans man, said he was stopped in the street by soldiers looking for a gang member. When they became aware of his gender nonconformity, he said:

> They lifted up my t-shirt and said, 'What is this?' I said, 'I'm a trans man.' One of them said, 'Oh, it's a chick. It's a woman. Dyke, you haven't been with a man, once you're with a man that will change you.' I could sense the hatred he felt for me. 'I know dykes and I know faggots, but I don't know people like you.'[100]

Angie R., a 36-year-old trans woman in San Salvador, said that on November 8, 2018, two soldiers and a police officer stopped her as she walked home in the evening after attending a soccer game with a friend. They threatened to plant drugs on her if she would not perform oral sex on them. Angie R. refused and threatened to report them. The next day, a cousin who worked in a store near her house told Angie that both police and gang members had come looking for her. Angie R. decided to move out of the home where she lived with her mother and rent a place, fearing violence from both the security forces and the gang members she presumed to be working with them. She filed a report at the Human Rights Ombudsperson's Office, but although officers initiated an investigation, Angie R. was afraid that she might face reprisals, and did not follow up with the complaint.[101] Nearly

[99] Human Rights Watch interview with Mario L. (pseudonym), San Miguel, July 17, 2019.

[100] Human Rights Watch interview with Nelson V., San Salvador, May 3, 2019.

[101] Human Rights Watch interview with Angie R. (pseudonym), San Salvador, July 13, 2019, and by telephone, August 12, 2020.

two years later, Angie had not returned to her mother's home out of fear for her safety, although she struggled to pay the rent.[102]

Mario L., the gay man in San Miguel who was threatened by police for standing in the street with his partner, said that on another occasion, soldiers threatened him because he was wearing an earring. "They told me: if we see you with an earring again, we'll beat you and take the earring out of your ear."[103]

Gang Violence

On numerous occasions, gangs in El Salvador have targeted LGBT people for violence or threats of violence. Gang violence affects many Salvadorans regardless of their gender identity or sexual orientation, but in some cases gangs specifically target LGBT people, killing, assaulting, threatening or extorting them for reasons that interviewees told Human Rights Watch might be linked to personal anti-LGBT animus; to assert social control or dominance; or because gangs recognize that LGBT people, particularly those who live in poverty, may have weak social support systems to protect them.

Ramón L., a 22-year-old gay man, described the murder of a friend in Nuevo Guadalupe in 2015.

> Geovanni Francisco Pérez, we called him Geo, was a friend of mine. He was openly gay and he was assassinated because of his sexual orientation.… He had a relationship with a gang member… It was about five years ago, in 2014. As his friends, we told him: this will get you in trouble. The gang members didn't want that someone of them was hanging out with someone who's gay. They told him to come to a place and he didn't return home. They found him three days later. There were really horrible pictures in the papers. He was tortured, [it was] terrible… I was really shaken by that

[102] Human Rights Watch telephone interview with Angie R., August 12, 2020.

[103] Human Rights Watch interview with Mario L., San Miguel, July 17, 2019.

> image. It made me afraid because he was my friend. I thought that something like that could happen to me too.[104]

Ramón said that Geo's mother did not pursue justice, despite the fact that "everyone knew" which gang members were allegedly involved, because she feared reprisals.[105] Ramón mourned the friend he had lost:

> We met in a cybercafé and we liked to play video games together. We played Capture the Fish, Mortal Combat…. He had recently graduated with a psychology degree, he'd gotten a job, he was happy. He was well-known as a softball player.[106]

Maria I., a trans woman from San Salvador, described the loss of one of her best friends, Mónica, in 2011. (The murder of her other best friend, Camila Díaz Córdova, for which police officers have been charged, is recounted above). Maria I. said that in 2006, gangs chased Mónica out of the Montreal neighborhood in San Salvador, where her mother owned a house: "The gang members told her they didn't want to see her there anymore." Maria I. assumed this was because Mónica was trans. In 2011, Mónica told Maria that she was moving back in with her family. Maria I. recounted: "The gang members had chased her away from there, but she said she didn't have money to be renting. I told her no, that it was dangerous."

Mónica returned to Montreal on May 14, Maria recalled. A week later, she was dead. Maria told Human Rights Watch that she heard secondhand from a witness's relative that Mónica was shot twice by gang members who said they had warned her to stay away from the neighborhood.[107]

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[104] Human Rights Watch interview with Ramón L. (pseudonym), San Miguel, El Salvador, July 17, 2019; see also Carlos Her Cruz, "This is How Trans People are Killed in El Salvador" ("Así asesinan a las personas trans en El Salvador"), *Sin Etiquetas*, July 27, 2015, https://sinetiquetas.org/2015/07/27/asi-asesinan-a-las-personas-trans-en-el-salvador (accessed April 11, 2020); "San Miguel: Young Man Found Dead in Nueva Guadalupe" ("San Miguel: Joven es encontrado muerto en Nueva Guadalupe"), *Diario TRV*, July 22, 2015, https://www.youtube.com/watch?v=w8zdLy9ab3U (accessed September 11, 2020).

