

	<p>DOCUMENTARY SUPPLEMENT TO APPLICATIONS FOR ASYLUM, WITHHOLDING OF REMOVAL AND TORTURE CONVENTION RELIEF</p> <p>(Last Revised September 21, 2016)</p>	Page(s)
B	REPORTS FROM THE UNITED STATES AND CANADIAN GOVERNMENTS, NON-GOVERNMENTAL ORGANIZATIONS (NGOS) & ACADEMIA	
B1	<p>United States Department of State, <i>2015 Country Reports on Human Rights Practices - Mexico</i>, 13 April 2016</p> <p>[1] “Mexico . . . has 31 states and a federal district”</p> <p>“The most significant human rights-related problems included law enforcement and military involvement in serious abuses, such as unlawful killings, torture, and disappearances. Impunity and corruption in the law enforcement and justice system remained serious problems.”</p> <p>“The following additional problems persisted: poor prison conditions; arbitrary arrest and detention . . . threats against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons”</p> <p>“Impunity for human rights abuses remained a problem throughout the country with extremely low rates of prosecution for all forms of crime.”</p> <p>[2] “There were numerous reports the government or its agents committed arbitrary or unlawful killings, often with impunity. Organized criminal groups also were implicated in numerous killings, often acting with impunity and at times in league with corrupt state, local, and security officials.”</p> <p>“Members of the army also were implicated in illegal detentions and injury to a number of citizens.”</p> <p>[3] “[T]he PGR released documents in December 2014 that revealed municipal police were complicit in the 2010 killing of 72 migrants in San Fernando, Tamaulipas. The documents also showed police involvement in the deaths of 193 other victims found in mass graves in Tamaulipas in 2011.”</p> <p>“There were numerous reports of forced disappearances by security forces as well as numerous cases of disappearances related to organized criminal groups.”</p> <p>“In September government agencies reported to the Congress that 25,230 persons were recorded as missing or disappeared as of December 31, 2014.”</p> <p>[4] “Kidnapping remained a serious problem for persons at all socioeconomic levels, and there were credible reports of instances of police involvement in kidnappings for ransom, often at the state and local level. The government’s statistics agency (INEGI) estimated that 94 percent of crimes were either unreported or not investigated and that underreporting for kidnapping was even higher.”</p> <p>[5] “[T]he Federal District of Mexico City acknowledged that district-level police had committed ‘acts of torture and cruel and inhuman treatment’ against 90 citizens who participated in demonstrations in the Federal District during 2013 and 2014.”</p> <p>[7] “The law prohibits arbitrary arrest and detention, but the government often</p>	1-28

	<p>failed to observe these prohibitions.”</p> <p>“[I]mpunity, especially for human rights abuses, remained a serious problem. The country had extremely low rates of prosecution, and prosecutions could take years to complete.”</p> <p>[8] “Under a procedure known in Spanish as ‘arraigo’ (a constitutionally permitted form of detention, employed during the investigative phase of a criminal case before probable cause is fully established), certain suspects may, with a judge’s approval, be detained for up to 80 days prior to the filing of formal charges. Human rights NGOs claimed arraigo allows authorities to detain someone first, then seek a reason to justify detention. . . . Human rights groups alleged authorities used arraigo to obtain confessions using torture.”</p> <p>“Allegations of arbitrary detentions persisted throughout the year. During its visit in October, the IACHR assessed that ‘arbitrary arrests are the norm rather than the exception.’”</p> <p>[14] “There were numerous reports of government corruption during the year. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials and security forces. More sophisticated and less apparent forms of corruption included overpaying for goods and services to provide payment to elected officials and political parties. . . .”</p> <p>“CNDH continued to report police, particularly at the state and local level, were involved in kidnapping, extortion, and providing protection for, or acting directly on behalf of, organized crime and drug traffickers.”</p> <p>[20] “Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity. The law prohibits discrimination against LGBTI individuals, but there were reports that the government did not always investigate and punish those complicit in abuses, especially outside the Federal District. Transgender persons may change their gender marker on identity documents only in Mexico City. The law [21] prohibits discrimination based on sexual orientation, but only in Mexico City does the law also prohibit discrimination based on gender identity. Discrimination based on sexual orientation and gender identity was prevalent, despite a gradual public acceptance of LGBTI individuals.”</p> <p>“Civil society groups reported the full extent of hate crimes, including killings of LGBTI persons, was difficult to ascertain because these crimes were often mischaracterized as ‘crimes of passion,’ which resulted in the authorities’ failure to adequately investigate, prosecute, or punish these incidents.”</p> <p>[26] “The law prohibits discrimination with respect to employment or occupation regarding ‘race, nationality age, religion, sex, political opinion, social status, handicap (or challenged capacity), economic status, health, pregnancy, language, sexual preference, or marital status.’”</p> <p>[27] “The government did not effectively enforce these laws and regulations.”</p>	
B2	<p>United States Department of State, <i>2012 Country Reports on Human Rights Practices - Mexico</i>, 19 April 2013</p> <p>[29] “The following problems were reported during the year . . . abuse of lesbian, gay, bisexual, and transgender persons and people with disabilities”</p> <p>[46] “LGBT persons reported that the government did not always investigate</p>	29-49

	<p>and punish those complicit in abuses. The CNDH received 28 complaints of human rights abuses against LGBT individuals during the year.”</p> <p>“Discrimination based on sexual orientation and gender identity was prevalent, despite a growing public acceptance of LGBT individuals. As of October CONAPRED had received 132 complaints of discrimination based on sexual preference against individual persons, and 24 complaints of discrimination based on sexual preferences against federal public servants. . . . during the months of October and November, the IACHR learned about and condemned the killing of 10 LGBT individuals during the year.”</p> <p>[47] “On March 10, the body of gender rights activist Agnes Torres Hernandez was found in a ravine near Atlixco, Puebla. Torres Hernandez was a well-known and outspoken advocate for transgender individuals.”</p> <p>“On June 14, Jesus Armando Mendez Mendez, a 17-year-old transgender individual, was found murdered in Altamira, Tamaulipas. At year's end no charges had been brought and no suspects were under investigation.”</p>	
B3	<p>Canada: Immigration and Refugee Board of Canada, <i>Mexico: Situation and treatment of sexual minorities, particularly in Mexico City, Cancún, Guadalajara, and Acapulco; state protection and support services available (2012-July 2015)</i>, 18 August 2015, MEX105241.E</p> <p>[50] “A study on transgendered women in the Federal District . . . 67.1 percent of respondents at typical meeting places, 78.7 percent at the CONDESA clinic, and 79.5 percent at penitentiaries (ibid., 37). CONAPRED indicates that, according to the CNDH, between 2009 and 2013, 176 inquiries on discrimination have been opened by the Public Ministry”</p> <p>[51] “[S]exual minorities face discrimination in employment”</p> <p>“[S]exual minorities face discrimination at educational institutions”</p> <p>“[S]exual minorities also face violence at educational institutions . . . 66 percent of transgendered persons (of 32 participants) experienced violence at educational institutions”</p> <p>“[O]f the 585 transgendered women interviewed, 21.9 percent at meeting places, 26.3 percent at CONDESA clinic, and 33.8 percent at penitentiaries have faced physical violence.”</p> <p>“[B]etween 2009 and 2013, 91 homicides have been committed in Mexico that were motivated by homophobia or transphobia (Mexico 2015, 5). . . . 1,218 homicides motivated by homophobia have been committed since 1995 in Mexico, with the majority of victims being gay men (976), followed by 226 victims who were transgender, transsexual or transvestite individuals,”</p> <p>[52] “[T]he rate of homophobia-motivated homicides has been increasing since 2005”</p> <p>“A report on crimes against transgendered women . . . indicates that transgendered women are discriminated against by the police and judicial authorities . . . LGBT persons are [translation] ‘frequently’ harassed and arbitrarily detained due to their physical appearance, the way they dress, or for expressing affection in public”</p> <p>“[O]fficials from the Public Ministry often mistreat LGBT persons and refuse to open investigation for crimes against them”</p>	50-55

	<p>“[A]uthorities did not always investigate and punish those who are complicit in human rights abuses against sexual minorities”. . . “homicides of transgendered women tend to result in impunity and [translation] ‘people often tend to view this as the rule rather than the exception,’ which adds to the stigmatization, discrimination, and human rights violation of this segment of the population . . . the LGBT population in Mexico continues to be persecuted, criminalized, and discriminated against due to the [translation] ‘high degree of corruption, negligence, and impunity’ in the justice system”</p> <p>“[M]any LGBT persons who arrive at the hospital as victims of violence and abuse refuse to file a complaint with the Public Ministry, arguing that these authorities [translation] ‘do not do anything and they make fun of their sexual preferences.’”</p>	
B4	<p>Canada: Immigration and Refugee Board of Canada, <i>Mexico: Reports of sexual abuse committed by police officers against sexual minorities</i>, 13 Sep. 2012, MEX104172.E</p> <p>[56] “The national newspaper <i>La Jornada</i> reports that this leader indicated that when police see homosexuals on the street, they assume that they are sex workers and request sexual acts or money in exchange for not imprisoning them.”</p> <p>[57] “[T]ransgendered, transsexual and ‘transvesti’ sex workers are ‘particularly vulnerable to abuse and extortion on the part of state officials and other individuals.’ According to the CODISE representative, transsexuals have reported being sexually abused by police officers.”</p> <p>“Media sources indicate that LGBT people do not usually report sexual abuse by police out of fear”</p> <p>“42.8 percent of LGBT people interviewed indicated that police are [translation] ‘intolerant’ of sexual minorities, which is the highest percentage listed from the study when compared to friends, family, health service providers, media, neighbours, federal and state governments, and the church.”</p> <p>“Several sources report on police abuses against sexual minorities, including: extortion . . . arbitrary detention . . . , beatings . . . and ‘torture.’” (parenthetical citations omitted).</p>	56-59
B5	<p>Canada: Immigration and Refugee Board of Canada, <i>Mexico: Treatment of sexual minorities, including legislation protecting sexual minorities, other state protection, recourse and services available; treatment of sexual minorities in the Federal District; information on the Zona Rosa</i>, 16 Sep. 2011, MEX103804.E</p> <p>[60] “[D]iscrimination and violence based on a person’s sexual orientation or gender identity are considered to be [translation] ‘socially acceptable.’”</p> <p>“[O]f the complaints about discrimination against sexual minorities that the organization receives, the most common allege: . . .the denial of services or access . . . violence . . . [61] ridicule and hate . . . denial of access to and maintenance of employment”</p> <p>“[H]uman rights violations and crimes based on sexual orientation or gender identity [translation] ‘are not isolated’ events as there is a ‘serious structural problem of intolerance’ within Mexican society”; “A shadow report on</p>	60-70

	<p>violations of the rights of lesbian, gay, bisexual and transgender (LGBT) people in Mexico . . . which was submitted to the United Nations (UN) Human Rights Committee, maintains that LGBT persons ‘face a serious threat of violence.’”</p> <p>“Latin America and the Caribbean have the highest number of homophobic killings world-wide, while Mexico ranks second highest. A Letra S report on homophobic hate crimes, compiled with statistics from a review of 71 local and national print newspapers in Mexico City and other cities that reported cases of homicides against homosexual men, lesbians and transgendered persons, was released at the CONAPRED office in May 2010. The report states that [translation] ‘between January 1995 and June 2009, the press reported 640 homophobic homicides in 11 states, a figure that could be increased to 1,656 if there was national reporting.’”; “between 1995 and 2009 there were 640 registered homophobic homicides”</p> <p>[62] “[B]etween 1995 and 2000, there were nearly 30 homicides a year, while between 2001 and 2009, the number rose to approximately 60 homicides a year.”</p> <p>“[T]he state of Guerrero, with 22 registered murders, is the entity with the highest number of homophobic hate crimes so far in 2011. In 2010, . . . the Federal District reported the highest number at 317 cases, the second highest rate of homophobic crimes and assaults took place in Guanajuato with 47, of which 33 were homicides, followed by Veracruz with 40 cases . . . between 1995 and 2008, the federal entity with the second most homophobic crimes in Mexico was Michoacán, followed by the states of Mexico, Nuevo León, and Jalisco.”</p> <p>“15 individuals belonging to sexual minority groups were murdered with impunity in Guerrero state and that ‘in the first eight months of 2009, around 40 homosexual persons were murdered in Michoacán. . . .’ It also provides reports of the homicides of homosexual and trans-identified individuals in several other states”</p> <p>“[H]uman rights defenders that work on sexual-diversity issues are often the ‘object of threats, aggressions, murder, politically motivated criminal charges and imprisonment for organizing protests or events promoting respect for human rights’”</p> <p>“Mexico's Federal Law . . . [63] includes sexual preference as grounds for protection against discrimination. However, gender identity is not included”</p> <p>[65] “[T]rans-identified individuals face ‘mass detentions, extortion, and physical abuse at the hands of police and military officials.’ The report includes examples of authorities assaulting and arresting trans individuals and threatening them with rape and death if they make complaints.”</p> <p>“Mexico's laws are vague and that, as a result, ‘they are frequently used by police officials to harass, detain, and extort’ people based on their gender identity.”</p> <p>“[T]he following state authorities are most likely to be responsible for violating the human rights of sexual minorities: . . . Members of security bodies. . . Prison authorities. . . Public Ministry agencies. . . School authorities”</p>	
--	---	--

	<p>“[I]mpunity of crimes against sexual minorities is prevalent”</p> <p>[66] “[H]omicides against sexual minorities are often dismissed as ‘crimes of passion’”</p> <p>“[B]etween 1995 and 2008, . . . 143 homophobic homicides occurred in the Federal District, . . . 29 against transvestites, transsexuals and transgendered persons”</p> <p>“‘ 11% of LGBT in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation.’”</p> <p>“[S]exual minorities often do not report discrimination because of the treatment they receive from staff in the public ministries, including humiliation.” (parenthetical citations omitted).</p>	
B6	<p>Canada: Immigration and Refugee Board of Canada, <i>Mexico: The situation of transgender people, particularly in Mexico City, Cancún, Guadalajara and Acapulco, including how they are treated and the support services available to victims of ill treatment</i>, 21 April 2010, MEX103460.FE</p> <p>[71]“‘LGBT persons continue to face discrimination and human rights violations.’ The report also indicates that Mexican society ‘remains highly repressive in its attitude towards LGBTI [lesbian, gay, bisexual, transgender/transsexual and intersex] persons’ and that LGBTs ‘face a serious threat of violence.’”</p> <p>“[B]ecause of lengthy delays and high costs, changing one’s name after sexual reassignment is [translation] ‘unattainable’ for most applicants, even though it is legal in Mexico City”</p> <p>“[I]n April 2008 and December 2009, approximately 40 sex workers were robbed, beaten and arrested by police in the surrounding areas of the municipality of Supermanzana ⁶³. The president of the municipality acknowledged the police action and justified it as ‘cleaning garbage from the streets.’”</p> <p>[72] “[T]ransvestites, lesbians, gays and transsexuals are among [translation] ‘vulnerable groups’ that [translation] ‘face discrimination and are sometimes assaulted by police officers.’”</p>	71-73
B7	<p><i>Report on Human Rights Conditions of Transgender Women in Mexico</i>, Transgender Law Center (Cornell Univ. Law School), May 2016</p> <p>[77] “This report examines whether recent legal reforms in Mexico have improved conditions for transgender women. It finds that transgender women in Mexico still face pervasive discrimination, hatred, violence, police abuse, rape, torture, and vicious murder. These problems have actually worsened since same-sex marriage became available in the country in 2010.”</p> <p>[78]“Despite recent legal reforms in Mexico, legal advocates and individuals living in both Mexico and the U.S. report that rates of violence against transgender women are higher than ever. Specifically, violence against the LGBT community has actually increased since the recognition of same-sex marriage throughout Mexico because of backlash to these progressive changes in the law.”</p> <p>“Despite the legal changes for same-sex couples in recent years, transgender women in Mexico still face pervasive persecution based on their gender identity and expression. Indeed, violence against LGBT people has actually</p>	74-120

	<p>increased, with transgender women bearing the brunt of this escalation. Changes in the laws have made the LGBT communities more visible to the public and more vulnerable to homophobic and transphobic violence. . . fears have in turn led to hate crimes and murders of LGBT people, particularly transgender women.”</p> <p>[80] “[W]hen transgender women and feminine gay men face persecution, the root cause of both is likely the combination of cultural gender norms,18 misogyny in general and the particular vitriol targeted at people who express femininity despite being assigned a male sex at birth.”</p> <p>“Gender identity describes ‘each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body. . . and other expressions of gender, including dress, speech and mannerisms.’ Sexual orientation, on the other hand, is ‘each person’s capacity for... sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.’ Transgender women are as diverse in their sexual orientations as non-transgender women. They may identify as straight, lesbian, bisexual, queer, or any other sexual orientation.”</p> <p>“In 2015, in <i>Avendano-Hernandez v. Lynch</i>, a case of a transgender woman fleeing persecution and torture from Mexico . . .”</p> <p>[81] “The court ultimately granted Avendano-Hernandez relief on the record, reasoning that transgender persons in Mexico are particularly visible and vulnerable to harassment and persecution due to their public nonconformance with gender roles, that the Mexican police specifically target the transgender community for extortion and sexual favors, that there is an epidemic of unsolved violent crimes against transgender persons in Mexico, that Mexico has one of the highest documented numbers of transgender murders in the world, and that Avendano-Hernandez, who takes female hormones and dresses as a woman, is a conspicuous target for harassment and abuse.”</p> <p>[83] “There are few population-based data sources that estimate the number of transgender people in any country. Those that do exist suggest that transgender people constitute 0.1% to 0.5% of the overall population. As such, transgender women likely constitute a small minority even within the Mexican LGBT community.”</p> <p>“Mexico has enacted antidiscrimination laws that forbid discrimination on the basis of sexual orientation at the federal level.”</p> <p>[84] “Various state laws also prohibit anti-gay discrimination. It is important to note, however, that there are no federal laws that explicitly protect transgender individuals from discrimination on the basis of their gender identity (i.e., their transgender status) as opposed to sexual orientation. Mexico has also enacted legislation to protect women generally from gender-based violence. But transgender women are not explicitly included in this legislation either.”</p> <p>“Despite the existence of these formal protections around sexual orientation, advocates maintain that these laws have not prevented discrimination and violence. LGBT individuals face many barriers in exercising their rights under the antidiscrimination statutes. LGBT individuals who experience</p>	
--	---	--

	<p>discrimination may be afraid to disclose their sexual orientation or gender identity to a federal agency and may be concerned about potential retaliation by public officials. This concern is especially relevant since the law does not have a clear enforcement mechanism or any provision that protects against retaliation.”</p> <p>“The adoption of the antidiscrimination laws is certainly a positive step, but it is far from clear that their enactment has actually led to an improvement in the treatment of LGBT people generally or transgender women in particular. For example, although Mexico City has an agency charged with receiving discrimination complaints, from January 2012 to April 2013 the agency had received only one official complaint of human rights abuse against a transgender individual. During the same period there were at least eight violent murders of transgender women in Mexico City.”</p> <p>[85] “The absence of any complaints is likely due to the myriad reasons transgender women do not report when they are victims of discrimination or hate crimes: concerns about disclosing sexual orientation or gender identity, fears of retaliation, lack of confidence in national agencies, a long history of corruption in Mexican investigative agencies, and doubts about the agency’s ability to investigate and remedy these violations.”</p> <p>[86] “Transgender women continue to experience pervasive discrimination in public and in their private lives. Even a representative of CONAPRED stated that ‘tolerance towards groups such as homosexuals is still ‘practically the same’ even after the State [Mexico] recognized their rights.’”</p> <p>“Transgender women often do not report hate crimes or police abuse because the authorities rarely investigate these crimes. When the police do get involved, they frequently minimize the crime and mischaracterize it. For example, in violent murder cases the police usually determine that the cases are ‘crimes of passion’ instead of hate crimes. Holding police and military abusers accountable is also difficult. The process for punishing the police and military is ‘extremely slow and inadequate.’”</p> <p>“Transgender women avoid reporting police abuse out of fear of police retaliation against them or their family members. Further, human rights commissions tend to be anti-LGBT and will often disregard complaints by transgender women. Transgender women cannot depend on inadequate and ineffective laws penalizing hate crimes to protect their rights.”</p> <p>“Some Mexican communities have explicitly targeted transgender women by enacting morality laws that criminalize ‘cross-dressing.’”</p> <p>[87] “Local transgender women reported a dramatic increase in police harassment following the law’s passage. . . Transgender women stopped by the police frequently faced extortion; ‘[t]he police used... the threat of arrest... to secure money or sexual favors from [transgender women].’”</p> <p>[88] “Legal recognition of same-sex couples has increased societal awareness of the LGBT community and made LGBT people much more visible. Ironically, increased awareness of LGBT people appears to have produced significant backlash.”</p> <p>“Even if Mexico’s prohibition of anti-gay discrimination and enactment of some formal protections for same-sex couples could be read to indicate that</p>	
--	---	--

	<p>certain authorities are willing to prevent anti-gay abuse”; “it does not necessarily mean that the Mexican government is <i>able</i> to protect LGBT people generally or transgender women specifically from the horrific violence they face. In fact, many transgender women face violence from government actors themselves, often in the form of abuse from police and harassment by the military.”</p> <p>“Since Mexico recognized same-sex marriage in 2010, several prominent advocates in the transgender community have been brutally murdered. Many of these killings occurred in Mexico City, despite its adoption of a hate crimes statute and antidiscrimination laws. In 2010, a Mexican National Survey about discrimination found that 83.4% of LGBT Mexicans had faced discrimination because of their ‘sexual preference.’ In 2011, the same survey reported the principal basis of discrimination was ‘sexual preference.’ In 2012, however, ‘gender identity’ was the most frequent basis for discrimination, showing the growing rates of discrimination against the transgender community. It is clear that the Mexican government is unable to effectively protect transgender women.”</p> <p>[89] “Transgender women regularly experience harassment and hate crimes at the hands of members of the public. . . . In November 2011 in Chihuahua, a group of men kidnapped two transgender women in Hotel Carmen. Days later, the dismembered bodies of these women were found in a van. In June 2012 in Mexico City, the body of a transgender woman was dismembered. Her remains were found abandoned in different neighborhoods in the Benito Juarez district. In June 2013, police found the body of the transgender woman who headed the Special Unit for Attention to Members of the Lesbian, Gay, Bisexual, Transsexual, Transgender, Transsexual and Intersex (LGBTTTI) Community of the Attorney General of the Federal District (PGJDF).”</p> <p>“Mexico has the second-highest index of crimes motivated by transphobia in Latin America, behind Brazil. Reports of hate crimes—particularly transphobic murders—continue to rise, including in Mexico City. Most hate crimes against the LGBT community go uninvestigated. In many instances, police dismiss investigations of homophobic and transphobic murders by categorizing them as ‘crimes of passion.’ Indeed, it is estimated that almost 90% of crimes in Mexico go unreported. It follows then that the actual number of transphobic murders in Mexico is likely much higher.”</p> <p>“[S]ome LGBT people are far more vulnerable than others. Transgender women are particularly likely to be singled out for abuse. . . . In Mexico, transgender people are ‘heavily stigmatized and discriminated against, even by members of the gay community.’”</p> <p>[90] “In 2011, the year following the implementation of same-sex marriage across the country, there were more hate crimes against transgender people than in any year in recent history. . . . On July 6, 2011, men in two vehicles opened fire on a group of transgender women in Chihuahua killing one and wounding several. In the state of Veracruz, activists noted that not only were LGBT people being killed at a high rate in 2011, but they were also increasingly being tortured before their deaths. On August 18, 2012, a transgender woman was found dead on the street in a suburb of Mexico City.</p>	
--	--	--

	<p>She had been beaten horribly and then decapitated.”</p> <p>[91] Providing summaries of “Recent Transphobic Murders Of Prominent Transgender Women”</p> <p>[92] “Transgender women in Mexico face brutal violence not only from private citizens, but also from state officials. Police officers and the military subject transgender women to arrest, extortion, and physical abuse. . . . the police and military are the ‘primary predators’ targeting transgender women. Mexican police target transgender women and arbitrarily arrest them for pretextual reasons such as ‘disturbing the peace’ because they were wearing female clothing; for being perceived to be sex workers even if they were not; for failing to carry a valid health card; for allegedly carrying drugs; or for being said to be gay.”</p> <p>“For decades the Mexican police forces have been implicated in cases of arbitrary detention, torture, and other human rights violations that are often unpunished. Police officers often extort transgender women for sex or money in return for not arresting them or for releasing them from jail. Many transgender women have to pay almost daily bribes to avoid being arrested.”</p> <p>[93] “Transgender women were already visible targets for police and military abuse, but once increased militarization began under Calderon, transgender women suffered increased aggression. Military troops engage in the same abuses as the police by making transgender women the object of arbitrary arrests, beatings, extortions, and robberies. In May 2007, for example, members of the Military Police beat approximately 40 transgender women in Ciudad Juarez, leaving them hospitalized and in serious condition.”</p> <p>“Vulnerable communities, including transgender women, are often victims of drug cartel and gang violence. Transgender women fall victim to cartel kidnappings, extortions, and human trafficking. . . .”</p> <p>[94] “If a cartel targets a transgender woman, it is nearly impossible to escape the cartel’s power.”</p> <p>[95] “Negative attitudes towards the LGBT community remain very common in Mexico. Homophobic and transphobic comments from public figures, such as former President Felipe Calderon, diminish the quality and dignity of transgender women’s lives by perpetuating widespread hatred and violence. There is also a nationwide backlash against advances in LGBT rights, resulting in increased levels of persecution against transgender women who tend to be the most visible and marginalized members of the LGBT community.”</p> <p>“Many transgender women face abuse and rejection at the hands of their own families. The abuse ranges from physical, verbal, and sexual attacks to murder. A recent survey of transgender women in Mexico City found that 45% had experienced abuse from their families. As many as 70% transgender women and girls in Latin America are estimated to run away from or be thrown out of their homes.”</p> <p>[96] “Violence against women is very prevalent in Mexico, particularly in the forms of domestic violence and murders (femicide). According to a 2012 report by the Mexican Secretary of State, the number of female murder victims increased dramatically over the previous three years. . . . While Mexico</p>	
--	---	--

	<p>has enacted statutes criminalizing domestic violence and femicide, their rates remain high. In a 2012 study, researchers reported that 67% of Mexican women had been the target of a crime.”</p> <p>[97] “Mexico’s federal antidiscrimination laws do not prohibit discrimination on the basis of gender identity. The lack of protection leaves transgender women especially vulnerable to employment discrimination.”</p> <p>“As noted, only Mexico City permits transgender people to legally change their name and gender to correspond to their gender identity. Even where such mechanisms are technically available, however, legal name changes are not accessible in practice for many transgender women.”</p> <p>[98] “Without the ability to obtain a legal name change, transgender women cannot obtain a national voter identification card with a name that reflects their female gender identity. The voter identification card is Mexico’s preferred identification card. It is necessary for exercising the right to vote, to acquire property, and to obtain medical assistance in a public hospital. Being forced to present a voter identification card with an old “male” name on it makes transgender women even more vulnerable to discrimination, abuse, and violence.”</p> <p>“Transgender women lack adequate health care in Mexico.”</p> <p>“Transgender women are also largely denied access to adequate healthcare for other life-threatening conditions, such as HIV/AIDS.”</p> <p>[99] “[T]he advances in LGBT rights has caused a nationwide backlash from those who oppose the changes, resulting in increased levels of persecution against transgender women who tend to be the most visible and marginalized members of the LGBT community.”</p> <p>[100] “[F]ormal changes in laws permitting same-sex couples to marry and adopt children have not improved conditions for transgender women in Mexico City. In fact, rates of violence and murder have actually <i>increased</i> in Mexico City as well as throughout the nation since the changes in same sex marriage and adoption laws.”</p> <p>“Police harassment against the LGBT community remains high in Mexico City as well. Despite the reputation of the Zona Rosa district of Mexico City as an LGBT neighborhood, extortion and harassment particularly of transgender women continues there. As described above, Mexico City also has the highest rate of transphobic murders in the country. Moving to Mexico City will therefore not protect transgender women from persecution: they will remain vulnerable no matter where they reside in Mexico.”</p> <p>[101] “Although tourism constitutes a large part of the Mexican economy, the existence of some tourist destinations that cater to wealthy gay men from other countries is not and could not plausibly be indicative of the safety of low-income Mexican transgender women against hate crimes and violence.”</p> <p>“conditions for tourists are very different from the experience of ordinary Mexican citizens. And the conditions for gay tourists are completely separate from the experiences of transgender Mexican women living in Mexico.”</p> <p>[108] Concluding that “[t]ransgender women face pervasive violence and serious human rights violations throughout Mexico. The Mexican government has not been able to prevent violent attacks on transgender</p>	
--	--	--

	women or provide effective redress for survivors. . . . Transgender women continue to face beatings, rape, police harassment, torture, and murder in Mexico. Despite limited formal legal advances, state and non-state actors are rarely held responsible for crimes against transgender women.” (footnotes omitted).	
B8	<p>Janet Arelis Quezada, <i>Transgender women in Mexico face human rights violations</i>, GLAAD, 27 May 2016, available at: http://www.glaad.org/blog/transgender-women-mexico-face-human-rights-violations</p> <p>[121] “A new report from the Transgender Law Center and the Cornell University Law School LGBT Clinic details the human rights violations faced by Mexican transgender women. . . . Currently there are no specific protections against discrimination for transgender women in the country. Only in Mexico City can transgender citizens change their gender markers and name on official documents, but even there the process takes a long time and a prohibitive \$7,000 (USD). Data and testimony from Mexican transgender women fill the pages with descriptions of the police abuse, employment discrimination, citations, extortion and harassment for walking while transgender, lack of health care, rejection and abuse by family and community members and other violations that make their home country ‘a living hell.’ The report also points out the high level of violence faced by transgender women in the country; Mexico is second only to Brazil in the number of transgender women murdered violently last year.”</p> <p>[122] ““What I can say is that it is important that the precariousness and vulnerable position that transgender people live in Mexico be known and understood, especially that of transgender women. In my experience as an expert, we have had to work hard to show that despite the changes that have been made relating to marriage equality in Mexico, the country still has not made any advances that impact the lives of transgender people. For them it is still a matter of life or death, not just about whether their rights are acknowledged.””</p>	121-22
B9	<p>Ricardo Baruch-Dominguez, Cesar Infante-Xibille & Claudio E. Saloma-Zuñiga, <i>Homophobic bullying in Mexico: Results of a national survey</i>, <i>Journal of LGBT Youth</i>, 13:1-2, 18-27, 04 May 2016</p> <p>[124] ““Homophobic and transphobic bullying, through teasing, physical violence, and other forms of aggression, is a problem that affects lesbian, gay, bisexual, and transgender students at all levels of education. Even though there have been legal changes in Mexico to protect human rights of lesbian, gay, bisexual, and transgender people, schools are spaces where discrimination and violence toward them are still common. . . . the authors collected responses from 912 participants younger than 30 years of age who self-identified as lesbian, gay, bisexual, or transgender and who lived in the 32 states of Mexico. Two thirds of participants said that they were victims of bullying during their school years; the majority of these students indicated that they did not have support from teachers or parents to avoid or stop the violence.”</p> <p>[125] “Despite widespread discrimination, very few strategies have been</p>	123-33

	<p>implemented by either governments or civil society organizations to ensure that human rights of nonheterosexual and noncisgender people are respected.”</p> <p>[126] “The results of the study showed that 67% of people surveyed (n D 912) had been victims of bullying based on their sexual orientation or gender identity at some point in their school career. Participants who reported not having been victims of bullying (n D 306) most commonly stated that the reason was that their orientation ‘was not obvious.’”</p> <p>“With regard to gender, gay and bisexual men had the highest percentage (74%), followed by transgender individuals (66%)”</p> <p>“Almost half of participants who experienced bullying (48%) mentioned that there was no reaction by teachers and other school authorities toward bullying.”</p> <p>[127] “Only 1 in 6 took action to eliminate homophobic bullying, which shows a tremendous lack of support for the victims.”;</p> <p>[128] “Gender stereotypes were associated with bullying, even more than sexual orientation (Table 2).”</p> <p>“Not only teachers but also school principals were involved in bullying LGBT students.”</p> <p>[130] “Consequences of homophobic bullying may occur in the short, medium, or long term. Different studies have shown that apart from provoking depression and suicidal thoughts among the people who experience it, there is a possibility that homophobic bullying may contribute to the development of other problems, including anxiety, personality disorders, and chronic depression, in adulthood (Birkett, Espeleage, & Koenig, 2009, p. 1).”</p> <p>[131] Concluding that “[i]n Mexico, there are new laws that aim to eliminate bullying at schools (‘Ley para la promocon de la convivencia libre de violencia’ 2012) but, as long as there is not a real fight against homophobia in all aspects of society, these laws are likely to be useless for preventing or addressing homophobic bullying.”</p>	
B10	<p><i>Ninth Circuit Grants Protection Against Torture for Mexican Transgender Woman</i>, National Immigrant Justice Center, 3 Sep. 2015</p> <p>[134] “A federal appeals court has granted Convention Against Torture protection to Edin (Carey) Avendano-Hernandez, a transgender woman who fled persecution in Mexico”</p> <p>“The court simultaneously issued unpublished rulings granting relief to two other transgender Mexican women who faced similar hurdles”</p> <p>“Ms. Avendano-Hernandez survived horrific sexual violence in Mexico perpetrated by a wide range of assailants including family, the police, military, and gang members.”</p>	134
B11	<p><i>Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in Mexico: A Shadow Report</i>, Letra S, Sida, Cultura y Vida Cotidiana, A.C.; Center for International Human Rights of Northwestern University School of Law; Heartland Alliance for Human Needs & Human Rights, Global Initiative for Sexuality and Human Rights, June 2014 (submitted for consideration at the 111th Session of the Human Rights Committee, July 2014, Geneva)</p>	135-49

	<p>[136] “Mexico is to be applauded for having taken certain positive steps in recent years to amend its constitution and enact federal legislation prohibiting discrimination on the basis of sexual orientation.”</p> <p>“But despite these commendable measures, homophobia and transphobia remain prevalent in Mexico, and discrimination and hate crimes on the basis of sexual orientation and gender identity remain all too common.”</p> <p>[137] “Letra S has compiled a register of more than 250 homicides of LGBTI individuals in the years 2010-2013, including homicides of LGBTI human rights defenders. The full extent of hate crimes, including murder, against LGBTI individuals is unknown, because police and prosecutorial officials frequently do not categorize these crimes as hate crimes. Often, homicides based on the victims’ sexuality are mischaracterized as ‘crimes of passion.’”</p> <p>“Students in Mexican schools continue to experience homophobic bullying, including insults, taunts, and even assaults on the basis of sexual orientation and gender identity. . . . 67% of survey respondents reported having been victims of homophobic bullying in schools”</p> <p>“Mexico City (D.F.) is the only jurisdiction within Mexico that has amended its laws to allow same-sex couples to marry on the same basis as opposite-sex couples.”</p> <p>[138] “Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. The inability to do so outside Mexico City exposes transgender individuals to a heightened risk of discrimination and hate crimes.”</p> <p>[140] Notwithstanding the positive developments noted above, homophobic and transphobic attitudes remain prevalent in Mexico. Indeed, the pervasiveness of homophobia has been recognized by Mexico’s own federal anti-discrimination agency, CONAPRED. according to CONAPRED, homophobia is deeply rooted in Mexican society and is prevalent in every area of life.¹⁵ These deeply rooted attitudes create an environment that leads to widespread and serious violations of the Covenant rights of LGBTI individuals.”</p> <p>“288 LGBTI individuals murdered in Mexico from 2010 through 2013. Undoubtedly, this register underestimates the true number killed during this time period.”</p> <p>“Transgender women are at particular risk of murder. According to a 2012 report by the NGO Centro de Apoyo a las Identidades Trans A.C., 126 transgender women were murdered in Mexico from 2010 through 2012.”</p> <p>“Prominent LGBTI human rights defenders have been among the people murdered.”</p> <p>[141] “In some cases, the homophobic motivation for a murder is apparent.”</p> <p>“While in some cases it is more difficult to say with certainty that a particular murder was motivated by the victim’s sexual orientation or gender identity, given the high number of murders of LGBTI individuals and the acknowledged prevalence of homophobia and transphobia in Mexico, every murder of a gay, lesbian, bisexual, transgender or intersex person should be investigated and prosecuted by the authorities as a potential hate crime.”</p> <p>“[A]ll too often, murders of LGBTI individuals are dismissed – without</p>	
--	---	--

<p>proper evidence – as crimes of passion rather than hate crimes. And, although on occasion these murders have led to prosecutions, more often the crimes are never solved and no one is held accountable.”</p> <p>[142] “Given the pervasiveness of homophobia and transphobia, it is not surprising that CONAPRED receives many complaints of discrimination against sexual minorities. For example, CONAPRED’s 2012 report on discrimination against sexual minorities indicates that from January 1, 2011, through April 30, 2012, CONAPRED received a total of 273 complaints of discrimination on the basis of sexual orientation and gender identity. Among these complaints, 237 were filed against private individuals or entities and 36 were filed against state actors.”</p> <p>“Individuals complained of (1) denial of medical attention because of manifesting or making their sexual orientation known, (2) refusal of social security enrollment to same-sex couples, (3) mockery and homophobic comments from medical staff at government run health centers, (4) physical and verbal mistreatment in public educational institutions . . .”</p> <p>[143] “CONAPRED notes that ‘[t]he right to non-discrimination is not guaranteed on equal terms throughout the national territory.’ It goes on to state that because the federal antidiscrimination law is not a general law, those who live in states which lack such legislation at the state level are unprotected.”</p> <p>“[R]espondents reported having been bullied . . . 66% of transgender respondents.”</p> <p>[144] “[A]pproximately one third (32%) of victims reported having been beaten. . . . only 3% reported that the bullies had been punished.”</p> <p>“This bullying has had profound effects on the victims. Fifty one percent reported suffering from depression and 25% had thought about suicide.”</p> <p>“Unfortunately, the kinds of bullying reported in the 2012 survey continue into the present.”</p> <p>[145] “Another example of bullying occurred on March 13, 2014, in Durango, when a male middle school student became the victim of an extreme physical form of homophobic bullying. Seven of his classmates took a razor or knife and carved the Spanish word for ‘girl’ in his left hand. Minutes after the attack, the injured child walked into the school office seeking medical attention. The school’s medical service applied antiseptic, gave him a painkiller, and turned him over to the social work department, which then reported the case to the Ministry of Education. The school authorities searched for the seven suspected aggressors, but the victim was unable to identify his attackers.”</p> <p>“Although Mexico City (D.F.) amended the Civil Code of the Federal District to allow same-sex marriage in 2010,⁵⁷ none of the 31 Mexican states has taken this step.”</p> <p>[146] “While Mexico’s National Supreme Court of Justice (SCJN) has issued a number of important rulings on marriage equality, it has not yet issued a ruling binding throughout Mexico requiring states to allow same-sex couples to marry on the same basis as opposite-sex couples. In August 2010, the SCJN ruled that all 31 states of Mexico must recognize same-sex marriages</p>	
---	--

	<p>registered in Mexico City. That ruling clarified, however, that state governments were not obligated to enact same-sex marriage laws of their own.”</p> <p>[147] “In sum, although Mexico City respects the right of same-sex couples to marry on the same basis as opposite-sex couples, and although there have been a few court rulings allowing some same sex couples in other parts of Mexico to marry, Mexico as a whole continues to discriminate with respect to marriage.”</p> <p>[148] “Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. Transgender individuals elsewhere in Mexico must live without this formal recognition of their gender identity.”</p> <p>“Without legal recognition of transgender and transexual identity, trans individuals (other than those from Mexico City) are forced to identify themselves using credentials or ID cards that contain a name, gender, and photograph that do not correspond to their name, physical appearance or actual identity. This leads to discrimination by health care providers, public security officials, and potential employers. In the employment sector, hiring discrimination against transgender women forces many into paid sex work, thereby exposing them to a heightened risk of violence and murder.” (footnotes omitted).</p>	
B12	<p><i>Blind Alleys: The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa, PART III, A Tri-Country Comparative Analysis: Mexico, South Africa, and Uganda</i>, Organization for Refuge, Asylum & Migration (ORAM), Feb. 2013, available at: http://www.alnap.org/pool/files/oram-ba-synthesising-lr.pdf</p> <p>[154] “Sexually and gender non-conforming (SGN) individuals are among the most vulnerable forced migrants in the world today. Persecuted by their families, communities, and governments in dozens of countries worldwide, they escape across international borders, often to find themselves shunned, abused, and persecuted yet again.”</p> <p>“Of the three, Mexico provides the most survivable environment for SGN forced migrants. Yet despite the positive legal environment and the relative improvement of Mexico in relation to countries of origin, SGN refugees there report abuse by criminal gangs (particularly along migratory routes), discrimination by locals and other migrants, and extortion by the authorities.”</p> <p>[157] “Most refugees do not perceive Mexico as a country of final destination. An overwhelming majority of SGN forced migrants in Mexico are in transit to other countries, notably the United States or Canada.”</p> <p>“societal discrimination based on sexual orientation and gender identity is prevalent in other areas of the country [apart from Mexico city], and violent hate crimes are common.”</p> <p>[159] “Our findings reveal deep and dangerous protection gaps for SGN urban refugees in all three countries.”</p> <p>[161] “Refugees who are identified as SGN report they are profoundly marginalized on that account and are excluded from meaningful protection. These individuals commonly undergo consistent, often violent harassment by</p>	150-72

	<p>local communities and refugee populations. Most are denied adequate police protection or are targeted for harassment, extortion, or violence by the authorities.”</p> <p>[162] “[W]e discovered that SGN refugees in all three countries face similar challenges in their attempt to survive and to navigate the displacement cycle. These challenges include: * Pervasive abuse by state authorities and government officials; * Exclusion and harassment by local populations and other refugees; * Isolation and discrimination preventing access to services, employment, and integration; * Insufficient and unavailable health care, especially for unique needs of SGN people; and * Inadequate access to information systems and social networks.”</p> <p>[163] “[I]nterviewees commonly perceived official harassment as an inevitable fact of life. Some refugees in Mexico reported being subjected to violence, threats, or sexual exploitation. For instance, a transgender interviewee stated that some police officers had attempted to coerce her into sex in exchange for ‘a pack of cigarettes or whatever [she] asks for.’ The vast majority of interviewees described extortion by police, again ‘normalizing’ these occurrences as unavoidable. One interviewee explained why he could not report that a guard had stolen money from him in detention: ‘[I]f I denounce[d] him, he would’ve lost his job, he would’ve killed me.... Here in Mexico it’s like this.... That is the law in Mexico.’”</p> <p>[164] “SGN refugees’ common experiences of abuse include verbal harassment, ostracism, discrimination and physical violence.”</p> <p>“In Mexico, the refugees interviewed reported abuse not only by criminal gangs, but also by other migrants. . . .”</p> <p>[165] Consistent with the reports of refugees, stakeholders said transgender women are particularly vulnerable.”</p> <p>[171] Concluding that “SGN refugees are subjected to marginalization far more acute and more dangerous than most other refugees. Protection gaps facing SGN refugees include violence by state authorities, local communities, and other refugees, and seemingly insurmountable barriers to health care, employment and vital services.” (footnotes omitted).</p>	
B13	<p>Paul Canning, <i>Transgender woman tortured, killed near Monterrey, Mexico</i>, San Diego Gay & Lesbian News.com, 20 Jan. 2012, available at: http://sdgln.com/news/2012/01/20/transgender-women-tortured-killed-near-monterrey-mexico</p> <p>[173] “Mexican media reported 17 January on the brutal killing of an apparently transsexual person in Apodaca, near Monterrey”</p> <p>“[T]he body was found lying face down and was about 25 years old. It showed signs of torture, of being shot as the victim was beaten, the hands were semi-amputated and there was a written message that said "For Rat””</p> <p>“The Trans Murder Monitoring project recorded 23 reports of murders of trans people in Mexico in 2011. Last August, in Mexico City, the first national march against anti-gay hate crime took place. That claimed that 700 LGBT people had been murdered in 2011.”</p>	173
B14	<p><i>The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America</i>, Red Latinoamericana y del</p>	174-216

	<p>Caribe de Personas Trans (REDLACTRANS), International HIV/AIDS Alliance (la Alianza) & What's Preventing Prevention? 2012</p> <p>[181] “[T]his report was born from the need to expose the numerous cases of violence and murders unjustly suffered by transgender women in Latin America.”</p> <p>“Although this report focuses on physical violence, transgender women experience violence on many levels as a result of social exclusion and discrimination.”</p> <p>“Given the absence of forensic and legal data, caused by the inexistence of transgender women in official records, this report presents scarce quantitative evidence. However, we believe that the wealth of the testimonies of the transgender women illustrates the problem in a more human and holistic way.”</p> <p>[182] “By describing individual cases, the document details the main human rights violations suffered by transgender women defenders and shows the direct responsibility that States have when it comes to respecting, protecting and promoting those rights.”</p> <p>“The report presents three findings. Firstly, the testimonies and events it describes reveal the systematic nature and scope of the human rights violations committed against transgender human rights defenders and other transgender women by State actors. These rights violations, which include extrajudicial executions, torture, cruel, inhuman and degrading treatment and arbitrary detentions</p> <p>Around 80 per cent of the transgender activists interviewed reported having been subjected to violence or threats to their physical integrity allegedly emanating from State actors.”</p> <p>“As its second finding, the report shows that the penetration of transphobia, namely fear or hatred of transgender people, across State structures at every level, is facilitating a similarly systematic climate of impunity with regard to human rights violations committed against transgender activists and other transgender women.”</p> <p>“[T]he impunity surrounding the violation of the rights of transgender activists and other transgender women is not solely due to the general impunity that exists in several Latin American countries but is largely motivated by transphobia.”</p> <p>[183] “The report’s third main finding is that transgender human rights defenders in Latin America are at extreme risk of being subjected to human rights violations”</p> <p>“The report highlights other aspects of the vulnerability of transgender defenders that they share with other transgender women, such as facing discrimination from their families and the communities or ethnic groups to which they belong, and the violence used by <i>maras</i>§ and organized crime. These findings show that the national, regional and universal measures and mechanisms established to protect human rights are failing in the case of of <i>[sic]</i> transgender women.”</p> <p>[184] “[T]he perpetration of human rights violations on grounds of sexual orientation and gender identity is common practice and entrenched in the</p>	
--	--	--

	<p>region, to the point of being systematic, while discrimination on the same grounds is institutionalized.”</p> <p>“There has been clear recent evidence of violence being targeted at transgender women in different Latin American countries and of the failure of States to take action to prevent, combat and eradicate it.”</p> <p>[186] “[A]ccording to the 2011 Trans Murder Monitoring Project, between 1 January 2008 and 31 December 2011, 80 per cent of the murders of transgender people reported throughout the world came from Latin America . . .” with Mexico accounting for 93 murders</p> <p>“[T]he violence committed against transgender human rights defenders and other transgender women is clearly too systematic, and its prevalence too widespread, to be explained solely in the context of the general violence. It is evident that the gender identity of the victims and their activism work are the main motives for the crimes in question.”</p> <p>[187] “[I]n various Latin American cities, the murder of transgender activists and other transgender women is widespread and committed, on occasion, by police officers or individuals acting with the acquiescence of the State.”</p> <p>“Testimonies from witnesses and colleagues suggest that police officers were directly involved in a good number of such killings, and that the motives ranged from killing someone for reporting an officer, to the result of arguments with the police over sexual favours or money.”</p> <p>[188] “[T]ransgender human rights defenders and other transgender women in Latin America are subjected to police brutality and cruel, inhuman and degrading treatment, which take place in both police stations and patrol cars as well as on the street. Ninety-five per cent of the transgender defenders interviewed reported having suffered that kind of treatment.”</p> <p>[189] “Transgender activists and other transgender women also face humiliation when they are taken to prisons and other detention centres intended for men where they suffer disproportionately from sexual violence inflicted on them by other inmates and security officials, as well as the resulting psychological trauma.”</p> <p>“[D]etention or charges may appear to be based on reasons other than identity or status as such, though those reasons may simply be a pretext for taking action against a person’s sexual orientation or gender identity.”</p> <p>“This is the case of the ambiguous morality codes and public decency laws which tend to be used for making arbitrary arrests on grounds of sexual orientation or gender identity or expression.”</p> <p>[190] “Arbitrary detentions are not only targeted at sex workers. The prejudice that equates transgender women with sex work means that some have been arrested while going about their daily activities and were not carrying out sex work at the time of arrest.”</p> <p>“Arbitrary detentions are habitually used as an excuse to subject sex workers to extortion, asking them for money or sexual favours in exchange for their freedom.”</p> <p>[191] “[D]espite the prevalence of HIV among transgender women and the mandates and resolutions of specialist health care agencies such as PAHO, public health care institutions are not usually accessible to such women and</p>	
--	---	--

	<p>do not cater for their needs.”</p> <p>“[T]he discrimination that results in sex work being the predominant form of livelihood for transgender women also fuels social stigma by establishing a link in which transgender women are mainly associated with sex work and HIV/AIDS.”</p> <p>[192] “[C]rimes against transgender human rights defenders and other transgender women in Latin America are ignored by the authorities. Such impunity in the case of abuses against transgender women confirms and legitimizes, albeit indirectly, the violence that this population suffers.”</p> <p>“[T]he violence that transgender women experience on a daily basis inhibits them from filing complaints about abuses, thereby creating a culture of silence.”</p> <p>[194] “[T]hese crimes are underestimated and are not addressed separately. The authorities themselves help foster prejudice by describing such cases as ‘crimes of passion’, emphasizing aspects of the personal lives of the victims instead of their vulnerability as transgender women and human rights defenders.”</p> <p>“‘[T]he influence exerted by discriminatory socio-cultural patterns may cause a victim’s credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence.’”</p> <p>“[O]n 20 June 2012 the body [of a young transgender woman aged 16] was found in a secluded area near the main road in Tepic [Nayarit, Mexico]. Social organizations have expressed concern that the authorities may be less rigorous in the investigation because they may assume that it was a crime of passion, as has happened in the past in similar situations.”</p> <p>[195] “[I]n most cases in which a complaint has been filed with the prosecution service, the follow-up has been flawed. The transphobia and corruption that exist in the ranks of the police extend to the <i>Ministerio Público</i>, Prosecution Service, thereby compounding the impunity surrounding human rights violations committed against transgender women.”</p> <p>“This climate of impunity is also present in the courts, thus depriving transgender women of the right to a fair trial.”</p> <p>[197] “The widespread transphobia found among State authorities and actors is illustrated by the way in which they refer to transgender women.”</p> <p>[198] “[T]he work of transgender activists in the countries of Latin America is hindered not only by the violence perpetrated against them in reprisal for or to impede their human rights work, but also because of the extreme vulnerability they share with other transgender women and their exclusion from policies on violence against women.”</p> <p>“The lives of transgender women in the region are marked by a dynamic of exclusion that is the consequence of family, social and institutional transphobia. . . . This lack of education and access to job opportunities pushes the vast majority of transgender women in Latin America into sex work, even as teenagers.”</p>	
--	---	--

	<p>[199] “Transgender women are also exposed to a series of vulnerabilities, including widespread discrimination from their families and the ethnic communities to which they belong, violence from <i>maras</i> and organized crime and the tendency to be the target of hate crimes.”</p> <p>“As well as being the victims of family violence, transgender women suffer attacks from various groups within society”</p> <p>“Transgender women are also subjected to violence by non-official armed groups.”</p> <p>[200] “The absence of a State response to their situation drives many transgender women to get involved as activists and citizens in promoting and defending their human rights.”</p> <p>“Sex work and activism against HIV and in favour of human rights are therefore intrinsically linked in the case of transgender women in Latin America.”</p> <p>[201] “From the specific targeting and recurrent nature of the violence directed at transgender women defenders, it can be inferred that it is largely connected with their activism.”</p> <p>[203] “[T]he institutions responsible for developing policies on violence against women do not include transgender women within their mandates, even though they are the victims of such violence.” (footnotes omitted).</p>	
B15	<p><i>The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in MEXICO: A Shadow Report</i>, Global Rights, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic, Human Rights Program, Harvard Law School, Colectivo Binni Laanu A.C., March 2010</p> <p>[219] “Despite this strong antidiscrimination norm enshrined in the Constitution, LGBT persons in Mexico face violations of their human rights based on sexual orientation and gender identity.”</p> <p>[220] “. . . LGBT persons continue to face discrimination and human rights violations based on their gender identity and sexual orientation. The overall culture in Mexico remains highly repressive in its attitudes towards LGBTI persons. The persistence of discriminatory sentiment towards the LGBTI community is illustrated by a recent poll of the Mexican population, which showed that 48.4% would never live with an LGB person and that 11.6% would never hire one.”</p> <p>“There have been multiple instances of discrimination and violence towards LGBTI individuals in Mexico over past few years, including hate crimes and serious abuses by state authorities, some of which are documented below. LGBT persons in Mexico face a serious threat of violence. One recent study has found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico. Another study indicates that 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had been assaulted in public spaces. Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police. Travesti and transgender persons are subjected to mass detentions, extortion, and physical abuse at the hands of police and</p>	217-32

	<p>military officials. LGBT persons face widespread employment discrimination in both the public and the private sector.”</p> <p>[221] “Mexico’s constitution prohibits discrimination based on preferences, and federal legislation prohibiting discrimination on the basis of sexual orientation in employment and occupation was passed in 2003. . . . This act does not provide protection against discrimination based on gender identity. Nevertheless, individuals experience societal discrimination in Mexico based on their sexual orientation or gender identity.”</p> <p>[222] “Discrimination against LGBT persons has manifested in the form of homophobic public statements by prominent Mexicans, including public officials. . . .”</p> <p>“The recent closing of the Sexual Diversity program of National Council to Prevent Discrimination (CONAPRED) is especially troubling. CONAPRED is the organ of the Mexican government responsible for investigating discrimination across the country. The closing of its Sexual Diversity program is a step backward in the fight against discrimination, especially in the light of the numerous reports of discrimination, as described below.”</p> <p>“Despite the existence of federal anti-discrimination laws, LGBT people in Mexico face employment discrimination in Mexico. The situation is especially troublesome for transgender persons, as gender identity is not a protected category in the anti-discrimination law and as there is no country-wide law allowing amendments to birth certificates and other identification [223] documents. This exposes transgender people to invasion of privacy, marginalization, and discrimination, as will be explained in further detail below.”</p> <p>[225] “Despite the fact that LGBT persons are frequently the victims of hate crime, there is no federal hate crimes statute. The Federal District of Mexico City does have hate crimes legislation, but this is the exception rather than the rule. There is also evidence to suggest that possible hate crimes are left uninvestigated or are dismissed as ‘crimes of passion.’ One 2009 study demonstrated that 80% of homophobic murders are left unpunished. Another recent study found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico. Lack of preventive measure and effective response by law enforcement agencies and the judicial system suggests state violation of articles 6 and 7 of the Covenant.”</p> <p>“In June 2009, a transgender woman was murdered in Puebla. She worked as a performer in a travesti show. This was the third murder of a transgender person in Puebla in 2009 to that date. [226] In March 2009, a <i>muxe</i> (transgender woman) sex worker was murdered in Juchitán. Local activists called the crime an act of homophobia perpetrated against the entire <i>muxe</i> community in the region. This was the fourth murder of a <i>muxe</i> in the city in the past eight years.”</p> <p>“LGBT individuals in Mexico experience police brutality prohibited under Article 7 of the ICCPR. Article 7 states, ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’”</p> <p>“. . . 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had</p>	
--	--	--

	<p>been assaulted in public spaces. Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police.”</p> <p>[227] “LGBT persons in Mexico are frequently detained without cause. LGBT persons are also subject to extortion and abuse at the hands of police. One recent study found that 11% of LGBT persons in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation.”</p> <p>[228] “Transgender persons are also threatened by the existence of public morals laws throughout the country. These laws, found in several areas around the country, are often very vague, criminalizing such acts as ‘obscene exhibitions’, ‘causing a scandal in a public way’, ‘acting in such a way as to offend one or more persons’, ‘acting in ways which fail to respect human dignity, public morality and good customs’. Because these laws are so vague, they are frequently used by police officials to harass, detain, and extort transgender persons and travestis. . . . Some travestis and transgender persons pay ‘fines’ to police officials almost daily to avoid being detained under these laws, a clear act of extortion and a violation of the right to be free from arbitrary detention.”</p> <p>[229] “The lack of legal recognition of transgender and <i>travesti</i> individuals’ identity in ID documents before gender reassignment exposes them to risk of abuses and discrimination and heavily affect their privacy, jeopardizing their enjoyment of the right enshrined by article 17 ICCPR. The City Code of Mexico City federal district provides that transgender people may change the sex and name on their birth certificate without a requirement of gender reassignment surgery. However, the lack of similar protection at a national level is troubling. This is especially so as a birth certificate is required to exercise civil and political rights—a birth certificate is required to obtain a voter identification card. Having identification papers which contradict one’s appearance may place gender non-conforming persons at risk for rights violations.”</p> <p>[231] Concluding that: “* . . . most of the country lags far behind Mexico City in recognition of LGBT rights. . . . * Greater protection of transgender rights is still needed. . . . * Individuals are vulnerable to hate crimes on grounds of their sexual orientation and gender identity, including hate-motivated killings. . . . * Sex workers, especially transgender/transsexual/travesti sex workers, are particularly vulnerable to abuse and extortion on the part of state officials and other individuals encouraged by the culture of impunity for crimes against this population. Greater protection must be afforded to sex workers, and police and military personnel must cease arbitrary detentions, extortion, and abuse of sex workers. * LGBT persons are especially vulnerable in the education system.” (footnotes omitted).</p>	
B16	Myra Betron, <i>Screening for Violence against MSM and Transgenders: Report on a Pilot Project in Mexico and Thailand</i> , Futures Group, USAID, Oct.	233-315