[105] Human Rights Watch interview with Ramón L., San Miguel, July 17, 2019.

[106] Ibid.

[107] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

Maria I., too, became a victim of the gangs in Montreal neighborhood, in 2013. She told Human Rights Watch: "The gang members told me: 'Hey faggot, if you want to live here you have to pay us $10 a week.'" Maria I. knew sex workers in the neighborhood, both transgender and cisgender, faced extortion, but tried to explain that she was doing domestic work and earning very little.[108] The gang members were unrelenting, telling her she had to pay them in order to live there.[109]

In September 2015, Maria I. was unable to pay for a few weeks. She said:

> One night I went out to buy soda and a man appeared at my side and hit me and told me to come with him. There was another man. And they took me to a ravine and down there I saw two others. They told me to walk down the ravine... I said that I wouldn't go down there, that if they wanted to do something to me that they'd have to do it here. [But] they pushed me and I fell [down the ravine], and they beat and raped me, the four of them. For quite some time, I was afraid that I had caught a disease, because they didn't use protection.[110]

After raping Maria I., the gang members warned her that she had better continue to pay them or face additional violence. Maria I. filed a police report against her assailants, but to her knowledge, no one was ever arrested.[111]

Sandra C., a 24-year-old lesbian from San Miguel, described how MS-13 members subjected her to threats and extortion after killing her aunt's husband's brother, "Luis." The gang had killed Luis in 2017 because he too was being subjected to extortion and failed to pay up, Sandra C. said. Sandra's aunt's husband confronted MS-13 members about his brother's murder, threatening them with a machete. Soon after, he and Sandra's aunt, along with her grandmother, fled El Salvador for Mexico, and in January 2018 the gang turned its attention to Sandra, who owned a small shop.

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[108] "Sex Workers Confront Multiple Attacks in the Midst of a Wave of Violence Shaking El Salvador" ("Las trabajadoras sexuales se enfrentan a múltiples agresiones en medio de la ola de violencia que sacude El Salvador"), *Plaperts Latinoamérica*, July 17, 2020, https://plaperts.nswp.org/node/48 (accessed September 11, 2020).

[109] Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

[110] Ibid.

[111] The police report is on file with Human Rights Watch.

> The gangs threatened me more than 10 times. The first time, they came to my work. They said they were gang members from MS and I had to pay them the quota for them to protect me and to not have problems. Later, they said they knew I had a girlfriend, maybe the third time that they came. They started making machista comments, 'You've never been with a man, you don't know how good it feels'.... They said they were going to teach me what it was really like to be with a man. I was afraid they were going to do something more than threaten me.[112]

Sandra paid up, while she could, and never considered reporting the threats and extortion to the police:

> I didn't ever try to go to the police.... [in El Salvador], the police don't even start investigations. I had never gone to the police. I had heard this from other people, and the news. People filed complaints and police do not do anything. The only thing you can do is flee.... When I couldn't pay them anymore, I decided to leave.[113]

Sandra stayed in Chiapas, Mexico with her aunt, uncle, and grandmother for about six months, but left Mexico for the United States after four men sexually assaulted her in Chiapas, as documented in the section below. When her uncle returned to El Salvador in 2019 to care for a child who had remained there, Sandra said, MS-13 members killed him.[114]

One danger that faces many Salvadorans in gang-controlled neighborhoods, but that has particular salience with regard to trans people and some lesbian, gay and bisexual people, is forced recruitment.

Johanna Ramírez, a researcher with Servicio Social Pasionista, in the Mejicanos neighborhood of San Salvador, told Human Rights Watch, "LGBT people are recruited by

[112] Human Rights Watch interview with Sandra C. (pseudonym), Los Angeles, December 10, 2019.
[113] Ibid.
[114] Ibid.

the gangs as collaborators because they're seen as vulnerable people, easier to manipulate."[115]

Pricila P., a 32-year-old trans woman from San Salvador, faced forced recruitment attempts. In 2017, MS-13 members asked her to store guns and drugs in her home. They knew that she was living alone because her family had rejected her. "They thought that because I was a faggot—gender identity doesn't exist for them—that I would have to cooperate with them."[116] The next night, she said, three gang members arrived at her house demanding her answer.