<p>2009, available at: http://www.healthpolicyinitiative.com/Publications/Documents/1100_1_GB_V_MARP_Final_Project_Report_FINAL_4_27_10_acc.pdf</p> <p>[241] “Recent studies and anecdotal evidence have shown that gender-based violence perpetrated against men who have sex with men (MSM) and transgenders (TG) can increase their HIV vulnerability, especially in the context of sex work and concurrent partnerships. . . . The project described in this document piloted the integration of screening for violence against MSM and TG into HIV health services.”</p> <p>“Results showed that at least half of MSM and TG experienced violence in the year prior to being screened (Mexico: . . . 65% among TG. . . .”</p> <p>[242] “Screening is hardly enough and certainly not the only or even most appropriate response to violence against MSM and TG. A multisectoral approach, including collaboration with community-based organizations, is essential in responding to the needs of MSM and TG who face gender-based violence.”</p> <p>[243] “Men who have sex with men (MSM) and transgenders (TG)—some of the most-at-risk populations (MARPs) for HIV—often face stigma, discrimination, poverty, violation of human rights in the form of homophobia, and heterosexism. Negative attitudes can foster environments that support violence against MSM and TG. . . . Law enforcement and healthcare providers often are guilty of widespread corruption, intimidation, and harassment”</p> <p>“The rates of violence against MSM and TG, particularly those engaging in sex work, are alarming.”</p> <p>“This violence is a manifestation of stigma and discrimination (S&D) against MSM and TG, primarily because they do not fit into traditional gender categories. In other words, violence experienced by MSM and TG often is a form of gender-based violence (GBV).”</p> <p>[251] “In Mexico, MSM and TG experience the range of forms of violence identified in the literature review—physical, sexual, and emotional/psychological, including S&D. When asked with whom they felt most unsafe, Mexican TG cited gangs, police, drug addicts, priests, neighbors, and co-workers.</p> <ul style="list-style-type: none"> • “<i>There are more unsafe than safe spaces.</i>”—TG in Mexico . . . ; • “<i>There are many who deny violence [in MSM and TG], but it is perhaps as high 60 percent.</i>”— Health provider in Mexico; • “<i>The police have gone as far as to rape and beat me and my friends...</i>”—TG in Mexico; • “<i>Anyone that is passing by yells profanities, throws objects, or hits us.</i>”—TG in Mexico” <p>“Health providers, MSM, and TG alike acknowledged that the police are recurring perpetrators of violence in both Mexico and Thailand. . . .</p> <ul style="list-style-type: none"> • “<i>Any place can be unsafe for us, but particularly in the street, above all with the police.</i>”—TG in Mexico . . . <p>In both Mexico and Thailand, evidence from the focus group discussions with MSM and TG also point to the fact that violence is gender-based.</p>	
--	--

	<p>Respondents in Mexico perceived “feminized” MSM and TG to be [252] at greater risk for violence.”</p> <p>“Finally, it was enlightening to find that the violence described above has gone largely unacknowledged and indeed is seen as the norm . . . In Mexico, some respondents seemed resigned to the abuse they faced, saying “<i>We have always suffered this rejection, and it will always be that way.</i>”—TG in Mexico”</p> <p>“Providers in Mexico recognized that they were not prepared to respond to violence against these populations but could do so if provided with the proper training.</p> <ul style="list-style-type: none"> • “<i>We are not prepared, but we have to help.</i>”—Health provider in Puerto Vallarta, Mexico[;] • “<i>It seems like a very good idea. What we need in this is trained personnel; there is no training.</i>”—Health provider in Puerto Vallarta, Mexico” <p>[262] “The referral systems varied for each site in Mexico but overall, clinics had trouble identifying formal services that could respond adequately to the needs of MSM and TG experiencing violence.”</p> <p>[264] “. . . the results of this pilot project are indicative of the high levels of violence found in groups at risk for HIV and accessing HIV services. Indeed, the screening tool found that half or more than half of MSM and TG in both Mexico and Thailand experienced violence. . . . In Mexico, 58 percent of TG were officially registered as experiencing violence, and another 15 of 20 individuals indicated on the forms as both MSM and TG had experienced violence.”</p> <p>“In Mexico, sexual violence was the most common type, with nearly half of MSM and three out of five TG experiencing this. Both physical and sexual violence levels were high, but higher levels of sexual violence (compared to physical violence) were identified in almost all groups in both countries . . . Based on the literature, MSM and TG who are sex workers—as many in this sample are—often face extortion, blackmail, and threats by police. This may explain the higher levels of sexual violence.”</p> <p>[265] “The majority of those who experienced violence had not sought help from anyone; this confirmed what the project had learned from the literature review and participatory assessment.”</p> <p>[278] “Providers in Mexico indicated that they felt helpless once they identified that a patient had experienced violence because there were no services to which they could refer them.”</p>	
B17	<p><i>Sexuality and Gender Law Clinic at Columbia Law School Secures Asylum for Transgender Mexican Woman</i>, Columbia University Law School, 25 June 2009, available at: https://www.law.columbia.edu/media_inquiries/news_events/2009/june2009/AsylTransMexi</p> <p>[316] “[A]sylum for a woman who fled her native Mexico after suffering severe police abuse and gang violence because she is transgender.”</p> <p>“[T]his case is part of a very small but growing number of cases in which the U.S. government has recognized that transgender individuals who have fled persecution are entitled to protection under American asylum law.”</p>	316-17

	<p>“Once she began dressing and living outwardly as a woman, she was constantly harassed, physically abused, and subjected to demands by the police for money and sexual favors.”</p> <p>“Even though I knew I would be an easy target for police and gang abuse, I made my transition to womanhood because my identity as a woman is what defines me. For me, hiding my true gender identity is impossible.”</p>	
C	ARTICLES FROM THE INTERNATIONAL PRESS	
C1	<p>Stephen Woodman, <i>Mexican Police Turn Blind Eye To Murders Of Transgender Women, Say Activists</i>, Reuters, Aug. 22, 2016</p> <p>[320] “[A]dvances in LGBT rights have not been accompanied by a decline in homophobic and transphobic attacks.”</p> <p>“Mexico has one of the highest rates of transphobic violence in the world”</p> <p>“The number of documented murders of transgender people rose to 46 in 2012 from [321] four in 2008, with actual figures likely to be significantly higher”</p> <p>“A U.S. immigration judge warned last year of “an epidemic of unsolved violent crimes” against transgender people in Mexico.”</p> <p>“Transgender women have become a focal point for hatred because they are often easier to detect . . .”</p> <p>“[L]aws protecting gay rights in Mexico do not extend to gender identity discrimination.”</p> <p>[322] “Most transgender women find their appearance prevents them from working in regular jobs . . .”</p> <p>[323] “The life expectancy for Latin American transgender women is 35 . . .”</p> <p>“[S]treet-based sex workers who may be victimized are unlikely to contact police for fear of harassment or extortion.”</p> <p>“[T]ransgender women are also at risk from the drug cartels that demand money from sex workers on the streets.”</p>	318-24
C2	<p>Chris Kitching, <i>Transgender beauty queen's burned body found dumped in Mexico a month after she disappeared</i>, Dailymail.Com, 25 July 2016</p> <p>[325] “Authorities have found the burned body of a transgender beauty queen who was reported missing in Mexico a month ago.”</p> <p>[327] “DNA tests were carried out to confirm her identity because the body was severely burned.”</p> <p>“Jorge Luis Zamora Cabrera, the state secretary of sexual diversity, told Mexican media that one of the lines of investigation in the case is transphobia.”</p>	325-27
C3	<p>Olivia P. Tallet, <i>Transgender Latinas faced a 'legion of stigmas,'</i> Houston Chronicle, June 25, 2016</p> <p>[329] “Being a transgender woman, a Latina and an undocumented immigrant is ‘like having a legion of stigmas against you . . .’”</p> <p>[330] “She vividly remembers the horror of being sexually assaulted by four</p>	328-36

	<p>male students she thought were her friends.”</p> <p>“They decided to teach her a lesson about what it means to be a woman.”</p> <p>[331] “The interception of being a Latina, a trans and an undocumented person is a combination that could be triple times more grave in terms of stigmatization”</p> <p>“While the stigmatization exists everywhere, Quezada said, it's ‘more prevalent in states like Texas because of their closeness to the border and their larger population of trans escaping from abuses they face in countries like Mexico and from Central America.’”</p> <p>[332] “Several cases of slaying and dismembering of transgender women have been reported in Mexico, and the murder rate has increased since 2008.”</p> <p>“[W]hat drove Jessica Trolinger to Houston. She described the terror she felt after four of her transgender friends, who were roommates, suddenly disappeared without a trace after being threatened by men in their neighborhood in Reynosa, Tamaulipas.”</p> <p>“‘[F]amilies in Mexico are afraid to report cases because we are also abused by officers; I was once beaten down to the floor and mocked by an officer while others watched and laughed.’”</p> <p>[333] “But you have to be in my shoes to understand what it means to be a trans woman, trying to work a decent job to put food on the table, and being rejected by everyone”</p> <p>“‘Transgender women who are Latinas face a lot of challenges,’ said Díaz, who is finishing an MBA program. ‘They are probably the most vulnerable community among the vulnerables.’”</p> <p>“Many Hispanic transgender people suffer severe poverty with five times higher likelihood of living with an income of \$10,000 or less per year than the overall Latino average.”</p> <p>“As many as 47 percent of them have attempted suicide, as opposed to 1.6 percent of the U.S. population.”</p> <p>[336] “Do you really think that being a transgender person is something that we chose? No, nobody chose to be the most discriminated and misunderstood people that exist.”</p>	
C4	<p>Angelica Basile. <i>Mexico is Hell for the transgender women</i>, West, June 17, 2016</p> <p>[337] “Discrimination, violence, abuse, rape, violent deaths, torture. This is daily life for the majority of transgender women in Mexico . Suffice it to say that 45 % of them have suffered at least one abuse in the family and 70 % are forced to leave the country to escape these many dangers.” (emphases in original).</p>	337
C5	<p>Dan Whitcomb, <i>U.S. court: Transgender illegal immigrant cannot be deported to Mexico</i>, Reuters, 3 Sep. 2015</p> <p>[338] “The justices also disagreed with a finding by the Board of Immigration Appeals that recent anti-discrimination laws in Mexico had made it safer for transgender individuals to live there.</p> <p>‘Country conditions evidence shows that police specifically target the transgender community for extortion and sexual favors and that Mexico suffers from an epidemic of unsolved violent crimes against transgender</p>	338

	<p>persons,”</p> <p>“[S]uffered years of abuse over her gender identity, including beatings, sexual assaults and rape.”</p> <p>“That abuse continued into her adulthood and she suffered at the hands of the Mexican police and military before seeking refuge in the United States.”</p>	
C6	<p>Dave Urbanski , <i>Why a Transgender Mexican Woman Was Just Granted Asylum in U.S. Despite DUI Conviction</i>, The Blaze (Assoc’d Press), 3 Sep. 2015</p> <p>[339] “Transgender people can be especially vulnerable to harassment and attacks”</p> <p>“[S]he had been sexually assaulted by uniformed Mexican police and a military official for being transgender.”</p> <p>“The 9th Circuit said transgender people face a unique level of danger and are specifically targeted in Mexico by police for extortion and sexual favors.”</p> <p>“Significant evidence suggests that transgender persons are often especially visible, and vulnerable, to harassment and persecution due to their often public nonconformance with normative gender roles.”</p>	339
C7	<p>Amy Lieberman, <i>Mexican Transgender Women Deported to Life of Peril</i>, We-news, 26 August 2013, available at: http://womensenews.org/2013/08/mexican-transgender-women-deported-life-peril/</p> <p>[340] “In 2007, rubber bullet wounds to the thigh landed Alvarez in the hospital after she was shot in a violent raid in her home by a now defunct police unit called Milipol, which targeted transgender sex workers for dressing like women, then illegal.”</p> <p>[341] “Alvarez, who is now the head of a local organization for transgender women's health, regularly receives letters with slurs and threats. She only goes outside when accompanied by a friend.”</p> <p>“The majority of detained transgender women are asylum seekers, and most of these cases-- . . .--result in victories, attorneys say.”</p> <p>[342] “Mexico has varying estimates of the number of hate crimes targeting lesbian, gay, bisexual and transgender and queer (LGBTQ) citizens. But all of them place the country as one of the most dangerous places to be transgender in the region or world.”</p> <p>“One monitoring project, Letra S, of the national daily newspaper La Jornada, approximated 1,260 hate-crime killings, mostly of transgender people, between 1995 and 2006.”; “76.4 percent of LGBT persons had been subjected to physical violence and 53.3 percent had been assaulted in public spaces between 1995 and 2007.”</p> <p>[343] “Attacks against LGBTQ Mexicans are worsening as the laws increasingly recognize their rights in some parts of Mexico”</p> <p>“[A]sylum cases in Mexico can be complicated by legal reforms that aren't yet changing everyday life. ‘Those changes haven't taken effect on the ground level and there is still a great deal of persecution that transgender people experience by the military and police.’”</p> <p>“The majority of the LGBTQ hate-crime victims in Mexico are transgender women . . . Murders of transgender people often go unchecked by police, who</p>	340-45

	<p>do not match transgender women's physical appearance and names to their state-issued photo identification cards.”</p> <p>“The violence against trans people is very ugly; people being stripped nude, tortured, mutilated, beheaded,”</p> <p>[344] “Activists such as Gomez and Alvarez, of Ciudad Juarez, are said to be more vulnerable to threats, attacks and assassinations in Mexico. But this brutal violence-- splashed daily on the tabloids in Mexico--also reaches less-prominent transgender women.”</p> <p>“Even with the support of her mother, poverty forced Bocanos to enter sex work full time when she was 18. She has been attacked . . . several times. One client robbed her and stabbed her more than 30 times. She says she called the police, but when they arrived they failed to respond to her near-fatal wounds.”</p> <p>“Initial results of interviews with 30 trans women show a distinct pattern of abuse”</p> <p>“No trans girl can find work in Juarez. If you don't cut hair you do sex work.”</p> <p>[345] “Within the past three years she has had at least two transgender Mexican clients who, once they returned to Mexico, suffered serious physical harm and returned to the United States.”</p>	
C8	<p>Amy Lieberman, <i>Transgenders in Mexico Dream of Escape</i>, We-news, 17 July 2013, available at: http://womensenews.org/2013/07/transgenders-in-mexico-dream-escape/</p> <p>[347] “In interviews, 10 transgender women said that if they don't leave, their employment options in Puebla mainly boil down to sex work and bar tending. Only if they are as fortunate as Ortega-- with either money or family support--can some become hair stylists.”</p> <p>“These three occupations--either dangerous or siloed from the rest of society--are understood across Mexico to be acceptable entry points of employment for transgender women.”</p> <p>“Puebla is among 22 of Mexico's 31 states that do not consider sexual orientation or gender identity-based discrimination to be illegal. People who identify as transgender or transsexual do not have the legal right in Puebla to change their gender on ID cards or official documents.”</p> <p>“Four homicides of transgender women have been reported in the local news media since June 2012, says Meta.”</p> <p>“In March 2012, a well-known transgender activist named <u>Agnes Torres Sulca was also murdered in Puebla.</u>”</p> <p>“Nearly every trans person interviewed reminisced about broken plans to, at some point, leave Mexico, which has the <u>second highest reported rate</u> of transgender murders in the world.”</p>	346-49
C9	<p><i>Activist Agnes Torres found dead in Puebla, Mexico</i>, Wild Gender, 13 March 2012, available at: http://wildgender.com/activist-agnes-torres-found-dead-in-puebla-mexico/1828</p> <p>[350] “Renowned transgender rights advocate, Anges Torres was found dead last Saturday in a ravine in Atlixco, just outside of her home town of Puebla,</p>	350-51

	<p>Mexico.” “Torres’ murder was confirmed a hate crime.” [351] “Also today, Mexico City’s congressman Juan Pablo Castro . . . made headlines for hateful comments, suggesting that ‘she [Agnes] deserved what happened to her’” “Torres’ body was found abandoned in a ditch near an expressway in Atlixco. She had a visible neck wound, burns throughout her body, and visible signs of torture.”</p>	
	<p><i>Certificate of Service</i></p>	



United States Department of State Bureau of Democracy, Human Rights and Labor

Country Reports on Human Rights Practices for 2015 - **Mexico**

13 April 2016

EXECUTIVE SUMMARY

Mexico, which has 31 states and a federal district, is a multiparty federal republic with an elected president and bicameral legislature. In July 2012 President Enrique Pena Nieto of the Institutional Revolutionary Party (PRI) won election to a single six-year term in elections observers considered free and fair. Citizens elected members of the Senate in July 2012 and members of the Chamber of Deputies in June. Observers considered the June 2015 legislative and gubernatorial elections free and fair. Civilian authorities generally maintained effective control over the security forces.

The most significant human rights-related problems included law enforcement and military involvement in serious abuses, such as unlawful killings, torture, and disappearances. Impunity and corruption in the law enforcement and justice system remained serious problems. Organized criminal groups killed, kidnapped, and intimidated citizens, migrants, journalists, and human rights defenders.

The following additional problems persisted: poor prison conditions; arbitrary arrest and detention; threats and violence against human rights defenders and journalists; threats and violence against migrants; violence against women; domestic violence; abuse of persons with disabilities; threats and violence against some members of the indigenous population; threats against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; trafficking in persons; and child labor, including forced labor by children.

Impunity for human rights abuses remained a problem throughout the country with extremely low rates of prosecution for all forms of crime. Neither general information about government investigations of human rights allegations nor information about specific cases was easily available to the public.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were numerous reports the government or its agents committed arbitrary or unlawful killings, often with impunity. Organized criminal groups also were implicated in numerous killings, often acting with impunity and at times in league with corrupt state, local, and security officials. The National Human Rights Commission (CNDH) reported 32 complaints for “deprivation of life” between January and October 31.

In November the CNDH released a report regarding the January 6 killing of 10 individuals in Apatzingan, Michoacan. The CNDH report found the federal police responsible for grave human rights violations in six of the deaths, at least one of which it classified as an extrajudicial execution. Members of the army also were implicated in illegal detentions and injury to a number of citizens. A separate criminal investigation continued at year’s end.

On May 22, federal police killed 42 alleged armed criminals in a gunfight near Tanhuato, Michoacan; one police officer also was killed. Federal authorities claimed that police were in pursuit when the criminals attacked, and that police returned fire to subdue the group. Families of the victims and civil society sources, however, asserted the bodies showed signs of torture. The Michoacan Attorney General’s Office began an investigation, which was joined in August by the federal Office of the Attorney General. On May 26, the CNDH also initiated an investigation. During its visit in October, a mission of the Inter-American Commission on Human Rights (IACHR) pressed the government to continue its investigation of the case. The investigations remained ongoing at year’s end.

On July 7, the commander of the 97th Infantry Battalion allegedly ordered and participated in the illegal detention and extrajudicial killing of seven suspected members of an organized criminal group in Calera, Zacatecas. On July 31, a federal judge in Zacatecas ordered the arrest of the commander and three other military officers on charges of forced disappearance and premeditated aggravated homicide. At year’s end all four were being held in pretrial detention at the military prison in Mazatlan, Sinaloa. The National Defense Ministry (SEDENA), which provided forensic and judicial assistance to the civilian-led investigation, transmitted its findings to the federal Attorney General’s Office (PGR).

Civilian criminal proceedings continued in the June 2014 killings of 22 suspected criminals in Tlatlaya, state of Mexico. In June the Attorney General’s Office (PGJ) for the state of Mexico and the PGR confirmed that 11 of the 22 individuals were executed, at least half of whom had surrendered before they were killed. In November 2014 the PGR charged three soldiers formerly assigned to SEDENA’s 102nd Infantry Battalion with homicide, tampering with evidence, and abuse of authority and brought lesser charges against four additional soldiers. In early October a federal district judge dropped the charges against four of the soldiers due to insufficient evidence. The PGR appealed the ruling. Those charged remained in pretrial confinement, and the four released from civil charges continued to face charges under the military justice system. Additionally,

seven police officers from the state of Mexico were charged in July with torturing three women who witnessed the executions.

After the Federal Institute of Access to Public Information and Data Protection ordered it to do so, the PGR released documents in December 2014 that revealed municipal police were complicit in the 2010 killing of 72 migrants in San Fernando, Tamaulipas. The documents also showed police involvement in the deaths of 193 other victims found in mass graves in Tamaulipas in 2011.

On July 20, a federal judge in Nuevo Leon sentenced former corporal Juan Ortiz Bermudez to 18 years' imprisonment on conviction of intentional homicide in the 2010 killing of two unarmed civilians. It was the first time a civilian judge penalized a military officer in Nuevo Leon.

On March 2, a federal judge in Sinaloa sentenced four soldiers to nine years and four months in prison for intentional homicide in the 2008 killing of unarmed civilians.

b. Disappearance

There were numerous reports of forced disappearances by security forces as well as numerous cases of disappearances related to organized criminal groups. In data collection the government often merged disappeared persons with missing persons, making it difficult to gather accurate statistics on the extent of the problem. While the federal criminal code includes provisions on "forced disappearances," the subfederal jurisdictions lacked legislation to define consistently this crime; 15 states classified "forced disappearance" as distinct from murder or kidnapping. Investigation, prosecution, and sentencing for the crime of disappearance remained rare.

In September government agencies reported to the Congress that 25,230 persons were recorded as missing or disappeared as of December 31, 2014. According to the National Data Registry of Missing Persons (RNPED), 24,812 of the cases came under state jurisdiction, while 418 cases were under federal jurisdiction. The PGR also reported that 74 persons had been located as of December 2014, 70 of whom were Mexican nationals. According to the government, the causes for disappearances included voluntary absence, migration, death, and unlawful imprisonment. The CNDH received 12 complaints of "enforced or involuntary disappearances" from January through October 31.

On September 6, a team of IACHR experts released a report critical of the government's initial investigation of the September 2014 disappearance of 43 students from a rural teachers college in Ayotzinapa, Guerrero State, and the concomitant killings of six others. The IACHR and the original government investigation concluded the students were arrested by local police and then handed over to drug traffickers in Iguala, Guerrero. In October the government extended the mandate of the team of experts until April 30, 2016, and agreed to "restart" the investigation and incorporate the recommendations from the September report, including the creation of a new investigation team to work alongside IACHR experts and the government. In September

government officials stated foreign forensic experts had identified the remains of a second student (in addition to the remains of one student identified in 2014). In November the Attorney General's Office announced the creation of a new special unit to investigate the students' disappearance. In December the Executive Committee for Victims Assistance (CEAV) approved the first reparations to the family of one of six individuals killed during the incident.

On August 18, a federal judge in Nuevo Leon issued the country's first civilian conviction of a military officer for the disappearance of a civilian. The court stripped Second Lieutenant Danny Hernandez Sanchez of his rank and sentenced him to 31 years and three months in prison for the forced disappearance in 2012 of a victim in the municipality of Los Herreras, Nuevo Leon.

Kidnapping remained a serious problem for persons at all socioeconomic levels, and there were credible reports of instances of police involvement in kidnappings for ransom, often at the state and local level. The government's statistics agency (INEGI) estimated that 94 percent of crimes were either unreported or not investigated and that underreporting for kidnapping was even higher.

On May 7, Javier Cano Torre, a journalist from ABC Radio in the state of Guerrero, and three other individuals traveling with him were kidnapped. Cano Torre's vehicle was found abandoned on the road between Iguala and Teloloapan. The four remained missing, and the case continued under investigation at the state level.

On September 10, the Baja California State Attorney General's Office (PGJE) announced that it had charged four men with the kidnappings of more than 70 migrants in areas near Tijuana and Mexicali. The PGJE stated that while arresting the men, local authorities had rescued nine migrants who were found being held against their will by the group. The nine kidnapping victims were tortured and abused, some sexually, according to local authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices and stipulates confessions obtained through illicit means are not admissible as evidence in court, but there were reports that government officials employed them.

There is no national registry of torture cases, and there is a lack of specific data on torture cases at the state level. From January to October 31, the CNDH received 587 complaints of "inhuman or degrading treatment" and 49 complaints of torture.

In Jalisco the state-level Human Rights Commission reported 89 torture complaints from January 1 to July 29, after reporting a total of 24 complaints for 2014. On April 26, Jalisco passed a law that increases sentences for those found guilty of torture. On September 25, a judge issued Jalisco's first-ever sentence for torture to two local police officers found guilty of torturing a man to death while he was under arrest in 2014.

On November 12, the government of the Federal District of Mexico City acknowledged that district-level police had committed “acts of torture and cruel and inhuman treatment” against 90 citizens who participated in demonstrations in the Federal District during 2013 and 2014. The government accepted all recommendations issued by the Human Rights Commission of Mexico City (CDHDF), which included documentation of police actions that violated federal and state law. It was the first time the government of the Federal District admitted to acts of torture and mistreatment.

In June a judge sentenced Omar Rivera Vela, a former police inspector with the Ciudad Juarez municipal police to four and one-half years in prison for torture relating to an incident that occurred in 2013.

On December 2, a Chihuahua state judge dismissed charges against Cristel Fabiola Pina Jasso, Leonardo Gilberto de la O Ramos, and Jose Eduardo Estrada, all three of whom were falsely accused of extortion and had been detained since 2013. The judge also ordered an investigation into allegations that state police officers tortured the three to secure confessions. On the same day, in a separate case, authorities released Adrian Vasquez from prison near Tijuana, more than three years after he was arrested and reportedly tortured by state police and accused of being a drug trafficker.

On October 7, the CNDH issued Recommendation 33/2015, which directs both SEDENA and the PGR to cooperate fully in the investigation by the UN Committee against Torture (CAT) of the 2009 arbitrary detention and torture of Ramiro Ramirez Martinez, Orlando Santaolaya Villareal, Rodrigo Ramirez Martinez, and Ramiro Lopez Vazquez by the military in the state of Baja California.

There were reports of abuse in public mental health institutions (see section 6, Persons with Disabilities).

Prison and Detention Center Conditions

Conditions in prisons and detention centers were often harsh and life threatening due to corruption, overcrowding, prisoner abuse, alcohol and drug addiction, and loss of security and control. In a 2015 report, the CNDH said prison occupancy was 25 percent above capacity and that conditions prevented or hindered inmates’ “access to a decent life, as well as the means to achieve effective rehabilitation and social reintegration.” There were numerous cases of corruption in the penitentiary system, including charges that the head of federal prisons and the former director of the Altiplano Prison allowed Sinaloa cartel leader Joaquin “El Chapo” Guzman Loera to escape. In 2012 the CNDH estimated that organized crime controlled 60 percent of prisons.

Civil society groups reported some abuses of migrants in some detention centers.

Physical Conditions: Health and sanitary conditions were poor, and most prisons did not offer psychiatric care. Some prisons often were staffed with poorly trained, underpaid, and corrupt correctional officers, and authorities occasionally placed prisoners in solitary confinement indefinitely. Prisoners often had to bribe

guards to acquire food, medicine, and other necessities. In some cases prisoners reportedly had to pay a fee to be permitted to visit with family members. Authorities held pretrial detainees together with convicted criminals. Prison overcrowding continued to threaten health and life. The CNDH noted a lack of access to adequate health care was a significant problem. Food quality and quantity varied by facility, with internationally accredited prisons generally having the highest standards. The CNDH reported 49 homicides and 62 suicides in state and district prisons in 2014.

The CNDH continued to report conditions for female prisoners were inferior to those for men, particularly for women who lived with their children in prison, due to a lack of appropriate living facilities and specialized medical care. There were reports women who lived with their children in prison did not receive extra food or assistance. Reports of physical and sexual abuse of female detainees continued.

Administration: At some state prisons, recordkeeping remained inadequate. Some states instituted mechanisms for alternative justice, including drug diversion courts, for nonviolent offenders. While prisoners and detainees could lodge complaints about human rights violations, access to justice was inconsistent, and authorities generally did not publicly release the results of investigations. The CNDH has an ombudsman dedicated to prison problems, but it does not provide legal representation for prisoners.

Independent Monitoring: The government permitted independent monitoring of prison conditions by the International Committee of the Red Cross, the CNDH, and state human rights commissions. Independent monitors were generally limited to making recommendations to authorities to improve prison conditions.

Improvements: A number of states, including Baja California, Hidalgo, Morelos, Nuevo Leon, and Puebla, established special pretrial detention units during the year to reduce overcrowding. Fifteen drug treatment courts in Chihuahua, Durango, Mexico Morelos, and Nuevo Leon enabled participants to receive counseling and treatment for their addiction rather than serving time in a correctional facility, thus reducing prison overcrowding. Both federal and state facilities continued to seek international accreditation from the American Correctional Association (ACA), which requires demonstrated compliance with a variety of international standards. As of September 22, one state administrative facility in Chihuahua and six federal prisons; one federal training academy; and 15 state prisons in the states of Baja California, Coahuila, Chihuahua, and Mexico and the Federal District had achieved ACA accreditation. In February the ACA recognized the state of Chihuahua for earning ACA accreditation for every state correctional facility under its control. Since beginning the accreditation process, Chihuahua's prisons experienced sharp decreases in deaths, escapes, and riots. In 2014 only one violence-related death and no riots occurred in Chihuahua's prison facilities.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, but the government often failed to observe these prohibitions.

Role of the Police and Security Apparatus

The federal police, as well as state and municipal police, have primary responsibility for law enforcement and the maintenance of order. The federal police are under the authority of the interior minister and National Security Committee; state police are under the authority of each of the 32 governors, and municipal police are under the authority of local mayors.

SEDENA, which oversees the army and air force, and the Ministry of the Navy (SEMAR), which oversees the navy and marines, also play a role in domestic security, particularly in combatting organized criminal groups. The secretary of national defense and the secretary of navy are cabinet-level officials who report directly to the president. The law requires military institutions to transfer all cases involving civilian victims, including human rights cases, to the civilian justice system under the jurisdiction of the PGR. If the victim is a member of the military, alleged perpetrators remain subject to the military justice system. SEDENA, SEMAR, the federal police, and the PGR have security protocols for chain of custody and use of force. The protocols, designed to reduce the time arrestees remain in military custody, outline specific procedures for the handling of detainees.

The National Migration Institute (INM), under the authority of the Interior Ministry (SEGOB), is the administrative body responsible for enforcing migration laws and protecting migrants. INM's 5,400 agents worked at ports of entry, checkpoints, and detention centers, conducting migrant apprehension operations in coordination with the federal police.

Although civilian authorities maintained effective control over security forces and police, impunity, especially for human rights abuses, remained a serious problem. The country had extremely low rates of prosecution, and prosecutions could take years to complete. For example, as of August 25, civilian criminal proceedings continued against an army lieutenant and soldiers formerly assigned to SEDENA's Ninth Infantry Battalion for the alleged illegal detention and disappearance of six civilians in 2010. Civilian courts tried cases of human rights violations of civilians by military personnel, and there were a number of such prosecutions during the year. By law elected officials enjoy immunity from prosecution, including for corruption, while they hold a public office, although state and federal legislatures have the authority to remove an elected official's immunity.

SEDENA's General Directorate for Human Rights investigates military personnel for violations of human rights identified by the CNDH and is responsible for promoting a culture of respect for human rights within the institution. The directorate, however, has no power to ensure allegations are prosecuted or to take independent judicial action.

As part of the implementation of SEDENA's 2014-18 human rights program, in December the secretary of defense announced new human rights measures, including an agreement with the National Council to Prevent Discrimination (CONAOPRED), to create a center for equality and nondiscrimination.

The National Public Security Council approved new police training standards in August 2014, including mandatory training on human rights for all law enforcement personnel. Enforcing compliance with training standards remained a challenge, particularly among municipal police.

Arrest Procedures and Treatment of Detainees

The constitution allows any person to arrest another if the crime is committed in his or her presence. A warrant for arrest is not required if an official has reasonable suspicion about a person's involvement in a crime. Bail exists, except for persons held in connection with drug trafficking or other forms of organized crime. In most cases persons must be presented to a judge, along with sufficient evidence to justify their continued detention, within 48 hours of their arrest, but there were violations of this 48-hour provision. In cases involving three or more persons who organize to commit certain crimes, suspects may be held for up to 96 hours before being presented to a judge.

Only the federal judicial system can prosecute cases involving organized criminal groups. Under a procedure known in Spanish as "arraigo" (a constitutionally permitted form of detention, employed during the investigative phase of a criminal case before probable cause is fully established), certain suspects may, with a judge's approval, be detained for up to 80 days prior to the filing of formal charges. Human rights NGOs claimed arraigo allows authorities to detain someone first, then seek a reason to justify detention. In the absence of formal charges, persons so detained are denied legal representation and are not eligible to receive credit for time served if convicted. Human rights groups alleged authorities used arraigo to obtain confessions using torture.

Some detainees complained about lack of access to family members and to counsel after police held persons incommunicado for several days and made arrests arbitrarily without a warrant. Police occasionally provided impoverished detainees counsel only during trials and not during arrests or investigations as provided for by law. Authorities held some detainees under house arrest. In June 2014 the armed forces issued a joint use-of-force doctrine, ordering transfer of detained individuals as soon as possible to civilian authorities and prohibiting use of military facilities as detention or retention centers.

Arbitrary Arrest: Allegations of arbitrary detentions persisted throughout the year. During its visit in October, the IACHR assessed that "arbitrary arrests are the norm rather than the exception."

Pretrial Detention: Lengthy pretrial detention was a problem, although no information was publicly available on the percentage of inmates held in pretrial detention or the average length of time they were held. The law

provides time limits within which an accused person must be tried. Authorities generally disregarded time limits on pretrial detention since caseloads far exceeded the capacity of the federal judicial system.

e. Denial of Fair Public Trial

Although the constitution and law provide for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level.

Trial Procedures

The civilian legal system was in a period of transition from an inquisitorial to an adversarial system. Until recently, the country had an inquisitorial-style legal system based primarily upon judicial review of written documents behind closed doors. A 2008 constitutional amendment, however, mandated that by June 2016 the federal and state governments should replace that system with an adversarial system that relies upon oral testimony presented in open court. While the federal government and nearly all of the states had begun to adopt the new criminal justice system, observers expected the complex transition, in which the old and new systems would coexist for a number of years, remained dependent on continuing government support. In some states implementing the adversarial system, alternative justice centers employed mechanisms such as mediation, negotiation, and restorative justice to resolve minor offenses outside the court system.

Under the new criminal justice system, all hearings and trials are conducted by a judge and follow the principles of public access, immediacy, confrontation, and cross-examination. Defendants enjoy a presumption of innocence and judges render judgments directly without the participation of a jury. Defendants have the right to attend the hearings and to challenge the evidence or testimony presented. Defendants have access to government-held evidence, although the law allows the government to keep elements of an investigation confidential until presentation of evidence in court. The law also provides the right of appeal.

As of September all of the country's 32 sub-federal jurisdictions had begun transitioning to the adversarial system and were at various stages of training and implementing reforms.

The law provides defendants with the right to an attorney at all stages of criminal proceedings. Attorneys are required to meet legal qualifications to represent a defendant. Not all public defenders had preparation and training to serve adequately on the defendants' behalf, and often the state public defender system was not adequate to meet demand. Public defender services functioned either in the judicial or executive branch.

According to the Center for Research and Economic Study (CIDE), most criminal suspects did not receive representation until after they came under judicial authority, thus making individuals vulnerable to coercion to sign false statements prior to appearing before a judge.

Although required by law, translation services from Spanish to indigenous languages at all stages of the criminal process were not always available. Indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases and were convicted without fully understanding the documents they were required to sign.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens have access to an independent judiciary in civil matters to seek civil remedies for human rights violations. For a plaintiff to secure damages against a defendant, the defendant first must be found guilty in a criminal case, a significant barrier given the relatively low number of convictions for civil rights offenses.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Although the law prohibits such practices and requires search warrants, there were some complaints of illegal searches or illegal destruction of private property.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights. Most newspapers, television, and radio stations were privately owned, and the government had minimal presence in the ownership of news media. Media monopolies, especially on a local level, posed a constraint on freedom of expression.

Violence and Harassment: Journalists were sometimes subject to physical attacks, harassment, and intimidation due to their reporting. Perpetrators of violence against journalists continued to act with impunity with few reports of successful investigation, arrest, or prosecution of suspects. Although organized crime was believed to be behind the majority of these cases, some NGOs believed there were instances when local government authorities participated in and condoned these acts.

According to international NGO Article 19, seven journalists were killed between January and September, compared with five in all of 2014. During the last decade, 370 journalists were killed, according to the Committee to Protect Journalists (CPJ), which noted that no indictments were issued in 90 percent of those cases.

During the first half of the year, Article 19 registered 227 cases of aggression against journalists, including assaults, intimidation, arbitrary detention, and threats; in 2014 there were 326 such cases.

On July 31, a photojournalist from Veracruz, Ruben Espinosa, and activist Nadia Vera Perez were killed in Mexico City, where they had sought refuge after being threatened for their work. Mexico City's attorney general, Rodolfo Rios Garza, led the investigation, which resulted in the arrests of a suspect on August 4 and a former police officer on August 30. After his arrest the former police officer alleged that a third person aligned with the Zetas, one of the country's powerful drug cartels, committed the killings. On September 13, authorities arrested a third suspect.

In May independent journalist Pedro Celestino Canche Herrera, who was imprisoned on charges of sabotage in the state of Quintana Roo in August 2014, was released after 271 days in prison. A local court declared him innocent of charges that he directed protesters to block access to the state water and sewage commission.

Censorship or Content Restrictions: Human rights groups reported state and local governments occasionally worked to censor the media and threaten journalists. Journalists reported altering their coverage in response to a lack of protection from the government, attacks against members of the media and media facilities, false charges for publishing undesirable news, and threats or retributions against family, among other reasons. There were reports of journalists practicing self-censorship because of threats from criminal groups and of government officials seeking to influence or pressure the press. According to Freedom House, as much as 80 percent of the funding for advertising came from state and federal governments.

Nongovernmental Impact: Organized criminal groups exercised a grave and increasing influence over media outlets and reporters, reportedly threatening individuals who published critical views of crime groups. During a period of intense fighting between rival criminal groups in northern Tamaulipas in February, gunmen kidnapped a newspaper editor in Matamoros after he published front-page stories covering the violence. They threatened to kill him if he continued to publish related stories. Also in February unknown assailants threw a grenade at the Matamoros offices of a national television station that had covered the recent violence, injuring two guards. There were no charges in either incident.

Actions to Expand Press Freedom: SEGOB worked to strengthen the national protection mechanism designed to protect human rights defenders and journalists. SEGOB's Human Rights Directorate increased personnel and improved training for the mechanism, resulting in more rapid review of cases. Separately, the Office of the Special Prosecutor for Crimes Against Freedom of Expression (FEADLE), part of the PGR, reported it had trained more than 500,000 public servants and more than 1,100 journalists on the importance of freedom of expression. A report released by NGOs in July, however, stated the mechanism suffered from a persistent lack of resources, personnel, and political support. During the year FEADLE did not prosecute any crimes committed against journalists.

Internet Freedom

The government did not restrict or disrupt access to the internet or block or filter online content. According to Freedom House, however, the government increased requests to social media companies to remove content. Some civil society organizations alleged that various state and federal agencies sought to monitor private online communications.

The International Telecommunication Union reported that 44 percent of citizens used the internet in 2014. Freedom House's 2015 *Freedom of the Net Report* categorized the country's internet as partly free.

While a 2013 constitutional amendment guarantees access to the internet as a civil right, NGOs alleged that provisions in secondary laws threatened the privacy of internet users by forcing telecommunication companies to retain data for two years, providing real-time geolocation data to the police, and allowing security agents to obtain metadata from private communications companies without a court order. Furthermore, the law does not fully define the "appropriate authority" to carry out such actions.

Concerns persisted regarding the use of physical and digital violence by organized criminal groups in retaliation for information posted online, which exposed journalists and bloggers to the same level of violence as that faced by traditional journalists. Access to the internet became more widely available due to legislation that diversified the telecommunications market.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The law provides for the freedoms of assembly and association, and the government generally respected these rights. There were some reports of security forces using excessive force against demonstrators.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to

internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

At the Iztapalapa detention center near Mexico City and other detention centers, including in Chiapas, men were kept separate from women and children, and there were special living quarters for LGBTI individuals. Migrants had access to medical, psychological, and dental services, and the installation had agreements with local hospitals for any urgent cases free of charge. The National Refugee Commission (COMAR) and CNDH visited daily, and the INM and Children and Family Services' officials took trafficking and other victims to designated shelters. Human rights pamphlets were available in many different languages. The CNDH reported that some police, immigration officers, and customs officials violated the rights of undocumented migrants and failed to provide for their safety.

In-country Movement: There were numerous instances of armed groups limiting the movements of migrants, including by kidnappings and homicides.

Internally Displaced Persons

In parts of the country, drug cartels emptied entire rural communities to take land and natural resources. During the previous year, 281,400 persons were internally displaced due to drug trafficking violence, according to the annual report of the Internal Displacement Monitoring Centre. NGOs estimated hundreds of thousands of citizens, many fleeing areas of armed conflict between organized criminal groups, or between the government and organized criminal groups, became internally displaced. Individuals from Tamaulipas, Baja California, Guerrero, Sinaloa, and Michoacan accounted for the majority of internally displaced persons (IDPs). The CNDH alleged the government allocated only minimal resources to assist IDPs.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. NGOs, however, alleged that the government failed to screen migrants properly for refugee status. Attempting to meet the need, COMAR increased asylum adjudication capacity by 60 percent.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections based on universal and equal suffrage, and citizens exercised that ability.

Elections and Political Participation

Recent Elections: Observers considered the July 2012 presidential election and the June 2015 legislative and gubernatorial elections free and fair. Due to constitutional reforms, the June elections were the first in which independent candidates could run. The country has rigorous requirements for independent candidates, including a minimum number of signatures required for candidacy, campaign finance restrictions, and limited use of media compared to candidates representing registered political parties. Nonetheless, in June the state of Nuevo Leon elected the country's first independent governor.

Participation of Women and Minorities: A 2014 constitutional reform requires equality between women and men in nominations to the Senate, the Chamber of Deputies, and state congresses. In the June legislative elections, 211 women were elected, up from 184 elected during the 2012 general elections.

There were no established quotas for increased participation of indigenous groups in the legislative body, and no reliable statistics were available regarding minority participation in government. The law provides for the right of indigenous people to elect representatives to local office according to "usages and customs" law rather than federal and state electoral law.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but the government did not enforce the law effectively. There were numerous reports of government corruption during the year. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials and security forces. More sophisticated and less apparent forms of corruption included overpaying for goods and services to provide payment to elected officials and political parties.

By law all new applicants for federal law enforcement jobs (and other sensitive positions) must pass a vetting process upon entry into service and every two years thereafter throughout their careers. According to SEGOB and the National Center of Certification and Accreditation, most active police officers at the national, state, and municipal level underwent at least initial vetting. Nevertheless, the CNDH continued to report police, particularly at the state and local level, were involved in kidnapping, extortion, and providing protection for, or acting directly on behalf of, organized crime and drug traffickers.

Corruption: Responsibility for investigating federal police criminal or administrative abuse falls under the purview of the PGR or the Office of Public Administration (SFP), depending on the type of offense. In 2012 the country adopted the Federal Law Against Corruption in Public Procurement, which prohibits companies and individuals from offering money or gifts to secure a business advantage in the procurement of public contracts with the government. Observers considered the agencies generally effective and adequately resourced, but there was broad public criticism that corruption was not investigated, prosecuted, and punished. In November the PGR Office of the Special Prosecutor for Electoral Crimes (Fepade) filed for the arrest of the

former Green Party president for distributing 10,000 discount club cards to voters in the June midterm elections. On November 25, he resigned from his position as the SEGOB undersecretary for prevention and citizen participation. The investigation continued at year's end.

Financial Disclosure: The law requires all federal and state-level appointed or elected officials from the middle to high ranks to provide income and asset disclosure. The SFP monitors disclosures with support from each agency. Disclosures are required at the beginning and end of employment, and yearly updates are also required. Declarations are not made publicly available unless the official provides consent. Criminal or administrative sanctions apply for abuses.

Public Access to Information: The government passed the General Law on Transparency in February, which grants free public access to government information at the state and federal levels. Authorities implemented the law effectively. The law includes exceptions to disclosure of government information, including for information that may compromise national security, affect the conduct of foreign relations, harm the country's financial stability, endanger another person's life, or for information relating to pending law enforcement investigations. The law also limits disclosure of personal information to third parties.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views, and the president or cabinet officials met with human rights organizations such as the UN High Commissioner for Human Rights, the UN Special Rapporteur for Torture, the IACHR, Amnesty International, and the CNDH.

Government Human Rights Bodies: The CNDH is an autonomous federal agency created by the government and funded by the legislature to monitor and act on human rights violations and abuses. It can call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but it cannot impose legal sanctions itself. Whenever the relevant authority accepts a CNDH recommendation, the CNDH is required to follow up with the authority to verify that it is carrying out the recommendation. The CNDH sends a request to the authority asking for evidence of its compliance and includes this follow-up information in its annual report. When authorities fail to accept a recommendation, the CNDH makes that known publicly and may exercise its power to call before the Senate government authorities who refuse to accept or enforce its recommendations.

All of the country's 31 states and the Federal District have their own human rights commission. The state-level commissions are funded by the legislatures and are instructed to be autonomous. The CNDH can take over

cases from state-level commissions if it receives a complaint the commission has not undertaken adequate investigation.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, or social status. While the government made some progress enforcing these provisions, significant problems, particularly violence against women, persisted.

Women

Rape and Domestic Violence: The federal law criminalizes rape, including spousal rape, and imposes penalties of up to 20 years' imprisonment. Twenty-three states and the Federal District have laws criminalizing spousal rape. Human rights organizations asserted authorities did not take seriously reports of rape, and victims continued to be socially stigmatized and ostracized.

The federal penal code prohibits domestic violence and stipulates penalties between six months' and four years' imprisonment. Twenty-eight states and the Federal District stipulate similar penalties, although actual sentences were often more lenient. Federal law does not criminalize spousal abuse. State and municipal laws addressing domestic violence largely failed to meet the required federal standards and often were unenforced, although states and municipalities, especially in the north, were beginning to prioritize training on domestic violence.

Victims of domestic violence in rural and indigenous communities often did not report abuses due to fear of spousal reprisal, stigma, and societal beliefs that abuse did not merit a complaint.

Femicide (the killing of a woman based on her gender) is a federal offense punishable by 40 to 60 years in prison; it is also an offense listed in the criminal codes of all 31 states and the Federal District. The Special Prosecutor's Office for Violence against Women and Trafficking in Persons of the PGR is responsible for leading government programs to combat domestic violence and prosecuting federal human trafficking cases involving three or fewer suspects. The office had 40 federal prosecutors dedicated to federal cases of violence against women, approximately 15 of whom specialized in trafficking countrywide.

In collaboration with civil society, the state of Mexico established the country's first "gender alert" system to collect information to support investigations of gender-based violence. At the national level, there were 72 shelters, of which 34 were operated by civil society organizations, four by private welfare institutions, and 34 by public institutions.

Sexual Harassment: Federal labor law prohibits sexual harassment and provides for fines from 250 to 5,000 times the minimum daily wage. Sexual harassment is criminalized in 15 of 31 states and the Federal District, and all states have provisions for punishment when the perpetrator is in a position of power. According to the

National Women's Institute (INMUJERES), the federal institution charged with directing national policy on equal opportunity for men and women, sexual harassment in the workplace was a significant problem, but victims were reluctant to come forward, and cases were difficult to prove.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have the information and means to do so, free from discrimination, coercion, or violence. Despite the existence of a national family-planning program, the lack of comprehensive sex education and access to contraceptives in public hospitals and rural areas continued to undermine the government's stated commitment to reproductive rights. Skilled attendants at delivery and in postpartum care were widely available except in some rural indigenous areas. The country's maternal mortality rate was 50 per 100,000 live births.

Discrimination: The law provides women the same legal status and rights as men and "equal pay for equal work performed in equal jobs, hours of work, and conditions of efficiency." According to INMUJERES, women continued to earn between 5 and 30 percent less than men for comparable work, whereas the World Economic Forum reported women earned 43 percent less than men for comparable work. Women were more likely to experience discrimination in wages, working hours, and benefits (see section 7.d).

Children

Birth Registration: Citizenship is derived both by birth within the country's territory and from one's parents. Citizens generally registered the births of newborns with local authorities. In some instances government officials visited private health institutions to facilitate the process. Failure to register births could result in the denial of public services, such as education or health care.

Child Abuse: There were numerous reports of child abuse. The government sought to increase comprehensive protection of children through passage of the General Law on the Rights of Children and Adolescents, adopted in December 2014. The law grants special attention to vulnerable children and adolescents, including migrant children, children with disabilities, and children living in poverty. The law includes provisions to eliminate all forms of violence and exploitation of children as well as provisions to strengthen their access to justice. In December the government created a National Program for the Integral Protection of Children and Adolescents, mandated by law, which is responsible for coordinating the protection of children's rights at all levels of government. The program includes the creation of a National System of Information on Children and Adolescents, designed to improve data on treatment of children.

Early and Forced Marriage: The legal minimum marriage age is 18. Enforcement, however, was inconsistent across the states, where some civil codes permit a minimum marital age of 14 for girls and 16 for boys with parental consent, and 18 without parental consent. With a judge's consent, children can be married at younger ages.

Sexual Exploitation of Children: The law prohibits the commercial sexual exploitation of children, and authorities generally enforced the law. Nonetheless, NGOs continued to report sexual exploitation of minors, as well as child sex tourism in resort towns and northern border areas.

Statutory rape constitutes a crime in the federal criminal code. If an adult who has sexual relations with a minor between ages 15 and 18, the penalty is between three months and four years in prison. An adult who has sexual relations with a minor under age 15 is liable to a penalty ranging from eight to 30 years in prison. Laws against corruption of a minor and child pornography apply to victims under age 18. For the crimes of selling, distributing, or promoting pornography to a minor, the law stipulates a prison term of six months to five years and a fine of 300 to 500 times the daily minimum wage. For crimes involving minors in acts of sexual exhibitionism or the production, facilitation, reproduction, distribution, sale, and purchase of child pornography, the law mandates seven to 12 years in prison and a fine of 800 to 2,500 times the daily minimum wage.

Perpetrators who promote, publicize, or facilitate sexual tourism involving minors face seven to 12 years' imprisonment and a fine of 800 to 2,000 times the daily minimum wage. For those involved in sexual tourism who commit a sexual act with a minor, the law requires a 12- to 16-year prison sentence and a fine of 2,000 to 3,000 times the daily minimum wage. The crime of sexual exploitation of a minor carries an eight- to 15-year prison sentence and a fine of 1,000 to 2,500 times the daily minimum wage. The crimes of child sex tourism and exploiting of children in prostitution do not require a complaint to prosecute and can be based on anonymous information.

Institutionalized Children: Civil society groups expressed concerns regarding violations of abuses of children with mental and physical disabilities in orphanages and care facilities (see section 6, Persons with Disabilities).

International Child Abductions: The country is party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at travel.state.gov/content/childabduction/en/legal/compliance.html and country-specific information at travel.state.gov/content/childabduction/en/country/mexico.html.

Anti-Semitism

According to the 2010 census, the Jewish community numbered approximately 67,000 persons, 90 percent of whom lived in Mexico City. There were no known reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, and the provision of other services. The government did not effectively enforce the law. The law requires the Ministry of Health to promote the creation of long-term institutions for persons with disabilities in distress, and the Ministry of Social Development must establish specialized institutions to care for, protect, and house persons with disabilities in poverty, neglect, or marginalization. NGOs reported programs for community integration had not been implemented. NGOs reported no changes in the mental health system to create community services nor any efforts by authorities to have independent experts monitor human rights violations in psychiatric institutions.

Public buildings and facilities continued to be in noncompliance with the law requiring access for persons with disabilities. The education system provided special education for students with disabilities nationwide. In general children with disabilities attended school at a lower rate than those without disabilities. NGOs reported employment discrimination (see section 7.d.).

Human rights abuses in mental health institutions and care facilities, including those for children, continued to be a problem. Abuses of persons with disabilities included lack of access to justice, the use of physical and chemical restraints, physical and sexual abuse, disappearances, and illegal adoption of institutionalized children. Institutionalized persons with disabilities often lacked adequate privacy and clothing and often ate, slept, and bathed in unhygienic conditions. They were vulnerable to abuse from staff members, other patients, or guests at facilities where there was inadequate supervision. Documentation supporting the person's identity and origin was lacking, and there were instances of disappearances.

In July the NGO Disability Rights International (DRI) reported on the privately run institution, Casa Esperanza. DRI alleged that residents, some of whom did not appear to have disabilities, were victims of pervasive sexual abuse by staff, and in some cases human trafficking, and were restrained using duct tape bandages or cages for extended periods of time. Eight residents were reported as permanently confined to their beds. Forty percent of women interviewed--all with psychosocial or psychiatric disabilities--had been surgically sterilized pursuant to an alleged standard practice to avoid pregnancy from sexual abuse. As of June most residents had been moved to other institutions, but no charges had been filed, and the director and staff continued at the facility with the remaining residents.

Persons with disabilities have the right to vote and participate in civic affairs. Voting centers for federal elections were generally accessible for persons with disabilities, and ballots were available with a braille overlay for federal elections. In Mexico City, voting centers were also reportedly accessible for local elections, and braille overlays were available, but in local elections elsewhere in the country, the availability of these services was inconsistent.

Indigenous People

Although the law recognizes indigenous rights, indigenous groups continued to report the country's legal framework did not respect the property rights of indigenous communities or prevent violations of human rights. Most conflicts arose from interpretation of the "habits and customs" laws used by indigenous communities. Habits and customs laws apply traditional practices to resolve disputes, choose local officials, and collect taxes with limited federal or state government involvement. Communities and NGOs representing indigenous groups continued to report the government often failed to consult indigenous communities adequately when making decisions about the development of projects intended to exploit the energy, minerals, timber, and other natural resources on indigenous lands. The CNDH maintained a formal human rights program to inform and assist members of indigenous communities.

The CNDH reported indigenous women were among the most vulnerable groups in society. They experienced racism, discrimination, and violence. Indigenous persons generally had limited access to health and education services. The CNDH stressed past government actions to improve the living conditions of indigenous people, namely social programs geared specifically to women, were insufficient to overcome the historical marginalization of indigenous populations.

On July 22, Colima state police arrested 33 Nahua indigenous people from the Jalisco municipality of Ayotitlan and their lawyer, Eduardo Mosqueda, under charges of kidnapping, robbery, and plundering. The arrest occurred while they protested at the Pena Colorada Mine--located on the Colima-Jalisco border--to demand the payment of royalties, in accordance with a 2013 injunction granted by a federal judge, for iron ore mined on their land. Following the intervention of the Jalisco governor, authorities reduced charges against the 33 Nahua people to plundering and released them under bail. Attorney Mosqueda, also a human rights defender with the NGO Institute for Environmental Law, remained in prison without the option of bail, awaiting trial on robbery and kidnapping charges.

The law provides for educational instruction in the national language, Spanish, without prejudice to the protection and promotion of indigenous languages, but many indigenous children spoke only their native languages. The lack of textbooks and teaching materials, as well as the lack of qualified teachers fluent in these languages limited education in indigenous languages.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law prohibits discrimination against LGBTI individuals, but there were reports that the government did not always investigate and punish those complicit in abuses, especially outside the Federal District.

Transgender persons may change their gender marker on identity documents only in Mexico City. The law

prohibits discrimination based on sexual orientation, but only in Mexico City does the law also prohibit discrimination based on gender identity. Discrimination based on sexual orientation and gender identity was prevalent, despite a gradual public acceptance of LGBTI individuals.

In Mexico City the law criminalizes hate crimes based on sexual orientation and gender identity. Civil society groups claimed police routinely subjected LGBTI persons to mistreatment while in custody. Civil society groups reported the full extent of hate crimes, including killings of LGBTI persons, was difficult to ascertain because these crimes were often mischaracterized as “crimes of passion,” which resulted in the authorities’ failure to adequately investigate, prosecute, or punish these incidents. In a public event on November 23, attended by 17 city mayors from other countries, Mexico City Mayor Miguel Angel Mancera declared the Federal District an LGBTI-friendly city and announced a series of events and festivities during the week to familiarize the population with issues affecting LGBTI individuals.

The National Council to Prevent Discrimination (CONAPRED) in Mexico City is the city government agency with the authority to resolve complaints of discrimination that occur within the Federal District. The national level CONAPRED received complaints of discriminatory acts in areas of employment, access to commercial establishments, and access to education and healthcare. Civil society groups reported difficulty in determining whether individual complaints were ever resolved.