> When I said, 'No,' one of them grabbed me and threw me to the floor. He hit me in the stomach. One of them lifted his shirt and showed me his tattoo. He said, 'You respect the gangs. You respect these two letters.' They beat me, and they burned a part of my foot with a lighter that they lit a cloth with and dropped on my foot.[117]

Pricila P. showed Human Rights Watch researchers the scar on her foot, where gang members had torched a cloth and dropped it on her.[118]

When she continued to refuse to work with MS-13, they told her she would have to pay "tax" twice a month:

> Every first and 16th day of the month they arrived in my house. Often, I couldn't pay them. When I couldn't pay, they came with a wooden bat. There was a big, empty house at the end of the community. They took me there, put me against the wall, and beat me. They said that their bat was the law. They hit me 13 times, to represent the name of the gang. On many occasions I had to stay lying there, vomiting blood, until I could get up and go home…. You can't ask for help, because obviously people don't get involved, for their own security.[119]

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[115] Human Rights Watch interview with Johanna Ramírez, San Salvador, July 23, 2019.

[116] Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

[117] Ibid.

[118] Ibid.

[119] Ibid.

They also told people in the neighborhood that Pricila had AIDS. After this, she said, "People started to shout at me, beat me, throw rocks at me."[120]

To pay the "rent" MS-13 demanded, Pricila, who had a low-paying job working at a store, turned to sex work. "I didn't like exercising that profession, but unfortunately I had to do it to pay the gangs. This continued through 2018, the formal job and the informal job," she said.[121]

On February 13, 2019, Pricila was witness to MS-13's abduction of a gay friend, whom the gang had also been trying to recruit. She saw gang members force her friend into a car and drive away. Later that night, they came for Pricila:

> At around 11:30 or 12 at night they knocked on my door and they said if I continued to refuse [to join], the next person to disappear would be me, and also because I had been a witness…. So unfortunately I had to leave my country, at 4 a.m. on February 14th. I just grabbed a backpack, I didn't plan. I threw in a few things and the little money that I had.[122]

Pricila P. continued to experience violence on her journey through Mexico, but eventually made it safely to the United States and applied for asylum. At time of writing, her next hearing was not scheduled until December 2021 due to Covid-19-related slowdowns in the US immigration system.[123]

Kiana C., a 30-year-old trans woman, also fled El Salvador because of gang violence, accompanied by discriminatory police treatment. Kiana C. told Human Rights Watch that in December 2018 and January 2019, gang members from both MS-13 and Barrio 18 threatened to kill her:

> MS controlled the area where I lived, and the 18 controlled where I worked [as a sex worker]. Barrio 18 members were the ones who attacked me. They

[120] Ibid.
[121] Ibid.
[122] Ibid.
[123] Human Rights Watch telephone interview with Pricila P., August 11, 2020.

> told me I needed to leave the *colonia* [neighborhood] or I would leave in a bag. The prosecutor's office and the police came to my house, and MS thought it was [because I had reported] them. They told me I needed to leave and go far, or they would kill me.[124]

Her attempt to report the threats to the police, with the assistance of the trans organization COMCAVIS, was met with further abuse:

> I filed a complaint, but the police derided me, calling me a prostitute, a gay, saying that I was a slut from the streets and that they weren't going to help me. They called me 'faggot.'[125]

Kiana C. said the police refused to give her a copy of the criminal complaint that detailed the testimony she provided them and the case number, and she did not know whether it was ever investigated. Without a copy of the criminal complaint, she will also lack an important document to corroborate her experience of the violence in her asylum application. Fearing her life was at risk, she fled to Mexico.[126] She entered the United States and filed an asylum claim shortly before the border closed to asylum seekers in March 2020.[127]

It is not always clear to what extent gang violence in El Salvador is directly related to a victim's sexual orientation or gender identity, but gangs sometimes used these details to further threaten someone.

Frank, a non-binary person from Santa Ana, said that in 2010, when they were 16, a gang kidnapped them and held them for ransom in a cave for four days, demanding $20,000 from Frank's family members in the United States. Throughout the ordeal, during which gang members hit Frank on the feet and stomach and withheld food, they also repeatedly asked "Are you a faggot?" They threatened to "sell" Frank if their family did not come up with the money. They freed them when Frank's family paid the ransom.[128]

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[124] Human Rights Watch interview with Kiana C. (pseudonym), Tijuana, Mexico, January 31, 2020.

[125] Ibid.

[126] Ibid.

[127] Human Rights Watch telephone interview with a representative of an LGBT shelter in Tijuana, August 2020.

[128] Human Rights Watch interview with Frank R., Los Angeles, December 11, 2019.