Other Societal Violence or Discrimination

There continued to be reports criminal groups kidnapped undocumented migrants to extort money from migrants’ relatives or force them into committing criminal acts on their behalf.

Self-defense groups--organized groups of armed civilians that claimed to fight crime in the face of inaction by governmental authorities--were concentrated in the southwestern states of Michoacan and Guerrero. The federal government required self-defense groups based in Michoacan to register with the country’s official rural defense force in 2014, but many members of self-defense groups did not join the force by the May deadline.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join unions, to bargain collectively, and to strike in both the public and private sectors; however, conflicting law, regulations, and practice restricted these rights.

The law requires a minimum of 20 workers to form a union. To receive official recognition from the government, unions must file for registration with the appropriate conciliation and arbitration board or the

Secretariat of Labor and Social Security (STPS). In order for the union to be able to perform its legally determined functions, its leadership must also register with the appropriate conciliation and arbitration board or STPS. Conciliation and arbitration boards operated under a tripartite system with government, worker, and employer representatives. Outside observers raised concerns that the boards did not adequately provide for inclusive worker representation and often perpetuated a bias against independent unions, in part due to intrinsic conflicts of interest within structure of the boards exacerbated by the prevalence of representatives from “protection” (unrepresentative, corporatist) unions.

Under the law a union may call for a strike or bargain collectively in accordance with its own bylaws. Before a strike may be considered legal, however, a union must file a “notice to strike” with the appropriate conciliation and arbitration board, which may find that the strike is “nonexistent,” or in other words, cannot proceed legally. The law prohibits employers from intervening in union affairs or interfering with union activities, including through implicit or explicit reprisals against workers. The law allows for reinstatement of workers if the conciliation and arbitration board finds the worker was unfairly fired and the worker requests reinstatement; however, the law also provides for broad exemptions for employers from such reinstatement, including employees of confidence or workers who have been in the job for less than a year.

Although the law authorizes the coexistence of several unions in one worksite, it limits collective bargaining to the union that has “ownership” of a collective bargaining agreement. When there is only one union present, it automatically has the exclusive right to bargain with the employer. Once a collective bargaining agreement is in place at a company, another union seeking to bargain with the employer must compete for bargaining rights through a lengthy representation election process (“recuento”) administered by the conciliation and arbitration boards. The union with the largest number of votes goes on to “win” the collective bargaining rights. It is not mandatory for a union to consult with workers or have worker support to sign a collective bargaining agreement with an employer. The law establishes that internal union leadership votes may be held via secret ballot, either directly or indirectly.

The government, including the conciliation and arbitration boards, did not consistently protect worker rights. The government’s common failure to enforce labor and other laws left workers with little recourse regarding violations of freedom of association, poor working conditions, and other labor problems. The conciliation and arbitration boards’ frequent failure to impartially and transparently administer and oversee procedures related to union activity, such as union elections and strikes, undermined worker efforts to exercise freely their rights to freedom of association and collective bargaining. A report commissioned by the President’s Office, produced by CIDE and released in April, found no guarantees of impartial and efficient labor justice from the boards and recommended the eventual incorporation of the conciliation and arbitration boards into the judicial branch.

By law penalties for violations of freedom of association and collective bargaining laws range from 16,160 pesos (\$960) to 161,600 pesos (\$9,640). Such penalties were rarely enforced and were insufficient to deter violations. Administrative and/or judicial procedures were subject to lengthy delays and appeals. To reduce backlogs and time to issue a ruling from a year to 90 days, some states began implementing oral trials at their labor boards. The government announced in July 2014 it would create 66 oral trial courts. As of March there were 19 courts located in four states. In the state of Mexico, the new process reduced the number of pending actions from 35,000 to 27,000.

Workers exercised their rights to freedom of association and collective bargaining with difficulty. The process for registration of unions was politicized, and the government, including the conciliation and arbitration boards, occasionally used the process to reward political allies or punish political opponents. According to union organizers, the government, including the conciliation and arbitration boards, frequently rejected registration applications for new locals of independent unions and for new unions on technicalities.

Companies and protection unions used complex divisions and a lack of coordination between federal and state jurisdictions to manipulate the labor conciliation and arbitration processes. For example, a company might register a collective bargaining agreement at both the federal and the local level, and later alternate the jurisdictions when complaints were filed and appealed to gain favorable outcomes. In addition, union organizers from several sectors raised concerns about the overt and usually hostile involvement of the conciliation and arbitration boards when organizers attempted to create independent unions.

Protection (unrepresentative, corporatist) unions and “protection contracts,” collective bargaining agreements signed by employers and these unions to prevent meaningful negotiations and ensure labor peace, continued to be a problem in all sectors. The combination of exclusivity in bargaining and the lack of a requirement that workers demonstrate support for a collective bargaining agreement or the union that negotiated it before the agreement could take effect facilitated the existence of these contracts. Protection contracts often were developed before the company hired any workers and without direct input from or knowledge of the covered workers. For example, in August a leader of the Confederacion de Trabajadores de Mexico (CTM)--a known protection union--claimed that he was negotiating a collective bargaining agreement to cover workers at a tire factory in San Luis Potosi that was not set to begin production until 2017.

Many observers noted working conditions of a majority of workers were under the control of these contracts and the unrepresentative unions that negotiated them, and that the protection unions and contracts often prevented workers from fully exercising their labor rights as defined by law. Independent unions, a few multinational corporations, and some labor lawyers and academics called on the government to institute legal reforms that would prohibit registration of collective bargaining agreements where the union cannot demonstrate support by a majority of workers or where workers had not ratified the content of the agreements.

These same groups advocated for workers to receive hard copies of existing collective bargaining agreements when they are hired.

According to several NGOs and unions, many workers continued to face procedural obstacles and various forms of intimidation (including physical violence) from protection union leaders, or employers supporting a protection union, in the lead-up to, during, and after bargaining-rights elections from other workers, union leaders, violent individuals hired by a company, or employers favoring a particular union. Some employers attempted to influence bargaining-rights elections through the illegal hiring of pseudo employees immediately prior to the election to vote for the company-controlled union.

In March thugs with insignia on their helmets from the CTM--the largest confederation of labor unions--threatened and physically attacked a Coahuila labor leader who had stated his desire to join the independent union Los Mineros in early 2011. The companies had already signed collective agreements with the CTM without the knowledge of or ratification by the workers. Although a majority of workers in each plant signed affiliation cards with Los Mineros, the Coahuila labor board refused to set a date for a collective bargaining rights election or provide copies of the existing collective bargaining agreements between the companies and the CTM. As of November no election date had been announced.

Union elections were often delayed for many years, which resulted in serious irregularities. For example, in November an independent union in the automobile industry in Jalisco was narrowly defeated in a hard-fought election characterized by irregularities. More than five years after the company dismissed 12 union leaders for forming an independent union, 2,500 workers were finally able to choose between the independent union and the CTM's union. In the days leading up to the recuento process, the election board failed to provide a reliable list of voters and called the election with only a few days' notice. A team of international observers was denied access to the polling and to workers. Workers reported that the list of voters included ineligible names, such as deceased workers, management based in Japan, and security personnel.

Other intimidating and manipulative practices continued to be common, including dismissing workers for labor activism. For example, during the year every worker who was involved with a September 2014 informal work stoppage at a factory in Torreon over alleged wage theft was fired. Workers fired for labor activism often had difficulties being reinstated. In April, for example, authorities concluded that four of 122 workers who were fired in 2012 after trying to dislodge a protection union at an auto parts assembly plant in Coahuila should be reinstated. As of November none had been reinstated.

Independent labor activists reported the requirement that the conciliation and arbitration boards approve strikes in advance gave the boards the power to show favoritism by determining which companies to protect from strikes. Few formal strikes occurred, but protests and informal work freezes were common. For example, local farmworkers in San Quintin, Baja California, began a "wildcat" or unofficial strike on March 17, reportedly against the wishes of the protection unions that officially represented the farmworkers with farm owners.

Workers engaged in work stoppages and demonstrations to demand improved working and living conditions during the year. They also demanded that the government begin labor inspections, enroll workers into the national social security, build clinics, and ensure access to decent education for their children.

Farmworker labor activists and owners in San Quintin reached an agreement on June 4 with the help of government representatives to end three months of strikes and protests, which had included sporadic violence. The agreement called for the full enforcement of labor law in the area, a three-tier increase of the minimum wage for workers, and increased government services and oversight. As of November, however, labor activists reported that farm owners and the government had not kept to the terms of the agreement and that farm owners systematically fired or imposed other forms of reprisal against farmworkers involved in the protests and strike action, such as increased workloads or mistreatment on the part of overseers and managers. The companies fired the worker leaders and those identified to have participated in work stoppages and demonstrations. Those leaders and participants were blacklisted and excluded from new seasonal work. On November 7, a total of 23 representatives of the San Quintin agricultural workers (the Alianza de Organizaciones Nacional, Estatal y Municipal por la Justicia Social), together with five representatives of workers from the Xochimilco area (located within the Federal District), obtained official recognition as a national union granted by the Federal District's local conciliation and arbitration board.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, but the government did not effectively enforce the law. Penalties for forced labor violations range from five to 30 years' imprisonment and generally were considered sufficient to deter violations.

Forced labor persisted in the agricultural and industrial sectors, as well as in the informal sector. Women and children were subject to domestic servitude. Women and migrants (including men, women, and children) were the most vulnerable to forced labor.

A December 2014 series of newspaper article exposed child labor, gender-based violence, discrimination against indigenous workers, debt bondage, illegal withholding of workers' wages in escrow to prevent workers from leaving their jobs, unsafe living arrangements for workers and their families, day labor on poverty wages, exclusion from social benefits, and toxic exposure to pesticides in Baja California Sur's agroexport fields.

Workers in these agroexport fields engaged in work stoppages and demonstrations to demand improved working and living conditions during the year. Although farmworkers, owners, and the government reached an agreement on June 4--which called for the full enforcement of labor law in the area, an increase of the minimum wage, and increased government services and oversight--labor activists reported that as of November farm owners and the government had not kept to the terms of the agreement (also see section 7.a.). Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The constitution prohibits children under age 15 from working and allows those between ages 15 and 17 to work no more than six daytime hours in nonhazardous conditions, and only with parental permission. The law requires that children under 18 must have a medical certificate in order to work. In June the government passed legislation establishing 18 as the minimum age for hazardous work. The law prohibits minors from working in a broad list of hazardous and unhealthy occupations.

The government was reasonably effective in enforcing child labor laws in large and medium-sized companies, especially factories run by some foreign-owned companies, the “maquila” (manufacturing for export) sector, and other industries under federal jurisdiction. Enforcement was inadequate in many small companies and in the agriculture and construction sectors, and nearly absent in the informal sector, in which most child laborers worked.

With regard to inspections at the federal level, the Secretariat for Social Development, the PGR, and National System for Integral Family Development have responsibility for enforcement of some aspects of child labor laws or intervention in cases where such laws are violated. The STPS is responsible for carrying out child labor inspections. Penalties for violations range from 16,780 pesos (\$1,000) to 335,850 pesos (\$20,000) but were not sufficiently enforced to deter violations.

In August the Coahuila state government rescued 78 child laborers, some as young as eight, from a farm near Ramos Arizpe. The state indicted four defendants under labor trafficking charges in the case, which also involved 228 adult victims. The victims reportedly worked at least nine hours daily, received insufficient food, and were forced to live in unhygienic conditions.

According to the 2013 INEGI survey, the most recent data available on child labor, the number of employed children between ages five and 17 remained at 2.5 million, or approximately 8.6 percent of the 29.3 million children in the country. Of these children, 746,000 were between ages five and 13, and 1.8 million were between ages 14 and 17. Of employed children, 30 percent worked in the agricultural sector in the harvest of melons, onions, cucumbers, eggplants, chili peppers, green beans, sugarcane, tobacco, and tomatoes. Other sectors with significant child labor included services (25 percent), retail sales (26 percent), manufacturing (13 percent), and construction (4 percent).

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination with respect to employment or occupation regarding “race, nationality age, religion, sex, political opinion, social status, handicap (or challenged capacity), economic status, health, pregnancy, language, sexual preference, or marital status.” The law provides for labor protection for pregnant women.

The government did not effectively enforce these laws and regulations. Penalties for violations of the law included administrative remedies, such as reinstatement, payment of back wages, and fines (often calculated based on the employee's wages), and were not generally considered sufficient to deter violations. Discrimination in employment or occupation occurred against women, indigenous groups, persons with disabilities, LGBTI individuals, and migrant workers.

INMUJERES reported 14 percent of women age 15 and older had been required to take a pre-employment pregnancy test to obtain employment, despite labor laws that prohibit employers from requiring such tests. Women earned approximately 65 percent of their male counterparts. Their access to professional opportunities was often blocked by social structures and expectations, and many faced gender-based violence at work. The National Commission to Prevent and Eradicate Violence against Women reported in 2014 that 45 percent of women working in the maquila industry suffered some type of abuse, most commonly a hostile work environment, sexual harassment, long work hours, low wages, and dismissal for pregnancy.

e. Acceptable Conditions of Work

On September 24, the National Commission on Minimum Wages announced a single general minimum wage of 70.10 pesos (\$4.24) a day to be effective as of October 1. Most formal sector workers received between one and three times the minimum wage. The National Council for Evaluation of Social Development Policy estimated the poverty line at 83.70 pesos (\$5.07) per day for the year. The tripartite commission, whose labor representatives largely represented protection unions and their interests, is responsible for establishing minimum salaries and continued to block increases that kept pace with inflation.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Any work more than eight hours in a day is considered overtime, for which a worker receives double the hourly wage. After accumulating nine hours of overtime in a week, a worker earns triple the hourly wage. The law prohibits compulsory overtime. The law includes eight paid public holidays and one week of paid annual leave after completing one year of work. The law requires employers to observe occupational safety and health regulations, issued jointly by the STPS and the Institute for Social Security. Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials. By law workers may remove themselves from situations that endanger health or safety without jeopardy to their employment.

The STPS is responsible for enforcing labor laws and conducting inspections at workplaces. As of November the number of inspectors nationwide was 946. This was sufficient to enforce compliance, and the STPS carried out inspections of workplaces throughout the year, using a questionnaire and other actions to identify victims of labor exploitation. Penalties for violations of wage, hours of work, or occupational safety and health laws range from 17,330 pesos (\$1,030) to 335,940 pesos (\$20,020) but were generally not sufficient to deter

violations. Through its DECLARALAB self-evaluation tool, by October STPS had provided technical assistance to 1,073 registered workplaces to help them meet labor regulations.

According to labor rights NGOs, employers in all sectors sometimes used the illegal “hours bank” approach--requiring long hours when the workload is heavy and cutting hours when it is light--to avoid compensating workers for overtime. This continued to be a common practice in the maquila sector, in which employers forced workers to take leave at low moments in the production cycle and oblige them to work, for example, over the Christmas holiday period, with no corresponding triple pay as mandated by law when workers opt for voluntary overtime on national holidays. In addition many companies evaded taxes and social security payments by employing workers informally, or by submitting falsified payroll records to the Mexican Social Security Institute (IMSS). In 2013, the latest year for which such data are available, INEGI estimated 59 percent of the workforce was engaged in the informal economy.

Private recruitment agencies and individual recruiters violated the rights of large numbers of temporary migrant workers recruited in the country to work abroad, primarily in the United States. Although the law requires these agencies to be registered, they were often unregistered. The STPS registry was out of date and limited in scope. Although a few large recruitments firms were registered, the registry included many defunct and nonexistent mid-sized firms, and few if any of the many small, independent recruiters. Even though the government did not actively monitor or control the recruitment process, it reportedly was responsive in addressing complaints. There were also reports that registered agencies defrauded workers with impunity. Temporary migrant workers were regularly charged illegal recruitment fees. The recruitment agents placed those who demanded their rights on blacklists and barred them from future employment opportunities. During the year the NGO Proyecto de Derechos Economicos, Sociales, y Culturales, or ProDESC, filed a collective criminal complaint with the government for recruitment fraud to demand an inspection of a recruitment agency. The government inspection resulted in a fine of 57,750 pesos (\$3,500) being levied against the recruiter.

There were several complaints of poor working conditions in maquiladoras. Low wages, poor labor relations, long work hours, unjustified dismissals, the lack of social security benefits, unsafe workplaces, and the lack of freedom of association were among the most common complaints. Many women working in the industry suffered some form of abuse (see section 7.d.). Most maquilas hired employees through outsourcing with few social benefits.

Permalink: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=253027>



United States Department of State

Bureau of Democracy, Human Rights and Labor

2012 Country Reports on Human Rights Practices – Mexico

19 April 2013

EXECUTIVE SUMMARY

Mexico is a multiparty federal republic with an elected president and bicameral legislature. On July 1, citizens elected President Enrique Peña Nieto of the Institutional Revolutionary Party (PRI) to a six-year term in generally free and fair multiparty elections; Peña Nieto took office on December 1. Security forces reported to civilian authorities; however, there were instances in which elements of the security forces acted independently of civilian control.

Significant human rights-related problems included police and military involvement in serious abuses, including unlawful killings, physical abuse, torture, and disappearances. Widespread impunity and corruption remained serious problems, particularly at the state level, in the security forces, and in the judicial sector. Violence attributed to transnational and local criminal organizations, violence against women, and violence against journalists that limited freedom of expression persisted.

The following problems were reported during the year by the country's National Human Rights Commission (CNDH) and other sources: kidnappings; physical abuse; harsh, overcrowded prison conditions; arbitrary arrest and detention; and confessions coerced through torture. Additionally, there were reports of threats and violence against human rights defenders; kidnapping, robbery and abuse of migrants; domestic violence; trafficking in persons; abuse of lesbian, gay, bisexual, and transgender persons and people with disabilities; social and economic discrimination against some members of the indigenous population; and exploitation of child labor.

Despite some arrests for corruption, widespread impunity for human rights abuses by officials remained a problem in both civilian and military jurisdictions.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

Security forces, acting both in and out of the line of duty, arbitrarily or unlawfully killed several persons during the year, often with impunity. During the year the CNDH received 45 complaints regarding arbitrary or unlawful killings and issued 14 recommendations to authorities (based on certifications that a case involved a serious human rights violation and merited further investigation or sanction). For example, security forces allegedly killed Bulmaro Granados Sanchez, Josue Olea Lopez, Jose Carlos Atrixco Isidra, Ever Daniel Granados Garcia, Jorge Granados Avila, and Joaquin Granados Vargas on September 1. According to the families of the victims, the six men were attending a birthday celebration when Secretariat of National Defense (SEDENA) officers of the 19th Infantry Battalion entered the home in Guerrero, detained the men, and took them to Guayabo ranch where the men were beaten and killed. According to SEDENA, the men died in a confrontational shootout. However, the lawyer representing the families told media that a forensic report by the Guerrero attorney general's office demonstrated that the deceased did not fire any guns. The state and federal attorneys general offices, the Military Prosecutor's Office, and the CNDH were investigating the case at year's end.

On August 16, the CNDH issued a recommendation to the Secretariat of Public Security (SSP) and SEDENA to pay damages and called on authorities to prosecute all alleged perpetrators for the arbitrary detention, torture, forced disappearance, and execution of Jethro Ramsses Sanchez. Sanchez, an engineering student, was allegedly detained

and beaten in May 2011 in Cuernavaca, Morelos, by municipal police officers under the command of Manrique Gonzalez Acosta. Gonzalez Acosta came under investigation for denying his participation in Sanchez's detention before judicial authorities. The municipal police later turned Sanchez over to federal police, presenting him as a transnational criminal organization (TCO) member. Federal Police transferred Sanchez to the military which took him to one of SEDENA's military facilities (24th Military Zone), where he was allegedly tortured and died as a result of the abuse. Although General Leopoldo Diaz Perez, commander of the 24th Military Zone, denied that the detention ever took place, the Military Prosecutor's Office investigation concluded that military forces tortured Sanchez, and he died on the same day. His body was clandestinely buried in Puebla. In July 2011 three military members were detained. Lieutenant Jose Guadalupe Orizaga y Guerra and Second Lieutenant Edwin Raziel Aguilar Guerrero were charged with the disappearance and torture of Sanchez, while Colonel Jose Guadalupe Arias Agredano faced charges of ordering his subordinates to cover up the crime. Although his case was initially before a military tribunal, on August 9, the Supreme Court determined that Colonel Arias Agredano must be tried in a federal civilian court in Morelos. As of the end of the year, there had been no prosecutions in the case. The SSP continued to reject the CNDH recommendation, and although SEDENA accepted the recommendation, nongovernmental organizations (NGOs) criticized the military for failing to comply with its terms thus far. On November 29, the CNDH invoked its new constitutional authority to have the Senate call Genaro Garcia Luna, then head of the SSP, before the Senate to explain why the SSP had not accepted three CNDH recommendations, including in Sanchez' case, to which Garcia Luna responded that federal police were not involved in the incidents that motivated the complaint.

The CNDH continued to investigate the June 2011 death of Joaquin Figueroa Vasquez, who was reportedly killed in a high-speed chase by state and federal security forces. According to the human rights NGO Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH), Figueroa's daughter was harassed and threatened by individuals dressed as police and other unidentified individuals in retaliation for her filing formal complaints in connection with her father's death, which prompted her to flee Veracruz in September.

During the year unidentified perpetrators killed sitting mayor Marisol Mora Cuevas in Veracruz and mayor-elect Edgar Morales Perez in San Luis Potosi. This was a decrease in alleged politically motivated killings of mayors from 2010 and 2011, when 20 sitting mayors were killed.

Impunity continued in the 2011 killings of Pedro Leyva Dominguez and Trinidad de la Cruz Crisostomo, activists from the Movement for Peace and Justice with Dignity (MPJD). On November 1, SEDENA announced that it, along with the Attorney General's Office (PGR), had detained Jesus Alfredo Salazar Ramirez for the November 2011 killing of MPJD activist Nepomuceno Moreno.

b. Disappearance

There were multiple reports of forced disappearances by the army, navy, and police. Most occurred in the course of sanctioned security operations. The CNDH received 52 complaints (down from 153 in 2011) and issued five recommendations to authorities in cases involving forced disappearance during the year. In several cases, security forces had detained persons incommunicado for several days. Since 2001 the Federal Criminal Code has classified forced disappearance as a crime. However, forced disappearances do not constitute a crime in several local penal codes. The Federal Criminal Code and the legislation of the 16 federal entities, which have classified forced disappearance as a crime, do not use the same definition, and penalties vary according to the jurisdiction. Sixteen states do not classify forced disappearances as a crime. On December 10, President Pena Nieto announced an initiative to reform the definition of forced disappearances in the federal code to meet international human rights standards.

The CNDH reported that there were at least 7,000 unidentified bodies of persons killed in the last six years in morgues and common graves, while a PGR-compiled list of more than 25,000 people who had disappeared since December 2006 was leaked to the *Washington Post* in November. Human rights organizations continued to call on the government to set up the national database of disappeared persons, which would include genetic and other information to identify the missing persons. On April 17, the government published a law for the National Registry of Missing or Disappeared Persons, with the purpose of creating a database of information for the National Public Security System to standardize and centralize information concerning missing and disappeared persons. However, by the year-end, the government had not yet published the regulations to ensure the database was operable or clearly delegated a government agency to host the database.

An August 30 press release by Amnesty International (AI) and the CMDPDH reported that the government's security approach has led to a drastic increase in the number of forced disappearances, noting that the complaints sent to the CNDH for forced disappearances went from four in 2006 to 153 in 2011. AI and the CMDPDH reported that from 2006 through August 2012, the CNDH received 390 complaints of forced disappearances, with 71 percent of those disappearances reported between 2010 and 2011.

On August 21, the CNDH found that the Secretariat of the Navy (SEMAR) was responsible for the June 2011 disappearances of six civilians in Nuevo Laredo, Tamaulipas. The CNDH reported that in June 2011 SEMAR detained the individuals in their homes, places of work and at other commercial establishments and then transported them in SEMAR vehicles to an unknown destination, without a court order or judicial proceedings. The six victims remained disappeared at the end of the year. Although the PGR and Military Attorneys General's office opened investigations, no one was held responsible for the disappearances.

The trial of Ciudad Juarez municipal police officers Eugenio de los Santos Decuesta, Francisco Javier Campoy Dominguez, and Leonardo Ivan Loya Hernandez, charged with the forced disappearance and killing of four men in March 2011, remained pending.

Kidnapping remained a serious and underreported problem for persons of all socioeconomic levels, and there were credible reports of police involvement in kidnappings for ransom, primarily at the state and local level. There continued to be reports of kidnapping of undocumented migrants by criminal groups to extort money from migrants' relatives or force them into committing criminal acts on their behalf.

On August 5, Mayor Nadin Torralba Mejia in Guerrero was kidnapped and remained missing at year's end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other cruel, inhuman, or degrading treatment and stipulates that confessions obtained through illicit means such as torture are not admissible as evidence in court. Similarly inadmissible is any confession made directly to police. To be admissible a confession must be formally recorded before a prosecutor or judge with the acknowledgement that it is being made voluntarily and after examination by a doctor confirming that the person has not been subjected to physical abuse.

In the state of Guerrero, the definition of torture is contained in the law creating the state's human rights commission rather than in the criminal code. Human rights NGOs reported that this anomaly resulted in inadequate investigation of and punishment for torture in the state.

During the year the CNDH received 1,642 complaints of cruel or degrading treatment and 20 torture complaints, compared with 1,626 complaints of cruel or degrading treatment and 42 torture complaints in 2011. The CNDH issued 22 recommendations in cases of cruel and degrading treatment and 11 recommendations in cases of torture during the year.

There were frequent reports of citizens and foreign nationals beaten, suffocated, tortured with electric shocks, raped, and threatened with death in the custody of arresting authorities. Foreign citizens filed numerous complaints before state-level human rights commissions for egregious mistreatment at the hands of arresting authorities or while in prison.

In one case, on January 17, a prisoner reported that customs agents used the sides of their hands to hit his throat, neck, back, and stomach for approximately 30 minutes. He stated that soldiers then took him to their headquarters, where they covered his eyes and placed a blanket on his head. He said they hit him on the head and knees with a hammer, hit his face, suffocated him with a plastic bag several times, and administered electric shocks to the inside of his legs.

In its November 2011 report, Human Rights Watch (HRW) reported more than 170 cases of torture committed by security forces in the states of Baja California, Chihuahua, Guerrero, Nuevo Leon, and Tabasco since the beginning of the government's fight against TCOs in 2006. The report noted that the most common forms of torture included "beatings, asphyxiation with plastic bags, waterboarding, electric shocks, sexual torture, and death threats." In response to the report, former president Calderon pledged to investigate all cases documented in the report and created a joint commission with HRW to follow progress. In December HRW reported that despite several meetings with the commission in 2011 and 2012, the government failed to demonstrate any meaningful progress in the investigation and prosecution of the cases documented in the report.

In August 2011 the CNDH issued a recommendation concluding that Israel Arzate Melendez did not receive a fair process when he was denied the opportunity to present evidence that his confession was the result of torture in 2010. On February 29, the UN Human Rights Commission, through its Working Group on Arbitrary Detention, called on the government to release Arzate immediately. On September 26, according to the NGO Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), the Chihuahua prosecutor's office transferred Arzate from prison to his home, where he remained under house arrest pending trial as of year's end. In October the Supreme Court assumed jurisdiction over the two amparos (challenges) filed by Arzate against the criminal charges against him.

In June the CNDH issued a recommendation against SEDENA for the torture and killing of Josue Manuel Esqueda Nieto who died from injuries he received during an interrogation carried out by military personnel in December 2011 in Nuevo Laredo, Tamaulipas.

On October 27, four Juarez police officers were arrested and charged with torture, aggravated rape, and misuse of authority related to the abuse of two men in their custody. Prosecutors alleged that one of the officers shot and wounded a man in his ankle and calf. Another victim claimed that the Juarez police officers raped and sexually abused him and his alleged accomplice while they were in custody.

The government took some steps to implement preventive measures against the practice of torture, including applying, at the federal level, the Istanbul Protocol, which contains guidance on investigating and documenting torture and other abuses. The PGR reported that from January 2011 through August 2012, it had applied the Istanbul Protocol at the national level in 96 cases, of which 11 resulted in a finding of torture, 28 resulted in a finding of mistreatment (*malos tratos*), and 57 resulted in a negative finding of torture. According to the PGR, 17 of the country's 32 federal entities had passed regulations to implement the protocol and established offices to evaluate allegations. In its testimony before the UN Committee Against Torture (UNCAT) on October 31, the government reported that a total of 74 public servants have been prosecuted for incidents of torture between 2005 and 2012, but just six had been convicted.

The PGR reported it had provided training on human rights and torture to its local, state, and federal staff.

Instances of cruel, inhuman, and degrading treatment reportedly occurred in public mental health institutions (see section 6, Persons with Disabilities).

Prison and Detention Center Conditions

Treatment and physical conditions in prisons and detention centers were harsh and life threatening. During the year the CNDH and NGOs continued to report that corruption, overcrowding, prisoner abuse, alcohol and drug addiction, and loss of security and control were prevalent in most facilities.

Physical Conditions: According to the SSP, as of July there were 238,269 prisoners in 419 facilities, which was approximately 25.8 percent above capacity. Approximately 227,000 (95.3 percent) of those inmates were men and 11,000 (4.7 percent) were women. The official number of juvenile inmates was unknown on a national level given the decentralized recordkeeping for juvenile inmates. In Mexico City, the General Directorate on Juvenile Treatment reported that 604 male juveniles were incarcerated in four facilities in the city and that 31 female juvenile inmates were incarcerated in one facility. In its Strategic Plan for 2008-12, the SSP described the penitentiary system as "one of the most underdeveloped and abandoned components of public security."

Health and sanitary conditions were poor, and most prisons did not offer psychiatric care. Prisons were often staffed with poorly trained, underpaid, and corrupt guards, and authorities occasionally placed prisoners in solitary confinement indefinitely. Prisoners often had to bribe guards to acquire food, medicine, and other necessities. Prison overcrowding continued to threaten health and life, particularly in the state of Baja California where the state sought to address its high incarceration rate (nearly three times the national average) through a combination of increasing facility capacity, early parole, and transfer of federal prisoners to facilities elsewhere.

As of November the SSP reported that 121 inmates had been killed in prisons, up from 71 in 2011. The SSP attributed 101 of the 121 deaths to prison fights, which highlighted the lack of security and control in many prisons.

The CNDH noted a lack of access to adequate healthcare was a significant problem at all facilities. Prisoners generally had access to potable water.

In September the CNDH reported that organized crime controlled 60 percent of prisons; it described the escape of 521 inmates in 14 incidents since 2010, sometimes with the help of corrupt prison officials, as a serious problem. The CNDH singled out prisons in the Federal District, Mexico State, Tamaulipas, Nuevo Leon, Quintana Roo, Oaxaca, Guerrero, Tabasco, and Nayarit for the worst prison conditions.

Several large scale riots and prison escapes occurred during the year. In January a total of 31 prisoners died in a prison riot in Altamira, Tamaulipas. On February 19, a prison riot in Apodaca, Monterrey left 44 dead and allowed 30 inmates to escape. On September 17, approximately 130 inmates escaped a prison at Piedras Negras. On December 18, a total of 15 prisoners and nine correctional officers died in a prison riot in Durango. Prison guards and officials were arrested or dismissed in several of the incidents for aiding in the escapes. In some cases prisons were at 180 percent of capacity.

Pretrial detainees were held together with convicted criminals. The CNDH continued to report that conditions for female prisoners were inferior to those for men, particularly for women who lived with their children in prison, due to a lack of appropriate living facilities and specialized medical care. There were reports that women who lived with their children in prison did not receive extra food or assistance. There continued to be reports of physical and sexual abuse of women while in detention.

Administration: There were improvements in recordkeeping in the federal prison system, largely due to a transition from a paper file system to electronic recordkeeping. However, at some state prisons, recordkeeping was inadequate.

The CNDH has an ombudsman dedicated to prison issues, but the office does not provide legal representation for prisoners. The CNDH received 1,311 complaints of human rights violations against prisoners.

Prisoners and detainees generally had reasonable access to visitors and could observe religious practices. While prisoners and detainees could lodge complaints about human rights violations, access to justice was inconsistent, and the results of investigations were generally not made public.

Monitoring: The government permitted independent monitoring of prison conditions by the International Committee of the Red Cross, the CNDH, and state human rights commissions. The CNDH made 745 visits to civilian and military prisons and 527 visits to detention centers nationwide during the year to monitor conditions.

Independent monitors are generally limited to making recommendations to authorities to improve prison conditions. The federal system made some improvements based on these recommendations.

Improvements: In October the government inaugurated two new state-of-the-art federal facilities in Sonora and Guanajuato that will eventually each hold 2,500 high-security prisoners. At year's end seven more federal facilities were under construction. In addition, as part of SSP's strategic plan, eight federal facilities have received international accreditation under the American Correctional Association. Authorities added programs to promote rehabilitation and an objective prisoner classification system. They also designed a new model parole for former inmates placed on probation as an alternative to prison, which will be under supervision of parole and probation officers.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention as well as sponsoring or concealing an illegal detention. However, the CNDH reported receiving 1,720 complaints and issued 22 recommendations to authorities regarding arbitrary arrests and detentions during the year.

On January 21, Guerrero state judicial police arrested Maximino Garcia Catarino, a leader of the Organization for the Future of the Mixtec Peoples (OFPM) and beneficiary of protective measures ordered by the Inter American Court on Human Rights, on what AI called "false murder charges." Apparently, the police failed to provide an arrest warrant or reason for Garcia Catarino's arrest. Only later did they accuse him of the February 2011 murder of Juan Teodoro Garcia from a neighboring community. During his detention, police allegedly beat Garcia Catarino for refusing to answer questions about other OFPM leaders. Garcia Catarino spent two months in detention before Guerrero's Superior Court ordered his release on March 20, finding that a lower court had ordered his detention and trial without reliable evidence. Local NGOs, including the Tlachinollan Mountain Human Rights Center, said that Garcia Catarino's arbitrary arrest and imprisonment was in reprisal for activism on behalf of his indigenous community.

In February 2011 elements of the Army dressed in civilian clothes allegedly detained Miriam Isaura Lopez Vargas in Ensenada, Baja California, under alleged drug possession charges and took her to barracks in Tijuana's Second Military Region where she was reportedly tortured and raped. Lopez remained in military custody one week before transfer to the National Arraigo Center and later to the Center of Social Re-adaptation where she was held until her release in September 2011. On September 28, the CNDH issued a recommendation to SEDENA for arbitrary detention, unlawful deprivation of liberty, torture, and sexual violence against Lopez. In its recommendation, the CNDH called on the military to ensure the immediate transfer of detainees to prosecutors, prohibit the use of military installations as detention and interrogation centers, and abstain from operations where military are dressed as civilians in unofficial vehicles. By year's end the PGR investigation had not resulted in identifying or holding to account any perpetrators in the case.

The NGO Freedom House reported that the military abused the provision of flagrancia (arresting someone caught in the act of a crime), which, it asserted, accounted for all registered arrests by the military.

Role of the Police and Security Apparatus

The federal police, under the SSP, as well as state and municipal police, have primary responsibility in law and in practice for law enforcement and the maintenance of order. SEDENA, which oversees the army and the air force, and SEMAR, which oversees the navy and the marines, also play a role in domestic security, particularly in relation to TCOs.

The CNDH stated that deployment of the armed forces for domestic law enforcement in the campaign against TCOs led to an increased number of reported human rights abuses by government security forces upon civilians, sometimes with impunity. On April 23, SEDENA, SEMAR, SSP, and PGR published security protocols for chain of custody and use of force. The protocols, designed to reduce the time that arrestees remain in military custody, outline specific procedures for the handling of detainees. According to the PGR, 78 percent of the 32 complaints for torture

that it received during the year occurred before April when implementation of the use-of-force protocols started and the PGR began training its staff in their use.

According to SEDENA's human rights Web site, based on the CNDH recommendations issued against SEDENA between December 2006 and December 2012, a total of 186 military members were charged for human rights violations, of whom 38 were prosecuted in the military justice system. However, credible human rights NGOs continued to charge that lack of transparency and the military justice system contributed to and encouraged impunity, pointing to a failure to openly and promptly investigate, prosecute, and convict members of the military for human rights violations. The human rights community continued to urge that complaints of human rights violations by the military be investigated and prosecuted by judicial systems outside the military chain of command.

The CNDH reported that police, immigration officers, and customs officials violated the rights of undocumented migrants and failed to provide for their safety.

The CNDH received 1,503 complaints of human rights violations against SEDENA during the year, compared with 1,695 complaints in 2011. The CNDH also reported a decrease in complaints against SEMAR, noting that it received 418 complaints against SEMAR during the year, compared with 495 in 2011. The CNDH attributed the reduction in complaints against the military to an increase in human rights training programs. During the year the CNDH issued 15 recommendations to SEDENA concerning human rights violations by members of the army and air force, compared with 25 in 2011. The CNDH issued six recommendations to SEMAR during the year, the same number as in 2011.

The CNDH received 742 complaints against the PGR during the year and 45 complaints against SSP (in addition to 802 specifically against the Federal Police under SSP authority). The CNDH issued three recommendations to the PGR and nine to the SSP (which included any complaints against the Federal Police). Only the SSP had rejected a CNDH recommendation by year's end.

SEDENA's General Directorate for Human Rights investigates military personnel for violations of human rights identified by the CNDH and is tasked with promoting a culture of respect for human rights within the institution. However, the directorate has no power to ensure allegations are properly prosecuted.

During the year the CNDH increased its training of military members due to new training agreements with SEMAR and SEDENA as well as the use of new technologies such as videoconferencing and online training. As of October the CNDH provided human rights training to 254,786 military members, compared with 30,148 in 2011. Human rights NGOs continued to report a lack of access to the directorate and asserted that the directorate had not improved SEDENA's human rights performance.

Numerous agencies and organizations offered training to federal police officers, and SSP personnel in human rights; however, evidence of its effectiveness remained limited. While some state-level police academies mandated human rights training as part of their curriculum, many did not, and the training across states was not standardized.

Arrest Procedures and Treatment While in Detention

The constitution allows any person to arrest another if the crime is committed in his or her presence, and a warrant for arrest is not required if an official has reasonable suspicion about a person's involvement in a crime. This practice was abused. Bail exists, except for persons held in connection with drug trafficking or other forms of organized crime. In the 20 states that had not yet begun implementing the 2008 constitutional reforms of the judicial system, pretrial release on bond was available only in cases in which the charged offense was not considered a serious crime. In most cases persons must be presented to a judge, along with sufficient evidence to justify their continued detention, within 48 hours of their arrest. However, there were violations of this 48-hour provision.

In cases involving three or more persons who organize to commit certain crimes, suspects may be held for up to 96 hours before being presented to a judge. Only the federal judicial system can prosecute organized crime cases. However, under a precautionary procedure known as "arraigo" (a constitutionally permitted form of detention, employed during the investigative phase of a criminal case before probable cause is fully established), certain suspects may, with the approval of a judge, be detained for up to 80 days prior to the filing of formal charges. Many human rights NGOs claimed that arraigo allows authorities to detain someone first, then seek a reason to justify that detention. In the absence of formal charges, persons so detained are denied legal representation and are not eligible to receive credit for time served if convicted. Human rights groups, including the CMDPDH, asserted that authorities used arraigo to obtain confessions using torture. As of year's end the states of Chiapas, Chihuahua, Mexico, and Morelos had declared the practice illegal.

In areas involving military operations against TCOs, SEDENA personnel detained individuals without the involvement of state or federal investigators authorized to collect evidence for use in subsequent prosecutions. Detention notifications to the PGR were sometimes delayed, which complicated efforts to prosecute and convict arrestees.

Some detainees complained about lack of access to family members and to counsel after police held persons incommunicado for several days and made arrests arbitrarily and without a warrant. Indigent detainees were sometimes provided counsel only during trials and not during arrests or investigations as provided for in law. Some detainees were held under house arrest. Human rights NGOs documented, and the CNDH issued several recommendations confirming, that the army continued to detain civilians for extended periods before placing them at the disposition of civilian authorities. The CNDH issued 12 recommendations to the military (eight to SEDENA and four to SEMAR) during the year for detaining civilians before placing them at the disposition of civilian authorities, the same number as in 2011 (nine against SEDENA and three against SEMAR in 2011).

Arbitrary Arrest: The CNDH reported that it received 1,720 complaints and issued 22 recommendations in cases of arbitrary arrests during the year. Many arrests were made under arraigo. On November 24, the UNCAT condemned the common use of arraigo and called on Mexico to abolish its use from law and practice, at the federal and local level. In December the PGR acknowledged that of the nearly 4,000 cases of persons held under arraigo over the last two years, criminal proceedings were initiated only in an estimated 120 cases.

Pretrial Detention: The law provides time limits within which an accused person must be tried. Such time limits were generally disregarded as caseloads far exceeded the capacity of the federal judicial system, and most state judicial systems continued to employ the written inquisitorial criminal justice process. In 2011 the Mexican Center for Research and Teaching in Economics (CIDE) and HRW reported that more than 40 percent of prisoners continued to be held in pretrial detention, as opposed to serving time for a convicted offense. Many spent years in pretrial detention. According to CIDE the average detention period for prisoners awaiting trial was two years. Of those tried, 14 percent were declared innocent after having served time in prison, and 85 percent received sentences of less than five years. For many, the time spent in prison ultimately exceeded the sentence.

States implementing the 2008 constitutional reforms of the judicial system, on the other hand, reduced the number of crimes with mandatory remand, and presented lower pretrial detention rates. These states were also beginning to adopt other measures associated with the 2008 judicial reform, such as pretrial services, house arrest, bail, and alternative dispute resolution.

e. Denial of Fair Public Trial

Although the constitution and law provide for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level, according to CIDE. Civil society organizations reported that corruption, inefficiency, and a lack of transparency continued to be major problems in the judiciary.

International bodies, including the Inter-American Commission on Human Rights (IACHR) and the Office of the UN High Commissioner for Human Rights, criticized the government's failure to limit military jurisdiction over human rights cases. Article 57 of the Military Justice Code defines crimes against military discipline as "state or common offenses that have been committed by active duty military." Civilian courts generally ceded jurisdiction to the military in cases where military personnel stood accused of human rights violations committed against civilians. The Supreme Court ruled in July 2011 that civilian courts should try all human rights abuses of civilians, including those committed by the military. Attempting to elaborate on that decision, in August the Supreme Court took steps to establish binding legal guidance by reviewing 30 cases related to the issue of civilian versus military jurisdiction. The Supreme Court limited military jurisdiction in several individual cases of crimes committed against civilians and determined in one case that provisions of the Military Justice Code, which has allowed the military to assert jurisdiction in human rights cases involving civilians, is unconstitutional. By year's end the Supreme Court had decided on 13 of the 30 cases, but had not yet established binding legal guidance, which requires that five consecutive cases addressing the exact same criteria produce the same ruling.

The government reported that between December 2011 and October 2012, the military had transferred jurisdiction to civilian courts in 231 pretrial investigations and 76 criminal cases. Although the government made some progress towards limiting military jurisdiction during the year, human rights NGOs urged amending the Military Justice Code to ensure human rights abuses committed by the military are not tried in military courts.

Trial Procedures

The civilian legal system is a hybrid system. While it incorporates some aspects of common law and accusatory-style systems, it draws primarily from traditional European code-based, inquisitorial systems. The 2008 constitutional criminal justice reforms mandated nationwide implementation of an oral adversarial system and the presumption of innocence by 2016. The military also employed a hybrid inquisitorial-accusatorial legal system but continued to move toward an oral accusatorial system. In some states implementing the accusatory system, alternative justice centers employed mechanisms such as mediation, negotiation, and restorative justice to resolve minor offenses outside the

court system. Partially because of increased use of alternative mechanisms, courts in reform states were burdened less by minor crimes.

At year's end, 22 states had passed legislation transitioning to the oral, adversarial system and were at various stages of training and implementation of the reforms; eight states were still legislating reforms; and two states had not yet developed legislation. Under the old system, still being used by the federal government, the federal district, and 20 states (some of which had passed reforms but were still transitioning to the new system) a typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony. A judge in chambers reviews the case file and then issues a final, written ruling. The record of the proceeding is not available to the general public; only the parties involved have access to the official file and only by special motion.

The 2008 constitutional criminal justice reform establishes that by 2016, defendants shall enjoy a presumption of innocence, and the accused shall have the right to attend the hearings and challenge the evidence or testimony presented. However, a majority of jurisdictions had not provided these rights, as they had not completed reform implementation and still operated under the inquisitorial system. Defendants are not tried by a jury.

While the law provides defendants with the right to an attorney at all stages of criminal proceedings, authorities regularly appointed a "person of confidence," who was not required to meet any particular legal qualifications to represent a defendant. Because of the nascent implementation of the 2008 reforms, not all public defenders had preparation and training to serve adequately on the defendants' behalf, and often the state public defender system was not adequate to meet demand. Public defender services were placed either in the judicial or executive branch. There were rarely autonomous public defender services. According to CIDE, most criminal suspects did not receive representation until after they were placed under judicial authority, thus making individuals vulnerable to coercion to sign false statements before being presented to a judge.

Although the law requires translation services from Spanish to indigenous languages be available at all stages of the criminal process, this generally was not available in practice. The PGR reported several improvements in access to services in indigenous languages during the year, however, indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases, and were convicted without fully understanding the documents they were required to sign.

According to human rights NGOs, including HRW and AI, judges continued to allow confessions coerced through torture as evidence against the accused. These confessions were often the primary evidence in criminal convictions (see section 1.c.). NGOs reported that judges often gave greater evidentiary value to the first statement of a defendant given in the absence of legal representation, providing prosecutors an incentive to obtain an incriminating first confession.

Where implemented, the 2008 justice reform also establishes strict guidelines on the use of confessions, evidence, and expert testimony; allows consensual monitoring of telephone calls; and gives police more responsibility for conducting investigations. The reform requires that all hearings and trials be conducted by a judge and follow the principles of public access, immediacy, confrontation, and cross-examination, in order to promote greater transparency and allow defendants to challenge their accusers. However, the law allows the government to keep elements of an investigation confidential until evidence is presented in court, and defendants do not usually have access to government-held evidence.

In June 2011 then President Calderon signed into law revisions to the "amparo" law, which reduce loopholes in the constitution that allowed lawbreakers to escape justice and provide for additional protection of civil liberties. Amparo is a Mexican legal procedure, analogous to an injunction, designed to protect persons from any official act deemed to violate the rights enshrined in the constitution. An amparo can rescind the ruling of a court and provide protection against laws and administrative acts and recourse in land disputes. Although the Supreme Court began to apply the reform, as of year's end, the constitutional reform in amparo lacked implementing legislation, which would ensure that courts nationwide apply the reform.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent judiciary in civil matters to which citizens have access to seek civil remedies for a human rights violation. However, for a plaintiff to secure damages against a defendant, the defendant first must have been found guilty in a criminal case, which was a high standard in view of the relatively low number of individuals convicted of human rights abuses in the country.

Regional Human Rights Court Decisions

The government made some progress during the year to implement four previous binding rulings calling on it to try human rights abuses by the military in civilian courts; the Supreme Court ruled on several cases and the military transferred some cases previously in military jurisdiction to civilian jurisdiction (see above).

The government made progress in implementing the Inter-American Court of Human Rights rulings in the emblematic cases of Organization of the Me'phaa Indigenous People members Valentina Rosendo Cantu and Ines Fernandez Ortega-indigenous women whom soldiers detained arbitrarily and raped in separate incidents in 2002. The federal government held public ceremonies in December 2011 and March 2012 acknowledging the state's responsibility, began construction on a Center for Attention to Victims, and inaugurated a new Special Prosecutors Office for Sex Crimes in Guerrero, complying with part of the Inter-American Court ruling. However, NGOs criticized the slow pace of the PGR's investigation and the failure to bring the case before a judge.

The IACHR called on the country to provide precautionary measures in eight cases during the year, and the government reached settlements in six cases by mutually agreeing to terms with alleged victims of human rights violations.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Although the law prohibits such practices and requires search warrants, the CNDH received 817 complaints of illegal searches and 123 complaints of illegal destruction of private property during the year.

On July 30, in the indigenous community of Kumiai de la Huerta in Baja California, approximately 30 members of the army and six armed civilians without a warrant allegedly entered three homes and raided personal belongings in search of drugs. The search squad allegedly questioned and threatened people, including children, and beat, blindfolded, and detained one young man, who was eventually set free on the outskirts of the community with the warning that if he reported the incident, the military squad would return and kill him and his family. The PGR and CNDH were investigating the case at year's end.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights. In practice, however, attacks on journalists, threats of attacks, and a lack of adequate protection resulted in significant self-censorship. Most newspapers, television, and radio stations were privately owned, and the government had minimal presence in the ownership of news media. Media monopolies, especially on a local level, constrained freedom of expression.

Freedom of Speech: On October 24, the state of Puebla brought charges against two journalists for "abusing freedom of expression"; the state threatened 17 others with charges that were never brought. Prosecutors eventually dropped charges in both cases. An additional case in Tijuana reflected a similar pattern of intimidation.

Freedom of Press: Despite federal laws supporting freedom of the press, many journalists were the victims of threats, harassment, and violence. Reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and their families. Freedom House's 2012 *Freedom of the Press Report* categorized Mexico as a country "not free" for the press due to the threats and violence that reporters faced and impunity for the perpetrators of crimes committed against the press.

The law does not provide a legal framework for issuing permits to nongovernmental and noncommercial community radio stations.

Violence and Harassment: During the year the NGO Article 19 reported seven journalists were killed for reasons presumed to be related to their work and two disappeared, compared with nine such killings and two disappearances in 2011. Article 19 also registered 207 aggressions against journalists, media workers, and media installations during the year. Moreover, in the state of Veracruz alone, Article 19 reported that 10 journalists fled the state for their safety during the year.

The PGR's Office of the Special Prosecutor for Crimes Against Journalists reported that it initiated 113 pretrial investigations from January to November, and accepted jurisdiction in about 20 cases with eight completed prosecutions.

Between April and June, attackers killed six journalists and news-media workers in the state of Veracruz, including Regina Martinez, a journalist who had been beaten and strangled to death. Martinez had worked for *Proceso* magazine for the past 10 years and had recently published reports that included accusations of local

government corruption. On October 30, the Veracruz State Prosecutor's Office announced that it had arrested Jose Antonio Hernandez, who had confessed to beating Martinez to death in an attempted robbery, and that a second suspect remained at large. When presented before the judge, Hernandez said that he was tortured into confessing to the crime.

On May 21, freelance journalist Zane Plemmons disappeared while covering TCO activity. According to his mother, who reported him missing on May 25, Plemmons was staying at a Nuevo Laredo hotel, where he was last seen by the hotel's desk clerk, who stated that she saw Plemmons outside of the hotel talking with individuals, possibly military personnel, based on their dress and vehicle. The clerk said that later the same night two armed and masked men emptied Plemmon's hotel room. State police alleged that the individuals who appeared to be military were actually TCO members. On June 28, the CNDH and the Nuevo Laredo state prosecutor began an investigation, which was ongoing at year's end.

There were multiple attacks on media outlets during the year. On May 11, gunmen opened fire and detonated grenades at the headquarters of *El Manana* in Nuevo Laredo. Following the attack *El Manana* published an editorial saying it would stop covering the disputes between drug cartels in the country for as long as necessary. In July three separate offices of *El Norte* were attacked in Monterrey. Two buildings were attacked with grenades and AK-47 gunfire, and the third was set on fire by arsonists. The initial attacks came just days after the newspaper had exposed corruption in the state's Vehicle Control Institute.

Perpetrators of violence against journalists continued to act with impunity with no developments reported in the investigation, arrest, or prosecution of suspects in multiple cases of violence against journalists since 2006.

On June 22, President Calderon signed amendments to Article 73 of the constitution, which allows federal authorities to assert jurisdiction over crimes against journalists, as well as the Law for the Protection of Human Rights Defenders and Journalists, which establishes a federal mechanism to provide protection measures. On November 30, the government published the regulations for the federal protection mechanism for journalists and human rights defenders, and the protection mechanism was operating by year's end. Although the constitutional reform federalizing crimes against journalists also took effect, secondary legislation to strengthen the federal government's ability to assert jurisdiction over such crimes had not passed at year's end.

Libel Laws/National Security: Twelve states have criminal libel laws making journalists vulnerable to imprisonment at the state level.

Nongovernmental Impact: TCOs allegedly exercised a grave and increasing influence over media outlets and reporters, frequently threatening individuals who published critical views of crime groups.

Local authorities made no arrests in the September and November 2011 cases of three Nuevo Laredo-based bloggers tortured and killed in alleged retaliation for posting comments on the Internet about local drug cartels.

Actions to Expand Press Freedom

On January 12, the federal government decriminalized defamation, libel, and slander when it repealed articles 1 and 31 of the law of crimes of the press. During the year the states of Campeche and Mexico repealed their criminal libel laws.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial oversight. According to the International Telecommunication Union, 28 percent of households had access to and 36 percent of the population used the Internet in 2011.

Two states continued to restrict the use of social media. A 2011 law in Veracruz, which created a "public disturbance" offense, continued to hinder the use of social media. Similarly, the state of Tabasco continued to outlaw telephone calls or social network postings that could provoke panic.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events; however, unidentified actors carried out attacks on academics, artists, and intellectuals.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and the government generally respected this right. However, there were instances of security forces using force against demonstrators.

Freedom of Assembly

In May the CNDH filed complaints against the police with both the federal PGR and the state attorney general's office for human rights abuses committed during a December 2011 student protest in the state of Guerrero, which resulted in deaths by gunfire of two student protesters. A CNDH report indicated that all security forces that day "used excessive force" and "were negligent in seeking a peaceful outcome with the protesters." The report said 42 persons were detained arbitrarily, 24 were physically beaten, and one was tortured. On January 30, authorities charged two ministerial police from Guerrero, Ismael Matadama Salinas and Rey David Cortes, with the homicide of students Jorge Alexis Herrera Pino and Gabriel Echeverria de Jesus; the case remained pending at year's end. Authorities also charged several members of the Guerrero Attorney General's Office and the Federal Police for false statements in their declarations concerning the incident.

On December 1, following protests of the inauguration of President Enrique Pena Nieto, the Mexico City Human Rights Commission (CDHDF) claimed to have evidence of at least four cases of torture and 22 arbitrary detentions. Almost 70 demonstrators were arrested during the protests. Mayor Miguel Angel Mancera said that the detainee cases would be carefully reviewed. No charges had been filed by the end of the year related to the claims of torture and arbitrary detention. In reaction to the arrests, on December 27, the Mexico City legislature made changes to the local penal code to reduce the penalty for "attacks on public peace" from five to 30 years' imprisonment down to two to seven years.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right.

c. Freedom of Religion

See the Department of State's [International Religious Freedom Report](#).

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights. However, according to several NGOs including AI, the army in the course of its operations occasionally restricted freedom of movement. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: In a 2011 special report, the CNDH estimated that approximately 11,330 migrants were kidnapped between April and September 2010 as they attempted to transit the country, although the National Migration Institute (INM) disputed this claim, noting it had registered only 222 such cases during the same period. Many migrants were reluctant to report such crimes due to fear of deportation.

There were numerous instances of armed groups limiting the movements of migrants during the year, including instances of kidnapping and murder. On October 17, the INM announced that 12 migration agents had been involved in kidnapping migrants and were being criminally processed.

On October 2, according to migrant rights activist Alejandro Solalinde, 40 migrants were allegedly kidnapped in the community of Medias Aguas, Veracruz. However, the Veracruz Attorney General's Office indicated that they had not received a formal report about the incident.

On October 7, authorities announced that they had arrested a leader of the Zetas cartel, Salvador Alfonso Martinez Escobedo, for the 2010 killings of 72 Central and South American migrants in San Fernando, Tamaulipas.

At year's end there were no further developments in the cases of the 2010 abduction of 40 Central American migrants from a train and the June 2011 mass kidnapping of migrants riding a train from Oaxaca to Veracruz.

Protection of Refugees

Access to Asylum: The country's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

Recent Elections: The July 1 presidential election, which Enrique Pena Nieto won by a 6.6 percent margin, was considered mostly free, fair, and transparent. The Federal Electoral Institute oversaw the electoral process, and the

Federal Electoral Tribunal, after conducting a comprehensive review of all electoral irregularities, declared the election valid on August 31.

Participation of Women and Minorities: In the July 1 legislative elections, 42 of 128 senators elected and 184 of 500 federal deputies elected were women. Two female justices sat on the 11-member Supreme Court, and there were three women in the 20-member cabinet. Many state electoral codes provide that no more than 70 to 80 percent of candidates can be of the same gender. At the federal level, at least 40 percent of all candidates to elected office must be women.

There were no established quotas for increased participation of indigenous groups in the legislative body, and no reliable statistics were available regarding minority participation in government. The law provides for the right of indigenous people to elect representatives to local office according to "usages and customs" law rather than federal and state electoral law. Usages and customs laws applied traditional practices to resolve disputes, choose local officials, and collect taxes without federal or state government interference. While such practices allowed communities to select officials according to their traditions, the usages and customs law generally excluded women from the political process and often infringed on the rights of women and religious minorities. In some villages women were not permitted to vote or hold office while in others they could vote but not hold office.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption. However, the government did not enforce the law effectively. Credible reports indicated that officials frequently engaged in corrupt practices with impunity and that relatively few cases came to trial. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials and security forces. More sophisticated and less apparent forms of corruption included overpaying for goods and services to provide payment to elected officials and political parties. A 2011 survey by Transparency International found that the average citizen spent about 14 percent of his or her income on bribes. In a 2012 survey on corruption, 23 percent of respondents told national daily *Reforma* that they had paid a bribe in the last year, and more than 80 percent replied that they believed there was significant corruption in the government, in the prison system, in political parties, and in the judiciary.