Yésica N., a trans woman from San Luis Talpa, recounted a chilling story of the murder of three of her close friends—Daniela, Yasuri, and Elizabeth, all trans women—after they refused to sell drugs for a gang. It is unclear whether the gang's demand was related to the victims' gender identity. Yésica N. told Human Rights Watch:

> Gang members had told them a year before their death: 'If you want to live in this place, you have to sell drugs for us.' Two [other trans friends who had been threatened] fled to Mexico. The other girls stayed. On February 19 [2017], they killed the first two. Less than 50 steps from the local police station, during the Valentine's Day dance.[129]

Yésica N. said that two days later, at the burial of the first two victims, Daniela and Yasuri, the third victim, Elizabeth, received a phone call and left to meet someone. Her body was found the next morning. Yésica said Elizabeth's eyes had been gouged out, her hands tied and her throat slit. Yésica said, "It was also as if I died, in a way."[130]

Laura I., a 28-year-old trans woman who dropped out of high school due to bullying, said that in 2015, she was studying for her high school diploma at night school, but her efforts to attend night school, too, were thwarted. On at least three occasions, when she was walking home after dark, gang members threatened her from a car, telling her that they did not want to see her in the neighborhood. The third time, one descended from the vehicle. "He lifted his shirt to show me he had a gun. From then on, for a year, I didn't leave my home after 6 p.m." Laura I. told Human Rights Watch, "I think it was because they saw me as a trans woman and thought that I was selling sex."[131]

Yadira Q., a trans woman in La Unión, said that while she had not been personally victimized by gangs, she knew other trans women whom gang members had sexually assaulted, and she had been subjected to threats of sexual violence:

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[129] Human Rights Watch interview with Yésica N. (pseudonym), San Salvador, July 16, 2019.

[130] Ibid.

[131] Human Rights Watch interview with Laura I., San Salvador, July 24, 2019.

> To avoid having problems with them, you have to agree to have sex with them. The gang members told me one time, 'We don't have anything against you faggots. It's just that what we like, we acquire. If we tell you to do something, you do it by choice or you do it by force.'[132]

LGBT people who make a living through sex work face a high level of exposure to gang violence.

Michelle S., a trans woman from Zacatecoluca, began selling sex at age 15 after fleeing violence at the hands of her father, as recounted above.[133] When she was 16 or 17, gang members shot her friend, who was also trans and sold sex, in front of her when the friend refused to pay them "rent." Police came to the scene of the crime and Michelle, afraid to tell the truth about the attack, told the police that strangers held her up, along with her friend, for money. Rather than providing support to Michelle or referring her to support services for victims of sexual exploitation, the police harassed her about her gender identity. "The police took my testimony, but they also told me this happened to us because we were dressed like women."[134]

When trans women or other non-conforming people witness gang violence, they may be particularly susceptible to repercussions because of difficulty blending in. Erika, a 39-year-old trans woman from San Salvador, said, "I always was one of those people who said 'I never want to leave my country. I'm going to die in my country.'" But she fled in 2015 after witnessing gang members murder four people in her neighborhood. "When it happened they saw me. They knew I was a witness. After a week they came and threatened me."[135]

Erika did not know where she could hide, or blend in, as a visible trans woman in a small country run largely by gangs:

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[132] Human Rights Watch interview with Yadira Q., La Unión, July 19, 2019.

[133] Consistent with international law on the rights of the child, child prostitution is one of the worst forms of child labor. The use of a child in sexual activities for remuneration or any other form of consideration should be a criminal offense and anyone who uses, offers, obtains, procures or provides a child for such use should be prosecuted. The child who is commercially sexually exploited or engaged in sex work should not be prosecuted or penalized for having been party to illegal sex work. Children engaged in sex work should be provided all appropriate assistance, including assistance in their physical and psychological recovery, and social reintegration, and where necessary, protective measures should be taken.

[134] Human Rights Watch interview with Michelle S., Washington, DC, December 6, 2019.

[135] Human Rights Watch interview with Erika Q., Washington, DC, December 5, 2019.

> Sometimes they say you should move to another department, but the government doesn't have control of the country, and all the criminality is interconnected, so you can't escape it. Especially being trans, you can't hide yourself.[136]

When Lisa A., a 27-year old trans women in San Miguel, was abducted by a gang, she had little recourse, especially as police appeared to be complicit in the violence by returning her to the perpetrators after she called for help. Lisa A. hailed a taxi to get home from a party on November 8, 2018. The taxi driver then picked up a man who he said was a friend whom he would drop off before taking Lisa to her destination. But on the city outskirts, the driver stopped the car in a dark, vacant area:

> He pulled out a pistol from his belt and told me 'You messed with someone you shouldn't have messed with.' 'Who?' I asked. He said: 'I'm going to leave you here with two bullets in you.'
>
> He told me to go toward the wood, but I thought: I'm not ready to die like this. I hit him with my purse. The pistol fell, and I took off running.[137]

Lisa A. ran into the hills, hid in the bushes, and called 911. The operator told her to enable GPS on her phone to send her location. When police arrived 30 minutes later, Lisa emerged from her hiding place and approached the officers, who were talking to the men who had threatened her, men she had concluded must be gang members. According to Lisa:

> The police officer just looked at me. I showed my cell phone to show that I had made the 911 call. He took my phone and asked: 'What were you doing with them?' 'I don't know them, I wanted the taxi driver to take me back to my neighborhood and I don't know why they took me here.' The police officers and the gang members stood and looked at each other for a while,

[136] Ibid. Human Rights Watch has also reported on how difficult it is for any victim of gang violence in El Salvador to safely relocate within the country. See Human Rights Watch, *Deported to Danger*, pp. 50-55.

[137] Human Rights Watch interview with Lisa A. (pseudonym), La Unión, July 19, 2019.

> and then the police officer just handed me over to the gang members, without words. The police officer gave me a push and turned me over.[138]

Lisa A. said the gang held her captive in a cave in the forest, where her two abductors were joined by others.[139] Lisa A. described her captivity:

> During the time that they had me there, they tortured me, they beat me, they asked me why I dress like this, saying 'We don't like faggots.' … Several of them raped me…. They shaved my head.[140]

Lisa A. managed to escape after four days. She ran through the woods, found the highway, and caught a ride back to San Miguel, where she went to the police station to file a report. The officers on duty insisted she could only file a report if she had her identification documents. Lisa A. said that despite her explanation that she had just escaped a kidnapping, and her obvious injuries, the police turned her away. She tried another police station, but after being made to wait several hours while police officers joked about her gender expression, she left without filing her complaint.[141]

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[138] Human Rights Watch interview with Lisa A., La Unión, July 19, 2019.

[139] The existence of such gang hide-outs in the forests has been confirmed by Salvadoran police. Fátima Membreño, "Police Discover Four Gang Hideouts in the Hills" ("Policía descubre cuatro refugios de pandilleros en cerros"), *La Prensa Gráfica,* November 4, 2019, https://www.laprensagrafica.com/elsalvador/Policia--descubre-cuatro-refugios-de-pandilleros-en-cerros-20191103-0753.html (accessed September 11, 2020).

[140] Human Rights Watch interview with Lisa A., La Unión, July 19, 2019.

[141] Ibid.

III. Discrimination: A Pathway to Life on the Margins

While El Salvador's penal code prohibits discrimination by state officials, as discussed above, LGBT people have no protection against violence in sectors such as education, employment and housing. A 2018 study by Spain's international development agency found that "the structural character of the discrimination and exclusion of LGBTI people places them, often from a young age, in a cycle of poverty because of the lack of access to services, opportunities, and social services."[142] El Salvador, like most countries, does not keep statistics regarding LGBT people's economic vulnerability, but Human Rights Watch heard from LGBT Salvadorans that education and employment discrimination limited their options, sometimes landing them in poverty.

Poverty is not just a harm in itself in El Salvador; people living in poverty are disproportionately affected by violence. Human Rights Watch's 2020 investigation *Deported to Danger* described the risks faced by Salvadorans living in specific urban neighborhoods, many of which are controlled by gangs.[143] Economic marginalization leaves many LGBT people without stable livelihoods and few housing options outside of low-income and often gang-controlled neighborhoods.[144] Trans women, who are often both impoverished and compelled to engage in sex work due to employment discrimination, are even more likely to face violence from gangs, police, and clients.

Erika Q., a 39-year-old trans woman from San Salvador, said she turned to sex work to survive after she was unable to obtain other employment:

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[142] Agencia Española de Cooperación Internacional y Desarrollo (Spanish Agency for International Cooperation and Development), *Study about the Situation of LGBTI People from the North of Central America with International Protection Needs in Guatemala and Mexico (Estudio sobre la situación de las personas LGBTI del norte de Centroamérica con necesidades de protección internacional en Guatemala y México)*, August 2018, http://www.aecid.es/Centro-Documentacion/Documentos/Acci%C3%B3n%20Humanitaria/Estudio%20LGBTI%20Norte%20Centroamerica.pdf (accessed September 11, 2020), p. 20.

[143] Human Rights Watch, *Deported to Danger*, section IV.

[144] El Salvador does not maintain statistics that track economic vulnerability among LGBT people. The World Bank has urged countries to collect such data, in countries where it does not pose a risk to the privacy and security of LGBT individuals. World Bank and UNDP, *Investing in a Research Revolution for LGBTI Inclusion,* November 2016, http://documents.worldbank.org/curated/en/196241478752872781/pdf/110035-WP-InvestinginaResearchRevolutionforLGBTIInclusion-PUBLIC-ABSTRACT-SENT.pdf (accessed September 10, 2020).