The law requires all federal and state-level appointed or elected officials from the middle to high ranks to provide income and asset disclosure for themselves, their spouses, and dependents. The Secretary of Public Functions (SFP) monitors disclosures with support from each agency. Disclosures are required at the beginning and end of employment; yearly updates are also required. Declarations are not made available to the public unless the official provides consent; otherwise, it is the prerogative of SFP to monitor the statements. Criminal or administrative sanctions apply for abuses.

From April 2011 to October 2012, the PGR initiated legal proceedings for corruption against 1,100 employees, approximately 280 of whom were convicted by year's end. From January through November, the INM dismissed 500 employees accused of corruption and human trafficking (10 percent of the institution's manpower), 200 of whom were under PGR investigation at year's end.

By law all new applicants for federal law enforcement (and other sensitive positions) must pass a vetting process upon entry into service and every two years thereafter throughout their careers. In July the PGR announced that since April 2011, it had dismissed 729 officials, including federal ministerial police, investigators, and prosecutors, for failing to meet the requirements of the vetting process. At the state level, there was a lack of uniform vetting procedures.

The CNDH continued to report that police, particularly at the state and local level, were involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers. Local forces in particular tended to be poorly compensated and directly pressured by criminal groups, leaving them most vulnerable to infiltration. Responsibility for investigating federal police criminal or administrative abuse falls under the purview of the PGR or the SFP, depending on the type of offense.

The SFP is charged with sanctioning corrupt practices among federal executive branch employees. According to the SFP, in the last six years the agency levied 50,000 administrative sanctions against public workers for corrupt acts. The SFP referred more than 2,000 cases for criminal prosecution, but only 100 government officials served time in prison as a result of the referrals.

In April police arrested Nestor Moreno Diaz, former head of the Federal Electricity Commission (CFE), on charges that he received more than 30 million pesos (\$2.35 million) in bribes from Swiss electrical engineering company ABB. The SFP fined Moreno and four other CFE directors nearly 70 million pesos (\$5.48 million) and banned them from public service for 17 years and six months. Moreno remained in prison as his criminal case proceeds.

There were numerous investigations into corruption by police at the federal, state, and local level. Cases included the two highest-ranking federal police officials in Baja California. The SSP's police commissioner for Baja California, Luis Eduardo Vega Camberos, and his second in command, Alfredo Garcia Castillo, were arrested on September 27 in a PGR sting operation on charges of extorting local businesses.

On August 6, the government brought charges of crimes against public health for collaborating and fomenting narcotics trafficking against General Ruben Perez Ramirez and Major Ivan Reyna Munoz, two army officers already imprisoned for aiding and abetting narcotics trafficking.

Federal authorities arrested two tax officials in Coahuila during the year and issued arrest warrants for five former state officials for alleged involvement in loan fraud, which added more than 25 billion pesos (nearly two billion dollars) to the state's public debt.

On November 6, the congress passed legislation obliging states to increase the transparency of their budgets and their spending, debt hiring, and management and restructuring decisions. The fiscal transparency legislation also mandated harmonization of state financial accounts and reporting to better track use of public resources, including spending on public education and healthcare.

The Federal Institute of Access to Public Information (IFAI) is responsible for guaranteeing access to government information from the federal executive, legislative, and judicial branches. IFAI received 94,724 such requests during the year, with 2,544 requests related to the PGR and 1,930 related to the SSP. The law requires that information requests be answered within 20 days. There are minimal reproduction and mailing costs for requested information that is not available in digital format. The law includes exceptions to disclosure of government information, including for information that may compromise national security, impact the conduct of foreign relations, harm the country's financial stability, put another person's life at risk, or for information relating to pending law enforcement investigations. The law also limits disclosure of personal information to third parties.

Access to information continued to be difficult in some states. All states had laws complying with the 2007 constitutional reforms regarding access to information, and have signed formal agreements with IFAI to make the information system on government operations, Infomex, available for petitions for state government information.

In March 2011 the Supreme Court ruled that the PGR had the right to withhold information from the CNDH in cases that were actively under investigation. In December the CNDH reported to the press that legal barriers and PGR's discretion sometimes impede CNDH's ability to carry out its mission, citing in particular PGR's ability to limit CNDH's access to pretrial investigations.

The SSP continued to expand the Intranet-based communications and analytical platform, Plataforma Mexico, which was continually updated with information on police at all levels and was utilized for personnel evaluations and ongoing investigations.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views. The government attempted to engage civil society on human rights issues by encouraging participation in policy debates and engaging with victims and their family members in public discussions. Civil society played a participatory role in the implementation of the Law to Protect Human Rights Defenders and Journalists, with nine members from civil society forming an advisory board for the protection mechanism, four of whom had a vote in the governing board. The Secretariat of Government also involved civil society in the development of the implementing regulations for the protection law. Some NGOs, however, expressed frustration over difficulty in engaging in constructive human rights discussions with government officials.

The UN and NGOs reported continued harassment of human rights defenders, including by state and municipal authorities. The CNDH received 51 complaints of aggression against human rights activists and three requests for protection. A study conducted by the NGOs Urgent Action for Human Rights Defenders and Comite Cerezo Mexico documented 326 cases of human rights violations against human rights defenders between 2008 and 2011, 118 in 2011, and 47 in the first trimester of 2012, demonstrating an increase in threats.

On April 15, Father Alejandro Solalinde Guerra, a well-known defender of migrant and human rights in Oaxaca, received death threats and announced that he would extend a scheduled speaking tour in Europe while state and federal officials investigated the threats against him. At year's end the government was reportedly guarding the shelter and Solalinde; however, there was no reported progress in the investigations.

On November 28, armed men in Coyuca, Guerrero, shot and killed environmental activist Juventina Villa Mojica and her 17-year-old son Reynaldo Santana. Villa Mojica was the leader of a group of environmental farmers. The state

prosecutor's office alleged that Villa Mojica and her son were traveling in an all-terrain vehicle when they pulled away from 10 state police officers who were protecting them to make a phone call. It was then that gunmen ambushed them. Local media reported that Villa had filed a complaint with authorities in early November after two of her nephews were killed and she received death threats, along with several farmers. Villa's husband, Ruben Santana Alonso, also a leader with the same group, was killed in February 2011.

In its October report summarizing the findings of an international mission in Mexico, Project Counseling Services reported that defenders of migrants' human rights were under increasing threat. Moreover, between June 2011 and November 2012, the Religious Dimension of Human Mobility, a Catholic-run network defending migrant rights, documented 66 cases in which defenders of migrants' human rights were subject to threats against their person, or the security of their organization and facilities.

Government Human Rights Bodies: The CNDH is an autonomous agency created by the government and funded by the legislature to monitor and act on human rights violations and abuses. It can call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but it cannot impose legal sanctions itself. Whenever the relevant authority accepts a CNDH recommendation, the CNDH is required to follow up with the authority to ensure that it is carrying out the recommendation. The CNDH sends a request to the authority asking for evidence of its compliance and includes this follow-up information in its annual report. When authorities fail to accept a recommendation, the CNDH makes that known publicly and may exercise its power to call government authorities who refuse to accept or enforce its recommendations before the Senate. On November 29, the CNDH exercised this authority to call SSP Secretary Genaro Garcia Luna before the Senate. NGOs and international organizations often drew attention to the failure of an institution to comply with or even accept the CNDH recommendations.

The public generally viewed the CNDH as unbiased and trustworthy. A December study by the Autonomous Technical Institute of Mexico and the NGO Fundar Research and Analysis Center criticized the CNDH for not sufficiently exercising its legal authority to investigate and lodge complaints against public servants for human rights violations. The report also asserted that the CNDH investigations did not conform to international standards for documenting human rights abuses. In response, the CNDH defended its work and said that PGR's ability to limit access to pretrial investigations and other structural challenges were to blame.

Each of the country's 31 states plus the Federal District has a state human rights commission autonomous from the CNDH, with the authority to investigate human rights complaints against state and local authorities. The CNDH can take over cases from state level commissions if it receives a complaint that the state level commission is not adequately investigating the case. The effectiveness of the state commissions varied.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, or social status. While the government made some progress enforcing these provisions, significant problems, particularly violence against women, persisted.

Women

Rape and Domestic Violence: Federal law criminalizes rape, including spousal rape, and imposes penalties of up to 20 years' imprisonment. Only 12 states have laws criminalizing spousal rape. According to the UN and NGOs, rape victims rarely filed complaints, in part because of the authorities' ineffective and unsupportive approach to victims, victims' fear of publicity, and a perception that prosecution of cases was unlikely. Human rights organizations asserted that authorities did not take seriously reports of rape, and victims continued to be socially stigmatized and ostracized. Forced disappearances and sexual violence continued to be a widespread problem along the border region.

Federal law prohibits domestic violence and stipulates penalties between three months' and four years' imprisonment; actual sentences were often more lenient. Federal law does not criminalize spousal abuse. State and municipal laws sanctioning domestic violence largely fail to meet the required federal standards and often were unenforced.

Victims in rural and indigenous communities did not report abuses due to fear of spousal reprisal, stigma, and societal beliefs that abuse did not merit a complaint. There were no authoritative government statistics available on the number of abusers prosecuted, convicted, or punished. According to the most recent National Survey on Household Relations conducted in 2011, 46 percent of women age 15 and older have in their lifetimes been victims of violence by their partner, with the incidence ranging from 30 percent in Chiapas to 57 percent in the state of Mexico.

On June 13, then President Calderon signed reforms to laws protecting women, most significantly making femicide (killing of a woman based on her gender) a federal offense punishable by 40 to 60 years in prison. By year's end 23 states had added femicide to their criminal codes. In many cases state laws allow for reduced sentences when a killing was associated with infidelity.

According to the National Femicide Observatory, between January 2010 and June 2011, only eight federal entities (the Federal District, Mexico State, Nuevo Leon, Oaxaca, Sinaloa, Sonora, and Tamaulipas), the state attorney generals' offices registered 1,235 femicides.

The PGR's Special Prosecutor's Office for Violence against Women and Trafficking in Persons is responsible for leading government programs to combat domestic violence and federal human trafficking cases involving three or fewer suspects. With only 15 federal prosecutors dedicated to federal cases of violence against women and trafficking countrywide, the special prosecutor faced challenges in moving from investigations to convictions, although it did achieve several convictions.

In June, 14-year-old Jessica Lucero was raped near Ecatepec, Mexico State. She reported the crime, implicating a neighbor to police, and was later raped again, then killed on July 14. State Prosecutor Alfredo Castillo reported that her death was related to drinking and was not related to her pressing charges.

There were approximately 70 shelters for women and their children funded at least in part by the government. Shelters were mostly for victims of gender-based violence, but one government shelter was exclusively for trafficking victims. According to the National Network of Shelters, shelter staff were professional and the shelters well equipped; however, because government funding typically only covers shelter operations for eight months, there is a high level of rotation in personnel. Civil society and women's rights groups maintained numerous shelters as well.

Sexual Harassment: Federal law prohibits sexual harassment and provides for fines of up to 40 days' minimum salary. Sexual harassment is criminalized in 21 of 31 states and the Federal District, and all states have provisions for punishment when the perpetrator is in a position of power. According to the National Women's Institute (INMUJERES), the federal government institution charged with directing national policy to achieve equality of opportunity between men and women, sexual harassment in the workplace was widespread, but victims were reluctant to come forward and cases were difficult to prove.

Reproductive Rights: Couples and individuals have the legal right to decide the number, spacing, and timing of their children and sometimes have the information and means to do so free from discrimination. Numerous NGOs reported that services, information, and public policies in the area of reproductive health were limited. Despite the existence of a national family planning program, the lack of sex education and access to contraceptives in public hospitals and rural areas continued to undermine the government's commitment to reproductive rights. According to UN estimates from 2011, 67 percent of married women ages 15-49 used a modern method of contraception. Information on maternal health was accessible at public and private health clinics and online at the Federal Secretariat of Health's Web site. Skilled attendants at delivery and in postpartum care were widely available except in some rural and indigenous areas.

Discrimination: The law provides women the same rights and obligations as men and "equal pay for equal work performed in equal jobs, hours of work, and conditions of efficiency." According to INMUJERES, women continued to earn between 5 and 30 percent less than men for comparable work. According to the World Economic Forum, women earned 42 percent less than men for comparable work. According to the 2011 National Survey on Household Relations, 21 percent of women said they had been victims of discrimination in the work place in the last year; this figure was likely to be underreported. Women constituted 99 percent of domestic workers and therefore were more likely to experience discrimination in wages, working hours, and benefits. The law provides labor protection for pregnant women. According to the Information Group on Reproductive Rights, some employers reportedly sought to avoid this law by requiring pregnancy tests in preemployment physicals and by continuing to make inquiries into a woman's reproductive status. INMUJERES reported that 14 percent of women age 15 and older have been required to take a preemployment pregnancy test in order to get a job. However, the new labor law, which was implemented on December 1, prohibits employers from requiring preemployment pregnancy tests. The National Counsel to Prevent Discrimination (CONAPRED) reported that through October, it received 81 complaints of discrimination against pregnant women and 92 complaints of discrimination based on gender during the year. Moreover, it received seven complaints of alleged discrimination by public officials against pregnant women and 44 complaints of alleged discrimination by public officials based on gender. The illiteracy rate for women living in urban areas was 5.3 percent, compared with 18.2 percent for women living in rural areas. In all but two states (Sinaloa and Sonora), women had lower literacy rates than men.

Children

Birth Registration: Citizenship is derived both by birth within the country's territory and from one's parents.

Citizens generally registered the birth of newborns with local authorities. In some instances government officials visited private health institutions to facilitate the process. Failure to register births could result in the denial of public services, such as education or healthcare. According to UNICEF, 93.4 percent of children in the country were registered, while the Child Rights Information Network found that 30 percent of children under age five were not

registered. States with large rural and indigenous populations, such as Chiapas, Guerrero, Oaxaca, and Puebla, had lower registration rates. Several NGOs noted that under-registration was a significant problem, particularly for more vulnerable populations.

Those without registration faced significant barriers to education, healthcare, protection, and employment according to the Be Foundation.

Child Abuse: In 2000, the date of the most recent survey, the Federal Elections Institute and UNICEF reported that 28 percent of children ages six to nine, 9 percent of those ages 10 to 13, and 10 percent of those ages 14 to 17 reported receiving violent treatment at home. According to the survey, 33 percent of rural children and youths and 26 percent of urban children and youths reported that adults sometimes resorted to insults and physical violence against children.

Child Marriage: Child marriage has historically been a problem in some parts of the country. The minimum marital age is 14 for girls and 16 for boys with parental consent, and 18 without parental consent. However, with a judge's consent, children can be married at younger ages. According to the National Survey of Demographic Dynamics, in 2009, 23 percent of women ages 20 to 24 were first married before age 18. The rate was 19 percent in urban centers and 31 percent in rural communities.

Harmful Traditional Practices: There were unconfirmed reports of female genital mutilation/cutting taking place in eastern Mexico.

Sexual Exploitation of Children: The law prohibits the commercial sexual exploitation of children; however, NGOs continued to report that sexual exploitation of minors, as well as child sex tourism in resort towns and northern border areas, were significant problems.

Statutory rape constitutes a crime in the federal criminal code. For an adult who has sexual relations with a minor between 15 and 18 years of age, the penalty is between three months and four years in prison. For an adult who has sexual relations with a minor under age 15, the penalty ranges from eight to 30 years in prison. Laws against corruption of a minor and child pornography apply to victims under 18 years of age. For the crimes of selling, distributing, or promoting pornography to a minor, the law stipulates a prison term of six months to five years and a fine of 300 to 500 times the daily minimum wage. For the crimes of involving minors in acts of sexual exhibitionism, or the production, facilitation, reproduction, distribution, sale, and purchase of child pornography, the law mandates seven to 12 years in prison and a fine of 800 to 2,500 times the daily minimum wage.

Perpetrators who promote, publicize, or facilitate sexual tourism involving minors, face seven to 12 years' imprisonment and a fine of 800 to 2,000 times the daily minimum wage. For those involved in sexual tourism who commit a sexual act with a minor, the law requires a 12 to 16-year prison sentence and a fine of 2,000 to 3,000 times the daily minimum wage. The crime of sexual exploitation of a minor carries an eight- to 15-year prison sentence and a fine of 1,000 to 2,500 times the daily minimum wage. The crimes of child sex tourism and prostitution of children do not require a complaint to prosecute, and can be based on anonymous information.

There were some complaints about the complexity of the application of the laws in practice. The lack of legislative harmonization between the general trafficking-in-persons law and the federal criminal code allowed defendants to obtain lower sentences or be acquitted for arguing that their cases were not tried under the appropriate legal framework. In addition there were differences in laws and enforcement across the country's municipalities.

Institutionalized Children: On March 23, the NGO Disability Rights International reported to the Organization of American States (OAS) on grave human rights violations of rights of mentally and physically disabled children in orphanages and care facilities.

On June 12, a leaked video showed a State Family Council of Jalisco (CEF) psychologist from the Pedacito de Cielo orphanage pressuring two girls, ages five and seven, into agreeing to be adopted by a foreign couple. This incident capped a state comptroller's investigation of the CEF and the CEF secretary Claudia Corona Marseille. The state subsequently took administrative measures against Corona and, on July 4, suspended her indefinitely. In the Guadalajara metropolitan zone, systemic violations of children's rights were in 45 percent of private and state-owned orphanages. The Jalisco Human Rights Commission has recognized multiple allegations of child welfare abuses and maltreatment by the CEF. An NGO, the FIND Foundation in Guadalajara, accused CEF of ignoring proper adoption procedures and facilitating adoptions of children without consent from relatives, and of being complicit in the adoptions by foreign couples of Jalisco children via a judge in Colima.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html as well as country-specific information at http://travel.state.gov/abduction/country/country_5831.html.

Anti-Semitism

According to the 2010 census, the Jewish community numbered approximately 67,000 persons.

There were several reports of anti-Semitism during year. For example, the Central Committee for the Jewish Community in Mexico and the public affairs agency Tribuna Israelita reported anti-Semitic social media attacks on a number of prominent Mexican Jewish intellectuals and activists.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report*.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, and the provision of other services. However, the government did not effectively enforce the law. In May 2011 a new Law for the Inclusion of People with Disabilities entered into force and replaced the previous Federal Law for Persons with Disabilities. On November 30, the government published regulations, which outline the responsibilities for different agencies. The new law proposes to bring the country into compliance with the Convention on the Rights of Persons with Disabilities; however, Disability Rights International (DRI) said that the new law fails to establish new opportunities for community integration. DRI noted that under the new law, the Ministry of Health is required to promote the creation of long-term institutions for people with disabilities in distress and the Ministry of Social Development must establish specialized institutions to care for, protect, and house people with disabilities in poverty, neglect, or marginalization. As such, DRI noted that the new law does not recognize the right of person with disabilities to live in the community.

Public buildings and facilities continued to be in noncompliance with the law requiring access for persons with disabilities. The education system provided special education for students with disabilities nationwide. However, children with disabilities attended at a lower rate than those without disabilities. For example, on September 3, a nine-year-old girl in Chilpancingo, Guerrero, was prevented from enrolling in school when the school claimed it could not accommodate her wheelchair. Her mother submitted a complaint to the local human rights commission for discrimination against the minor child based on her physical condition. CONAPRED reported that through October, it had received 124 complaints of discrimination based on disability against individuals and 39 complaints of discrimination based on disability against federal public servants. Only 4 percent of the overall population with disabilities had finished university.

According to CONAPRED, 60 percent of all persons with disabilities reported insufficient access to health services. The CNDH received 216 complaints of human rights violations against persons with physical disabilities and nine complaints of human rights violations against persons with mental disabilities during the year.

In its 2010 study and March 23 presentation to the OAS, DRI documented widespread human rights abuses in mental health institutions and care facilities across the country, including those for children. Abuses against persons with disabilities included lack of access to justice, the use of physical and chemical restraints, lobotomies on patients without consent, physical and sexual abuse, disappearances, and trafficking of children. Persons with disabilities often lacked adequate privacy and clothing and often ate, slept, and bathed in unhygienic conditions. They were vulnerable to abuse from staff members, other patients, or guests at facilities where there was inadequate supervision. Documentation supporting the person's identity and origin was lacking, and there were instances of disappearances.

DRI reported in 2010 that at the Samuel Ramirez Moreno Psychiatric Hospital in Mexico City, a man was restrained with a helmet and arm restraints during the day and bed restraints at night. In October DRI visited the institution again and interviewed nurses from the Samuel Ramirez Hospital, who said that the man was still at the hospital, which continued to use arm and bed restraints and the helmet to control him.

On March 20, the CDHDF issued a recommendation on the living conditions of persons with disabilities institutionalized in the Assistance and Social Integration Centers (CAIS) shelters under the jurisdiction of the Mexico City government. The CDHDF found a lack of adequate medical treatment, qualified staff, and basic medications, as well as unhygienic and degrading conditions. The CDHDF also reported that patients did not receive any rehabilitation with the purpose of reintegrating them into society. The CDHDF concluded that the CAIS shelters were violating the right to health; the right not to be subjected to cruel, inhuman, and degrading treatment; and the right to live in the community.

Persons with disabilities have the right to vote and participate in civic affairs. Voting centers for federal elections are generally accessible for persons with disabilities, and ballots are available with a Braille overlay for federal elections. In Mexico City, voting centers were also reportedly accessible for local elections and Braille overlays were available;

however, in local elections elsewhere in the country, the accessibility for voting centers and the availability of Braille ballots or overlays was inconsistent.

Indigenous People

Indigenous groups continued to report that the country's legal framework did not respect the property rights of indigenous communities or prevent violations of those rights. Communities and NGOs representing indigenous groups continued to report that the government failed to consult indigenous communities adequately when making decisions about the implementation of development projects on indigenous land. Consultation with indigenous communities regarding the exploitation of energy, minerals, timber, and other natural resources on indigenous lands remained limited.

Several members of the organization Coordinating Body of United Peoples of the Valley of Ocotlan (CPUVO), which opposed a mining project in their community in San Jose del Progreso in Oaxaca, were attacked and killed during the year. On June 16, Bertin Vazquez Ruiz and Guadalupe Andres Vazquez Ruiz were shot outside San Jose del Progreso's city hall by three men in a truck, whom CPUVO and human rights activists identified as a municipal official, the son of the municipal president, and an employee of a local mining company. On January 18, another member of CPUVO, Bernardo Mendez Vazquez, was killed, and on March 15, the former leader of CPUVO, Bernardo Vazquez Sanchez was killed.

On November 28, the Mexican Supreme Court ordered the release from jail of indigenous water rights activists Jose Ramon Aniceto Gomez and Pascual Agustin Cruz from the community of Atla, Puebla, after they spent nearly three years imprisoned on charges of stealing a vehicle. Mexican and international human rights groups, including Centro Prodh and AI, had called for their release, saying they were unjustly arrested and sentenced to nearly seven years in prison in retaliation for their legitimate and successful defense of their community's right to water. They were sentenced to seven years in jail despite what human rights groups say was a lack of evidence and due to discrimination they faced for being poor and indigenous.

In September the CNDH reported that Mexican indigenous women were among the most vulnerable groups in society. They experienced racism, discrimination, and violence. Indigenous people were generally excluded from health and education services. The CNDH stressed that past government actions to improve the living conditions of indigenous people, namely social programs geared specifically to women, were insufficient to overcome the historical marginalization of indigenous populations. The CNDH's Program for Promotion and Dissemination of Human Rights for Indigenous Peoples held 358 outreach and training activities with the participation of 18,178 people during the year, including conferences, trainings for public officials and prison personnel, interagency workshops, and outreach in indigenous communities.

The law provides for educational instruction in the national language, Spanish, without prejudice to the protection and promotion of indigenous languages. However, many indigenous children spoke only their native languages. In practice, education in indigenous languages was limited by the lack of textbooks and teaching materials, as well as by the lack of qualified teachers fluent in these languages. During the year the CNDH received 113 complaints and issued two recommendations on human rights abuses of the indigenous population. Most complaints pertained to a lack of interpreters and discriminatory practices by government officials.

In May, Vidulfo Rosales Sierra, a lawyer for the Tlachinollan Mountain Human Rights Center in Guerrero, fled the country following receipt of an anonymous written death threat issued against him in reprisal for his work in litigating human rights cases. The threat referred specifically to Rosales' work on prominent human rights cases, many involving indigenous communities or individuals, in Guerrero.

The federal government made some progress in compliance with the Inter American Court of Human Rights case related to Valentina Rosendo Cantu and Ines Fernandez Ortega (see section 1. e.).

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The law prohibits discrimination against and lesbian, gay, bisexual, and transgender (LGBT) individuals; however, LGBT persons reported that the government did not always investigate and punish those complicit in abuses. The CNDH received 28 complaints of human rights abuses against LGBT individuals during the year.

Discrimination based on sexual orientation and gender identity was prevalent, despite a growing public acceptance of LGBT individuals. As of October CONAPRED had received 132 complaints of discrimination based on sexual preference against individual persons, and 24 complaints of discrimination based on sexual preferences against federal public servants. Additionally, in a December press release, the IACHR announced that during the months of October and November, the IACHR learned about and condemned the killing of 10 LGBT individuals during the year.

On March 10, the body of gender rights activist Agnes Torres Hernandez was found in a ravine near Atlixco, Puebla. Torres Hernandez was a well-known and outspoken advocate for transgender individuals.

On June 14, Jesus Armando Mendez Mendez, a 17- year-old transgender individual, was found murdered in Altamira, Tamaulipas. At year's end no charges had been brought and no suspects were under investigation.

Other Societal Violence or Discrimination

There were no reports of societal violence or discrimination against persons with HIV/AIDS.

High-profile crimes against migrants in 2011, resulting in significant loss of life, prompted the passage in May 2011 of a comprehensive migration law intended to protect the human rights of migrants. On September 28, the government published the implementing regulations for the law. Several NGOs criticized the regulations for allowing for the discretionary application of the law by migration officials, and said that the regulations did not sufficiently provide protection for vulnerable migrant populations such as minor children and persons with HIV.

A joint report entitled the "State of Torture in Mexico" by the World Organization Against Torture and the Mexican NGO network Todos Los Derechos para Todas y Todos, describes inhuman conditions and severe overcrowding in migrant holding centers, in particular in the Iztapalapa center in Mexico City, and Century XXI center in Tapachula, Chiapas.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

On November 13, after a long debate, the Senate passed a final version of a labor reform law by 99 votes to 28, and former President Calderon signed the law on November 29. The reform, which took effect on December 1, represented the first update to Mexico's labor law in 40 years. Federal law provides workers the right to form and join unions, the right to strike in both the public and private sector, and the right to bargain collectively. However, the law places several restrictions on these rights. The law does not prohibit antiunion discrimination nor does it require reinstatement of workers fired for union activity.

Although the law requires a minimum of only 20 workers to form an independent union, it requires official recognition from the government to register the union formally and establishes administrative procedures for registration. The law prohibits the coexistence of two or more unions in the same state agency. Article 372 of the labor law bans foreign nationals from being members of trade union executive bodies, and Article 395 was an "exclusion clause," which allowed employers to terminate the contract of an employee who quits the union. In 2011 the Supreme Court determined that the exclusion clause was unconstitutional. On November 30, the law was modified and Article 395 was revoked.

A union established in accordance with its own bylaws may call for a strike or bargain collectively. The government can grant legal recognition to unions, a process known as "toma de nota," either to union executive leaders individually or to the entire executive committee. The law limits the right to strike for a number of public officials, including many that do not exercise authority in the name of the government. The law also restricts government employees – including banking sector employees – from striking unless there is a "systematic violation of their rights" and requires that a two-thirds majority of workers in the relevant public service entity be in favor of a strike. Before a strike may be considered legal, a union must file a "notice to strike" with the appropriate labor authorities.

Although the law authorizes the coexistence of several unions, it sets rules on which union has priority and limits collective bargaining to the union that has the largest number of workers. Migrant workers are excluded from relevant legal protections.

The government did not consistently protect worker rights in practice. Its general failure to enforce labor and other laws left workers without much recourse with regard to violations of freedom of association, working conditions, or other problems. Union organizers from several sectors complained about the overt and usually hostile involvement of the government when organizers attempted to develop independent unions. The process for official government recognition of unions was politicized, and the government occasionally used the process to reward political allies or punish political opponents. According to union organizers, government labor boards frequently rejected union registration applications on technicalities. In addition, independent union activists claimed that the requirement that the government approve strikes in advance gave authorities the power to show favoritism by determining which companies would be protected from strikes.