> In El Salvador, many fall into prostitution because there is no other way to subsist. You lose hope. I lost hope about finding work in El Salvador. I applied to many places, but they never called me back…. What we really need is access to work.[145]

Erika Q. had dropped out of school because of bullying, which impeded her future opportunities:

> I studied up to ninth grade. I was discouraged [and left school because] when you start to realize you have a different identity, you realize it's going to be a fight. There were many jokes from other students. You're not psychologically prepared for that. They see us [trans people] as people without feelings.[146]

Other LGBT people were kicked out of classes or threatened with expulsion from school due to gender nonconformity. Nelson V., a trans man, said that in fourth grade, the assistant director of his primary school began to harass him about wearing pants rather than a skirt. He had to repeat a grade after being kicked out of class repeatedly, he said.

> The assistant director said that he was going to throw me out of school. He sent me home because I came to school wearing pants and was not allowed into class. He always bothered me: 'Who is your boyfriend? Is Jorge your boyfriend? Or is he your girlfriend?'[147]

Ricardo S., a gay man, described harassment from his public high school teachers in San Salvador for being "very effeminate." One teacher, who caught him with makeup on, said it was "for faggots" and threatened to expel him. She sent him to a psychologist, who urged him to get a girlfriend. To stay in school and avoid further problems, Ricardo pretended that a female friend was his girlfriend.[148]

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[145] Human Rights Watch interview with Erika Q., Washington, DC, December 5, 2019.
[146] Ibid.
[147] Human Rights Watch interview with Nelson V., San Salvador, May 3, 2019.
[148] Human Rights Watch interview with Ricardo S., San Salvador, April 30, 2019.

Xavier H., a 26-year-old trans man, remembered being bullied by classmates for being "different." They threw stones at him, he said, and teachers did nothing. Sometimes Xavier hid in the bathroom to eat lunch, to escape bullying, but sometimes "they pulled me out of the bathroom by force and beat me hard."[149] Xavier continued to suffer discrimination in university, where in 2015, during what was supposed to be the last year of his veterinary program, he was repeatedly rejected when applying for placements for a required external internship because of what he believed was anti-trans bias. When Human Rights Watch interviewed him in 2019, he had still not managed to do his internship and complete the program.[150]

Xavier did manage to find a job in a veterinary clinic, despite not having completed his degree, but there, too, he faced harassment from colleagues who disparaged his gender identity and insisted on calling him by his deadname (the name on his official documents). Xavier said he was also paid less than similarly qualified colleagues. He eventually left his job.[151]

Navas F., a trans man in San Salvador who studied hospitality, also found employment opportunities were closed to him because of his gender identity. "I went to leave my CV at hotels and restaurants but there was no door open to me." He was invited for a job interview at one restaurant, where the person interviewing him observed that there was an "error" on his identity documents. Navas explained he was a trans man. He did not hear back from the employer.[152]

LGBT people may also be held back from opportunities or promotions. Henrik A., a trans man, said his supervisor refused to send him to trainings and denied him opportunities for advancement that were available to his cisgender colleagues at the medical laboratory where he worked.[153]

[149] Human Rights Watch interview with Xavier H., San Salvador, May 3, 2019.
[150] Ibid.
[151] Ibid.
[152] Human Rights Watch interview with Navas F., San Salvador, July 24, 2019.
[153] Human Rights Watch interview with Henrik A., San Salvador, May 3, 2019.

Pricila P., a trans woman from San Salvador, said that finding employment was contingent on hiding her gender identity: “People like me are not accepted. I always knew I was a girl, but I had to cut my hair short and dress in men’s clothes to have a formal job.”[154]

[154] Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

IV. Obligations Under International Human Rights Law

The Inter-American system is among the most developed regional human rights systems when it comes to articulating the basis for rights and protections related to sexual orientation and gender identity, which El Salvador is obligated to uphold.[155] As the Inter-American Commission on Human Rights (the "Commission") has stated:

> [t]he principles of non-discrimination, equality before the law, the right to life and personal integrity are founding principles of the regional and universal human rights system, with legal duties that are of particular importance to lesbian, gay, bisexual, trans, and intersex (hereinafter 'LGBTI') persons in the Americas.[156]

The Inter-American Court of Human Rights has ruled that sexual orientation and gender identity are considered protected grounds under Article 1.1 of the American Convention on Human Rights ("the Convention"), which protects all rights recognized within the convention without discrimination on any grounds.[157]

Article 4 of the Convention protects the right to life, echoing Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which El Salvador is a state party. Article 5 protects each person's "physical, mental, and moral integrity" and prohibits torture and cruel, inhuman and degrading punishment or treatment.[158] No one should live with the

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[155] American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 22, 1969, ratified by El Salvador on June 20, 1978, https://www.cidh.oas.org/basicos/49merica/basic3.american%20convention.htm.

[156] Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas,* OEA/Ser.L/V/II.170 Doc. 184, December 7, 2018, http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf (accessed September 11, 2020).

[157] Inter-American Court of Human Rights, *Case of Atala Riffo & Daughters v. Chile*, Judgment of February 24, 2012, https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf (accessed September 11, 2020), para 91; see also Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas,* http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf, pp. 26-28.

[158] American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 22, 1969, ratified by El Salvador on June 20, 1978, https://www.cidh.oas.org/basicos/49merica/basic3.american%20convention.htm, arts. 4, 5; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by El Salvador in 1967, art. 6.

constant threat of violence, and states are obligated under international and regional law to protect the right to security of the person and the right to personal integrity.

The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity address both violence and discrimination against LGBT people. The principles assert that states should take all necessary measures to prevent violence and harassment related to sexual orientation or gender identity, including through vigorous investigation, redress to victims, and awareness-rising campaigns to reduce bias.[159]

Obligation to Investigate and Protect against Violence

The Organization of American States (OAS), the main regional governance body in the Western Hemisphere, has recognized the obligation of member states to address violence against LGBT people. The OAS General Assembly has issued annual resolutions since 2013 urging member states to produce data on violence based on sexual orientation and gender identity, with a view to fostering public policies to prevent such violence.[160]

The Inter-American Commission on Human Rights, created by the OAS to serve as the principal hemispheric human rights body, has specified that states should "make efforts and allocate sufficient resources to collect and analyze disaggregated statistical data in a systematic manner on the prevalence and nature of violence and bias discrimination against LGBTI persons, or those perceived as such."[161]

The Inter-American Court of Human Rights has found that the right to life under Article 4 of the American Convention, in conjunction with Article 1(1), is comprised of both negative and positive obligations.[162] States must not only ensure that no person be arbitrarily

[159] International Commission of Jurists, The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (accessed September 11, 2020), principle 5.

[160] OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, June 6, 2013, http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf (accessed September 11, 2020).

[161] Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas,* http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf.

[162] Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf (accessed September 11, 2020), para. 153.

deprived of their life, but must also adopt all appropriate measures to "prevent, try, and punish the deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents."[163]

As such, the court held that safeguarding the right to life requires:

> States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.[164]

The commission has further emphasized that "any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international law, to actions or omissions by any public authority constitutes an act attributable to the State."[165]

The UN Human Rights Committee, in overseeing states' compliance with the ICCPR, emphasizes that states' positive obligations:

> …will only be fully discharged if individuals are protected by the State, not just against violations of … rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of … rights in so far as they are amenable to application between private persons or entities.[166]

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[163] Ibid.

[164] Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf, para. 156.

[165] Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights,* OEA/Ser.L/V/II., Doc. 57, December 31, 2009, https://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm#_ftnref21 (accessed September 11, 2020), para 39.

[166] UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), https://www.refworld.org/docid/478b26ae2.html, para. 8.

The UN Office of the High Commissioner for Human Rights notes that although hate-motivated violence against LGBT people is typically perpetrated by non-state actors, "failure by State authorities to investigate and punish this kind of violence is a breach of States' obligation to protect everyone's right to life, liberty and security of person."[167] Under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, states party are obligated to adopt measures to combat violence against women.[168] The Inter-American Commission on Human Rights has interpreted the Belém do Pará convention, which defines "violence against women" as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women" as applicable to transgender women.[169]

The Inter-American Court of Human Rights has ruled that in investigating and prosecuting cases of violence, judicial processes should be attentive to the specific vulnerabilities of LGBT people. In March 2020, in *Azul Rojas Marín y Otra vs. Perú*, a case involving sexual violence and other forms of torture of a trans woman in prison, the Court held that when investigating violent acts, state authorities "have a duty to take all reasonable measures to uncover whether there are possible discriminatory grounds." No facts can be omitted from this investigation if they can lead to establishing that the violence was motivated by discrimination; failure to investigate possibly discriminatory motives could be a violation of the non-discrimination provision in Article 1(1) of the American Convention.[170]

In its determination, the court ordered Peru to establish a specific protocol for investigation and administration of justice in cases involving allegations of violence against LGBTI people. Such a protocol should include, the court ruled, the obligation to be

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[167] UN Office of the High Commissioner, "Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law," October 2012, http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf (accessed September 11, 2020), p. 14.

[168] Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), adopted June 9, 1994, entered into force March 9, 1995, https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf (accessed September 16, 2020), arts. 7-8. El Salvador ratified the treaty in 1995.

[169] Inter-American Commission on Human Rights, Report on Merits, Vicky Hernández and Family, Honduras, OEA/Ser.L/V/II.170 Doc. 179, Report No. 157/18, Case 13.051, December 7, 2018, https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf (accessed September 11, 2020), paras. 80, 98.

[170] Inter-American Court of Human Rights, *Case of Azul Rojas Marín et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of March 12, 2020, https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf (accessed September 11, 2020), para. 196.

sensitive to victims' gender identity and sexual orientation, not engage in stereotyping or other discriminatory treatment, avoid retraumatization, and stipulate methods to determine whether crimes of sexual violence or torture were perpetrated due to anti-LGBTI animus.[171]

Protection from Discrimination

Regional and international human rights law are equally firm in their condemnation of all forms of discrimination against LGBT people. The OAS General Assembly resolution cited above, in addition to calling for data collection with regard to violence, calls on member states to adopt public policies against discrimination by reason of sexual orientation and gender identity or expression.[172] The Yogyakarta Principles also call on states to ensure all human rights without discrimination on the basis of sexual orientation or gender identity, including the right to work and to education.[173]

In February 2020, the Inter-American Convention Against All Forms of Discrimination and Intolerance entered into force. It explicitly protects against discrimination on the grounds of gender identity, gender expression and sexual orientation alongside other grounds including language, cultural identity, migrant or refugee status, and socioeconomic status. It has been signed by 12 countries and ratified by Mexico and Uruguay. El Salvador is among the countries that have neither signed nor yet ratified the convention.[174]

As noted by the UN Human Rights Committee, the term "discrimination" should be understood broadly, "to imply any distinction, exclusion, restriction or preference… which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."[175] Regardless of intent,

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[171] Ibid., paras. 241-244; "Groundbreaking Ruling: Inter-American Court Finds Peru Responsible for Discriminatory Torture Against an LGBTI Person and Orders the State to Combat Discrimination," Redress news release, April 7, 2020, https://redress.org/news/groundbreaking-ruling-inter-american-court-finds-peru-responsible-for-discriminatory-torture-against-an-lgbti-person-and-orders-the-state-to-combat-discrimination (accessed September 11, 2020).

[172] OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf, art. 2.

[173] Yogyakarta Principles, principles 12, 16.

[174] Inter-American Convention Against All Forms of Discrimination and Intolerance, adopted June 5, 2013, entered into force February 20, 2020, http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp (accessed September 11, 2020).

[175] UN Human Rights Committee, CCPR General Comment No. 18, Non-Discrimination, November 10, 1989, https://www.refworld.org/docid/453883fa8.html (accessed September 11, 2020), para. 7.

policies and practices that result in disparate impacts on particular groups of people—including LGBT people—can constitute discrimination which states are obligated to eliminate. The UN Committee on Economic, Social and Cultural Rights, the authoritative body that interprets the UN Convention on Economic, Social and Cultural Rights, has also stressed that states are obligated to eliminate not only formal, but also de facto or substantive, discrimination, noting:

> Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination… In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.[176]

Accordingly, to effectively curtail systemic discrimination, it is critical that states prioritize adopting comprehensive civil and administrative laws banning discrimination. While the use of the criminal law is warranted when discrimination manifests itself in particular egregious forms—notably, acts of violence or incitement to violence—its focus on criminal intent, which needs to be established beyond a reasonable doubt, is inadequate to capture and sanction much discriminatory behavior. This is particularly true when discrimination is widespread as part of policies and practices. By contrast, civil and administrative legal frameworks are better designed than the criminal law to give greater weight to the consequences of particular actions, and can help address and sanction harmful actions and practices that impact groups or large numbers of people in a way that promotes good systems and policies.

States are also obligated to adopt robust economic and social policies in various areas—education, health, and employment, among others—to counter societal discrimination and

[176] UN Committee on Economic, Social and Cultural Rights, 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), July 2, 2009, E/C.12/GC/20, https://www.refworld.org/docid/4a60961f2.html (accessed September 11, 2020).

its harmful effects, and affirmatively ensure the equal rights of vulnerable groups, such as LGBT people in El Salvador.

Legal Gender Recognition

In November 2017, the Inter-American Court of Human Rights issued an advisory opinion, in response to a query from Costa Rica about its obligations under the American Convention, stating that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression, states must establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements such as medical or psychiatric evaluation or divorce.[177] The Yogyakarta Principles also urge states to ensure that procedures exist whereby a person's self-defined gender identity can be indicated on all state-issued identity documents that include gender markers.[178] To date, El Salvador has provided no path to legal gender recognition for transgender people.

[177] Inter-American Court of Human Rights, Advisory Opinion OC-24/17, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf, pp. 43-72.

[178] Yogyakarta Principles, principle 3.

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