Although few formal strikes occurred, in part because of the numerous restrictions on strikes, informal work freezes by both union and nonunionized groups were fairly common. According to union activists, employers frequently did not attend conciliation meetings between the parties as a stalling tactic.

Protection (company-controlled) unions continued to be a problem in all sectors, and many observers noted that a majority of organized workers belonged to unrepresentative unions. Protection contracts are a violation of International Labor Organization Convention 87, regarding freedom of association. Officially sanctioned "protection contracts" – formal agreements whereby the company created an unrepresentative union in exchange for labor peace and other concessions – were common in all sectors and often prevented workers from fully exercising their labor rights as defined by law. These contracts were often developed prior to the company hiring any workers at a new job site and managed without direct input from workers. Collective bargaining agreements resulting from protection contracts usually failed to provide worker benefits beyond the legal minimum and impeded the rights of independent unions to effectively and legitimately bargain collectively on behalf of workers.

According to several NGOs and unions, many workers continued to face intimidation during bargaining rights elections from other workers, union leaders, or employers favoring a particular union. The practice of a voice vote was declared illegal by the Supreme Court but was still widely used. However, practices such as providing very limited notice prior to an election and allowing management or nonemployees to vote were increasingly common. The new labor reform law, which came into effect on December 1, establishes that union votes must be held via secret ballot, either directly or indirectly.

Workers were excluded from official unions for trying to organize their colleagues into separate, independent unions. The "exclusion clause" in the law gave these unions the right to prevent the formation of an authentic union by expelling agitators from the "official" union, thereby obliging the company to fire these individuals. Some fired workers accused unions of harassment and intimidation.

On May 31, the Worker Support Center (CAT) announced that it was obliged to cease all operations in the State of Puebla. The announcement came after the kidnapping and torture of CAT staffer Jose Enrique Morales Montano on May 15 and subsequent death threats made against CAT's executive director Blanca Velásquez. The CAT had barely restarted its community and educational outreach with workers and families in early 2012, after the December 2010 ransacking of their offices and the January 2011 death threats against Velasquez, when Leobardo Soto, a federal deputy and Confederation of Mexican Workers (CTM) leader in Puebla, publicly blamed the CAT for labor unrest. Soto stated in the local press that all means, including violence, would be used to prevent the CAT from continuing its work. The CAT filed a complaint with the Attorney General's Office, which opened an investigation into the incidents; however, by year's end the investigation had not progressed significantly. Protective measures recommended by IACHR in 2011 for the CAT were renewed on May 29.

Finnish auto parts producer, PKC Group, purchased a 7,000-worker wire-harnesses plant in Ciudad Acuña, Coahuila, in October 2011. The independent mining union, Los Mineros Section 307, was legally registered as a representative of workers at the factory since 2009, although company owners had never agreed to bargain with the local union section. On January 12, the PKC management announced to workers that it had signed a collective bargaining agreement with a CTM affiliated union in October 2011 in order to protect the workers' interests and that it was paying the workers' dues to the protection union. On February 3, Los Mineros filed for the legal right for a worker election to decide union representation and control of the collective bargaining agreement. After several attempts to refuse admission to Los Mineros request for an election, the Federal Mediation and Arbitration Board scheduled a vote for October 18. The vote was carried out after months of intense anti-Mineros campaigning by the PKC, allegedly in collaboration with the CTM and the local authorities. The campaign allegedly included the infiltration of Los Mineros meetings by CTM officials and company management, CTM-fueled rumors and threats of plant closure and mass layoffs, a media slur campaign against Los Mineros and the Border Worker Committee Chief Financial Officer, and the deportation of a United Auto Workers staffer and film maker recording events leading up to the vote. For the day of the vote, more than 1,000 former PKC workers were rehired and instructed to vote for the CTM. Los Mineros officially withdrew its participation, claiming it was a fraudulent election, and requested another vote. In the meantime, a formal complaint citing the PKC's antiunion animus was filed with the Organization for Economic Cooperation and Development.

b. Prohibition of Forced or Compulsory Labor

Although the law prohibits all forms of forced or compulsory labor, the government did not effectively enforce such laws. Forced labor persisted in both the agricultural and industrial sectors. Women and children were subjected to domestic servitude. Migrants, including men, women, and children, were the most vulnerable to forced labor.

Also see the Department of State's [Trafficking in Persons Report](#).

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits children under the age of 14 from working and allows those between the ages of 14 and 17 to work limited daytime hours in nonhazardous conditions, and only with parental permission. The new labor reform law, which came into effect on December 1, makes it a federal penalty to employ children under the age of 14.

The government did not effectively enforce such prohibitions. According to sources, including the International Labor Organization, government enforcement was reasonably effective in large and medium-sized companies, especially in factories run by U.S. companies, and in the "maquila" (in-bond export) sector, as well as other industries under federal jurisdiction. Enforcement was inadequate in many small companies and in the agriculture and construction sectors; and nearly absent in the informal sector, in which most children worked. Complex divisions and a lack of coordination between federal and state jurisdictions complicated the labor inspection process. The Secretariat for Social Development, the PGR, and the National System for Integral Family Development all have responsibility for enforcement of some aspects of child labor laws or intervention in cases where such laws are violated. The Secretariat of Labor and Social Security (STPS) is responsible for carrying out child labor inspections.

According to the National Institute of Statistics and Geography (INEGI), the number of employed children fell slightly from 10.8 percent in 2009 to 10.5 percent in 2011. Of employed children, 29.5 percent worked in the agricultural sector in the harvest of melons, onions, sugarcane, tobacco, and tomatoes. Other sectors with significant child labor included services (26.7 percent), retail sales (25.4 percent), manufacturing (11.9 percent), and construction (4.8 percent).

d. Acceptable Conditions of Work

On November 26, the minimum wage zones were reduced from three to two, and the minimum wage was set at 62.33 pesos (\$5.00) per day for Zone A and 59.08 pesos (\$4.75) per day for Zone B. Most formal sector workers received between one and three times the minimum wage. The National Council for Evaluation of Social Development Policy estimated the poverty line at 77.60 pesos (\$6.26) per day for 2012.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Any work more than eight hours in a day is considered overtime, for which a worker receives double the hourly wage. After accumulating nine hours of overtime in a week, a worker earns triple the hourly wage; the law prohibits compulsory overtime. The law includes eight paid public holidays and one week of paid annual leave after completing one year of work. The law requires employers to observe occupational safety and health regulations, issued jointly by the STPS and the Mexican Institute for Social Security. Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials.

The STPS is responsible for enforcing labor laws and employed 776 federal labor inspectors during the year, compared with 376 in 2011. The STPS carried out regular inspections of workplaces, using a questionnaire and other actions to identify victims of labor exploitation. Between January and November, it undertook 75,031 inspections, including the monitoring of industries identified as having a high incidence of child labor (agriculture, coal mines, and construction). These operations identified 712 underage agricultural workers, removed workers under age 14, and penalized employers with fines. According to the STPS, training for labor inspectors included a program focused on enforcement of labor laws in the agricultural sector, but there was no program for labor inspections in the informal sector. Still, all workplaces are subject to STPS inspection.

According to labor rights NGOs, employers in all sectors sometimes used the illegal "hours bank" approach – requiring long hours when the workload is heavy and cutting hours when it is light – to avoid compensating workers for overtime. In addition many companies evaded taxes and social security payments by employing workers informally. INEGI estimated that 29.3 percent of the workforce was engaged in the informal economy.

There were several accidents in coal mines reported during the year. On May 18, two miners lost their lives in an explosion, and on June 8, one miner died after slipping off a platform (union leaders claimed that the platform transporting the miner did not have proper safety controls); both accidents occurred in Coahuila. On July 25, seven miners died after an explosion due to firedamp in Saltillo, Coahuila, despite assurances from the STPS that the company had been inspected 16 times before the accident. The union blamed the incidents on a lack of sufficient safety controls, and at year's end, an investigation into the accident continued. On August 3, six miners died in a mine after a collapse of a coal cave in Monclova, Coahuila. On November 30, three miners died and three were injured at a mine in Zacazonapan, Mexico State, when an error occurred as the miners were detonating to extract minerals.

The state-run oil company Petroleos Mexicanos (Pemex) also experienced several accidents where employees lost their lives during the year. On September 8, an explosion in the Cadereyta refinery killed one employee. On September 18, at a plant near the town of Reynosa, 31 workers (four from Pemex and 27 contractors) died in an explosion caused by a build-up of gas in Pemex pipelines. On October 18, the pressure of a gas leak caused a fire at a Pemex facility in the community Corralillos, leaving two contract employees injured. Another explosion and fire occurred in the refinery located in Salina Cruz, Oaxaca on October 20, leaving two Pemex employees injured. Although all the events cited above were believed to be accidents, illegal tapping of pipelines, often by criminal gangs, cost hundreds of millions of dollars and in some cases, sparked fires and caused accidents.



Mexico: Situation and treatment of sexual minorities, particularly in Mexico City, Cancún, Guadalajara, and Acapulco; state protection and support services available (2012-July 2015)

18 August 2015

MEX105241.E

1. Overview and Legislation

The 2003 Federal Law to Prevent and Eliminate Discrimination (Ley Federal para Prevenir y Eliminar la Discriminación) protects against discrimination based on sexual orientation (Mexico 2003, Art. 1). The website of the National Council for the Prevention of Discrimination (Comisión Nacional para Prevenir la Discriminación, CONAPRED), an independent federal institution created in 2003 to prevent discrimination and to promote and design policies for social and cultural development (ibid. n.d.a), indicates that 29 out of the 32 states in Mexico (not including Jalisco, Nuevo León, and Tabasco) have state legislation that prohibits discrimination based on sexual orientation (ibid. 2015, 7). In addition, 21 states have anti-discrimination clauses in their Constitutions (ibid. 31 Dec. 2014).

Sources indicate that same-sex marriages were first recognized in Mexico City in 2009 (BBC 24 June 2015; Al Jazeera 28 Jan. 2014). A 2015 document produced by CONAPRED indicates that same-sex marriages are legally recognized in three states: Federal District (called Matrimonio), Coahuila (Matrimonio igualitario), and Quintana Roo (Matrimonio) (Mexico 2015, 2-3). The document also indicates that five states recognize same-sex civil unions: Federal District (Sociedad en convivencia), Campeche (Sociedad en convivencia), Coahuila (Pacto de solidaridad), Colima (Enlace conyugal), and Jalisco (Libre convivencia) (ibid., 3). CONAPRED also indicates that same-sex marriages can be recognized anywhere in the country through a writ of amparo (constitutional legal protection) (ibid. 2015, 7). For further information on writs of amparo, see Response to Information Request MEX103802. The Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) ruled on 3 June 2015 that [translation] "there is no constitutional reason to not recognize same-sex marriages" (ibid. 4 June 2015).

The SCJN judgment further stated that

[translation]

[t]he reason why same-sex couples have not enjoyed the same protections available to heterosexual couples is not because of negligence from the legislative branch of government but because of the legacy of severe prejudices that have traditionally existed and the historical discrimination against them. (ibid.)

However, according to Alejandro Madrazo, a lawyer and investigator with Mexico City's Center for Research and Teaching Economics (Centro de Investigación y Docencia Económicas, CIDE) [1], same-sex couples will continue facing challenges regarding marriage as civil registries [translation] "will continue rejecting applications for same-sex marriages and these couples will have to file an amparo with the associated costs and bureaucracy this process implies" (qtd. in BBC 24 June 2015). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

CONAPRED indicates that same-sex partners can be registered as beneficiaries before the Mexican Institute of Social Security (Instituto Mexicano de Seguridad Social, IMSS) and the Institute of Security and Social Services for State Workers (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, ISSSTE) (Mexico 2015, 8).

2. Treatment by Society

Sources indicate that discrimination against sexual minorities remains common across Mexico (Al Jazeera 28 Jan. 2014; US 25 June 2015, 31). A study on transgendered women in the Federal District was produced by the National Institute of Public Health (Instituto Nacional de Salud Pública, INSP) [2], the Condesa Specialized Clinic (Clínica de Especialidades Condesa, CONDESA) [3], and Population Services International in Mexico (PSI Mexico) [4], and supported by the US Agency for International Development (USAID) (INSP et al. 8 May 2013). The study, which consisted of 585 interviews with transgendered women, took place in the Federal District at 77 locations where transgendered women typically meet (351 participants), the CONDESA Specialized Clinic (150), and four penitentiaries (84) (INSP et al. 8 May 2013, 10, 19-20). According to the survey, the following percentages of women surveyed have faced discrimination: 67.1 percent of respondents at typical meeting places, 78.7 percent at the CONDESA clinic, and 79.5 percent at penitentiaries (ibid., 37). CONAPRED indicates that, according to the CNDH, between 2009 and 2013, 176 inquiries on discrimination have been opened by the Public Ministry (Mexico 2015, 5). Information on the status

of these inquiries could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, a representative from the Colectivo León Gay, A.C., an NGO that advocates for the rights of LGBT persons in Mexico, indicated that LGBT persons face discrimination when accessing health care services (Colectivo León Gay, A.C. 10 July 2015). Excelsior, a Mexico City-based newspaper, quotes the Deputy Director of the Complaints Unit at CONAPRED as indicating that the most common complaints received at that institution from LGBT persons include the denial of access to health services, the rejection of applications to access social security for same-sex partners, and homophobic comments made by health care providers (8 Sept. 2013). The INSP et al. study indicates that of those transgendered women surveyed, 7.1 percent at meeting places, 9.3 percent at the CONDESA clinic, and 7.3 percent at penitentiaries in the Federal District have been denied access to health services (8 May 2013, 38).

The US Department of State's Country Reports on Human Rights Practices for 2014 for Mexico indicates that **sexual minorities face discrimination in employment** (US 25 June 2015, 38). The INSP et al. study indicates that the following percentages of those transgendered women surveyed have been denied employment based on their sexual orientation: 8.7 percent at meeting places, 20.3 percent at the CONDESA clinic, and 10.9 percent at penitentiaries (8 May 2015, 38). A national online survey by the National Commission of Human Rights (Comisión Nacional de los Derechos Humanos, CNDH) [5], Espolea [6], and Google Mexico, among other sources, indicates that 39 percent of respondents have been asked at some point in their lives about their sexual orientation in order to obtain employment (Mexico et al. 15 May 2014, 11). The survey, which consisted of 2,284 LGBT respondents in Mexico, of whom 64 percent were gay males and bisexuals, 24 percent were lesbians and bisexual women, and 8 percent were transgendered women, also indicates that 35 percent of the respondents have been refused employment and 26 percent have been fired due to their sexual orientation (ibid.). The survey further indicates that 53 percent of respondents did not take any action against this treatment, while 15 percent did, of which 17 percent filed a complaint with authorities (ibid. 13).

Sources indicate that **sexual minorities face discrimination at educational institutions** (Colectivo León Gay, A.C., 10 July 2015; El Financiero 10 Feb. 2014). Sources report that children of same-sex couples are denied access to education (El Financiero 10 Feb. 2014; Milenio 20 Sept. 2013). An investigation undertaken by El Financiero, a Mexico City-based business and financial newspaper, reports that educational institutions in several states, including Querétaro, Guanajuato, and the Federal District, deny access to education to children of same-sex couples (El Financiero 10 Feb. 2014). Milenio, a newspaper based out of Mexico City, similarly reports on the dismissal of a two year-old girl from a school in Monterrey because her parents were a gay couple (Milenio 20 Sept. 2013). The article points out that one of the spouses asked for assistance from CONAPRED and the Office of the Under-Secretary of Education of Nuevo León, but that the school still refused to register the girl (ibid.). The Secretary of Education was reportedly studying the case (ibid.). Additional information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that **sexual minorities also face violence at educational institutions** (Excelsior 8 Sept. 2013; Colectivo León Gay, A.C. 10 July 2015; NotieSe 16 May 2012). Sources report that an online study conducted in 2011 on homophobic bullying at schools in Mexico by the Youth Coalition for Sexual and Reproductive Rights [7] and the Youth Coalition for Education and Sexual Health (Coalición de Jóvenes por la Educación y la Salud Sexual, COJESS) [8], which was presented to the CNDH, from a sample of 1,273 LGBT persons (UN n.d.; Proceso 3 June 2014), indicates that 74 percent of gay men (of 875 participants), 50 percent of lesbians (of 124 participants), and **66 percent of transgendered persons (of 32 participants) experienced violence at educational institutions** (ibid.; NotieSe 16 May 2012). Proceso, a Mexico City-based news magazine, also reports that, according to the study, 50 percent of teachers considered aggressions against LGBT students as [translation] "normal" and that in 5 percent of the cases the aggressors were punished (Proceso 3 June 2014).

The representative from the Colectivo León Gay, A.C. indicated that some parts of Mexico City, Guadalajara, Puerto Vallarta, and Monterrey "can be considered as safe for LGBT persons, however, in the rest of the country it would be difficult to publicly show yourself as an LGBT person" (10 July 2015). Al Jazeera reports that on 31 December 2014, a gay couple was asked to leave a "trendy" nightclub in Guadalajara after they kissed each other, and that two months prior to this incident, a lesbian couple was thrown out of a bar after kissing and holding hands (Al Jazeera 28 Jan. 2014). The gay couple filed a complaint with municipal, state, and federal authorities, as well as with human rights organizations but did not receive a response to their complaint (ibid.). Additional information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Violence Against Sexual Minorities

The INSP et al. study indicates that **of the 585 transgendered women interviewed, 21.9 percent at meeting places, 26.3 percent at CONDESA clinic, and 33.8 percent at penitentiaries have faced physical violence** (8 May 2013, 38).

CONAPRED indicates that, according to the CNDH, **between 2009 and 2013, 91 homicides have been committed in Mexico that were motivated by homophobia or transphobia** (Mexico 2015, 5). Proceso reports that, according to a report produced by the Citizens Commission Against Hate Crimes Motivated by Homophobia (Comisión Ciudadana contra los Crímenes de Odio por Homofobia, CCCOH) [9], **1,218 homicides motivated by homophobia have been committed since 1995 in Mexico, with the majority of victims being gay men (976), followed by 226 victims who were transgender, transsexual or transvestite individuals, and 16**

women (Proceso 11 May 2015). The CCCOH investigation indicated that homicides against lesbians are underreported because the murders are usually categorized as femicides and not murders caused by homophobia (ibid.). The Federal District has the highest number of these types of homicides (190 homicides), followed by the State of Mexico (119), Nuevo León (78), Veracruz (72), Chihuahua (69), Michoacán (65), Jalisco (66), and Yucatán (60) (ibid.). The report further indicates that **the rate of homophobia-motivated homicides has been increasing since 2005**, when it reached the highest number recorded at 71 cases (ibid.).

4. Treatment by Authorities

A report on crimes against transgendered women sent to the Research Directorate by a representative at the Support Centre for Transgender Identities (Centro de Apoyo a las Identidades Trans, CAIT), an NGO that advocates for the rights of transgendered women in Mexico (CAIT n.d.), **indicates that transgendered women are discriminated against by the police and judicial authorities** (ibid. Feb. 2013). The representative from Colectivo León Gay, A.C. indicated that **LGBT persons are [translation] "frequently harassed and arbitrarily detained due to their physical appearance, the way they dress, or for expressing affection in public"** (Colectivo León Gay, A.C. 10 July 2015). The representative also indicated that they are barred from assembling in public because they are seen as "engaging in prostitution or giving a 'bad example' or 'bad image' to society" (ibid.).

According to the Colectivo León Gay, A.C. representative, **officials from the Public Ministry often mistreat LGBT persons and refuse to open investigation for crimes against them** (ibid.). In correspondence with the Research Directorate, a representative from Queer Investigations (Investigaciones Queer, A.C.), a civil society organization that advocates for the rights of LGBT persons in Mexico (Investigaciones Queer, A.C. n.d.), indicated that despite the training provided to judicial authorities on sexual diversity, [translation] "there is still a lot of intimidation and threats against the LGBT population due to what they perceive as 'faults against morals,' which are used to extort members of the LGBT community" (ibid. 10 July 2015). The INSP et al. study indicates the following percentage of women surveyed as identifying the police as agents of discrimination: 33.4 percent at meeting places, 24.6 percent at the CONDESA clinic, and 20.6 percent at penitentiaries (8 May 2013, 38).

5. State Protection

Sources indicate that **authorities did not always investigate and punish those who are complicit in human rights abuses against sexual minorities** (US 25 June 2015, 31; Colectivo León Gay, A.C. 10 July 2015). Sources indicate that crimes committed against sexual minorities are often characterized by authorities as "crimes of passion" (crímenes pasionales) and that these types of crimes are investigated less (OAS 25 June 2012; Investigaciones Queer, A.C. 10 July 2015). Proceso reports that, according to the CCCOH report, homicides motivated by homophobia run the risk of becoming [translation] "'invisible'" due to the "'violence, impunity and corruption' that are present during the investigation of these crimes" (11 May 2015). The report provided by CAIT similarly indicates that **homicides of transgendered women tend to result in impunity and [translation] "people often tend to view this as the rule rather than the exception,"** which adds to the stigmatization, discrimination, and human rights violation of this segment of the population (ibid. Feb. 2013, 1). According to the Queer Investigations representative, **the LGBT population in Mexico continues to be persecuted, criminalized, and discriminated against due to the [translation] "high degree of corruption, negligence, and impunity" in the justice system** (ibid. 10 July 2015). In a response to an access to information request made by the Research Directorate, the Human Rights Commission of the Federal District (Comisión de Derechos Humanos del Distrito Federal) indicated that, between January 2012 and May 2015, 132 human rights violations were identified in the 87 complaints received and finalized by that federal institution regarding crimes against LGBT persons (Federal District 29 June 2015, 10). Out of the investigations into these 132 violations, 56 were terminated due to lack of evidence, 13 were terminated due to "lack of interest" from the complainant, and 57 were resolved (ibid.).

Excelsior quotes a physician at the López Mateos Hospital in Mexico City as stating that **many LGBT persons who arrive at the hospital as victims of violence and abuse refuse to file a complaint with the Public Ministry, arguing that these authorities [translation] "do not do anything and they make fun of their sexual preferences"** (Excelsior 8 Sept. 2013). The physician explained that even though physicians and health service providers administer the paperwork that provides notice to authorities regarding cases, LGBT patients do not follow through with the complaint (ibid.).

The representative from the Colectivo León Gay, A.C. indicated that even though Mexican authorities have been receiving training in sexual diversity issues, they do not have an integrated strategy nor do they seek the participation of LGBT rights organizations in that training (Colectivo León Gay, A.C. 10 July 2015).

5.1 Support Services

Sources report that the Community Centre for the Assistance of Sexual Minorities (Centro Comunitario de Atención a la Diversidad Sexual) is located in the Zona Rosa area of the Federal District (Time Out México 12 Dec. 2014; La Jornada 1 Nov. 2012). La Jornada, a Mexico City-based newspaper, reports that the Centre, which is located at Génova Street No. 30, was inaugurated on 8 April 2011 and is the [translation] "only one of its type" in Mexico (ibid.). The Centre provides medical, legal, and psychological assistance, as well as testing for HIV and syphilis (ibid.; Time Out México 12 Dec. 2014). A specialized unit that provides assistance to LGBT persons at the General Attorney's Office of the Federal District also has an office located at the Centre to assist victims of crimes (ibid.; La Jornada 1 Nov. 2012). Time Out México indicates that services are provided for free (Time Out México 12 Dec. 2014). According to the Under-Secretary of Government (Subsecretario de Gobierno) of the Federal District, the Centre provided

services to 13,600 people during its first year of operations, including investigations by the Public Ministry (1,253 people) and the provision of health services (2,398 people) (qtd. in La Jornada 1 Nov. 2012).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] CIDE is "one of Mexico's most important centers of higher education and research in the social sciences. Recognized both nationally and internationally, CIDE has been a non-profit public institution since its establishment in Mexico City in 1974" (Stanford University n.d.).

[2] INSP is an academic institution that undertakes research on public health issues (INSP 30 June 2015).

[3] Clínica de Especialidades Condesa is the [translation] "largest" clinic that provides services to HIV patients in Mexico (Federal District n.d.).

[4] PSI Mexico is a non-profit charitable organization that "aims to improve the health of low income and vulnerable Mexicans" (PSI n.d.).

[5] The CNDH is the national body responsible for the promotion and protection of human rights in the country (ibid. n.d.b).

[6] Espolea is an NGO made up of young people that advocates for the promotion and protection of human rights (Espolea n.d.).

[7] Youth Coalition for Sexual and Reproductive Rights "is an international organization of young people (ages 18-29 years) committed to promoting adolescent and youth sexual and reproductive rights at the national, regional and international levels" (Youth Coalition for Sexual and Reproductive Rights n.d.).

[8] COJESS is an organization based in Mexico that advocates for the sexual rights of young people (COJESS 29 Oct. 2012).

[9] The CCCOH is an organization that provides assistance to the families of victims during the investigation of homophobia-motivated homicides to bring the perpetrator to justice (Letra S, Sida, Cultura y Vida Cotidiana, AC n.d.). It also develops strategies to publicize and disseminate information about these cases (ibid.).

References

Al Jazeera. 28 January 2014. Duncan Tucker. "Mexico's Gay Rights Movement Gaining Ground." [Accessed 25 June 2015]

British Broadcasting Corporation (BBC). 24 June 2015. Juan Paullier. "¿Por qué pasó desapercibida la decisión judicial que legaliza el matrimonio gay en México?" [Accessed 26 June 2015]

Centro de Apoyo a las Identidades Trans, A.C. February 2013. Informe crímenes de mujeres trans en México, invisibilidad=impunidad. Sent to the Research Directorate by a representative, 14 July 2015.

_____. N.d. "Centro de Apoyo a las Identidades Trans A.C." [Accessed 25 July 2015]

Coalición de Jóvenes por la Educación y la Salud Sexual, COJESS. 29 October 2012. "Coalición de Jóvenes por la Educación y Salud Sexual (COJESS)." [Accessed 17 Aug. 2015]

Colectivo León Gay, A.C. 10 July 2015. Correspondence from a representative to the Research Directorate.

El Financiero. 3 October 2013. Miriam de Regil and Rosalía Servín Magaña. "Escuelas cierran puertas a hijos de padres gays." [Accessed 21 July 2015]

Espolea. N.d. "Misión y visión." [Accessed 24 July 2015]

Excelsior. 8 September 2013. Claudia Solera. "Por homofobia llenan salas de urgencias." [Accessed 21 July 2015]

Federal District. 29 June 2015. Comisión de Derechos Humanos del Distrito Federal. Information obtained through an access to information request.

_____. N.d. Agencia de Gestión Urbana de la Ciudad de México. "Clínica especializada Condesa (VIH-SIDA)." [Accessed 24 July 2015]

Instituto Nacional de Salud Pública (INSP). 30 June 2015. "El Instituto." [Accessed 22 July 2015]

Instituto Nacional de Salud Pública (INSP), Clínica de Especialidades Condesa, (CONDESA) and Population Services International (PSI Mexico). 8 May 2013. Resultados de la encuesta de salud con ser-prevalencia de VIH a mujeres transgénero en la Ciudad de México. [Accessed 3 July 2015]

Investigaciones Queer, A.C. 10 July 2015. Correspondence from a representative to the Research Directorate.

_____. N.d. "Quiénes somos." [Accessed 25 July 2015]

La Jornada. 1 November 2012. Antonio Medina Trejo. "El DF y su espacio de la diversidad sexual." [Accessed 23 July 2015]

Letra S, Sida, Cultura y Vida Cotidiana, AC. N.d. "Informe de crímenes de odio por homofobia." [Accessed 25 July 2015]

Mexico. 4 June 2015. Suprema Corte de Justicia de la Nación (SCJN). Tesis jurisprudencial 46/2015 (10a.). [Accessed 15 July 2015]

_____. 2015. Consejo Nacional para Prevenir la Discriminación (CONAPRED). Día nacional de la Lucha contra la Homofobia. [Accessed 24 July 2015]

_____. 31 December 2014. Consejo Nacional para Prevenir la Discriminación (CONAPRED). "Estados en los que se cuenta con cláusula antidiscriminatoria constitucional, ley antidiscriminatoria y conducta tipificada en relación a la discriminación." [Accessed 26 July 2015]

_____. 2003 (amended 2014). Ley Federal para Prevenir y Eliminar la Discriminación. [Accessed 26 July 2015]

_____. N.d.a. Consejo Nacional para Prevenir la Discriminación (CONAPRED). "¿Quiénes somos?" [Accessed 24 July 2015]

_____. N.d.b. Comisión Nacional de los Derechos Humanos (CNDH). "Funciones." [Accessed 26 July 2015]

Mexico et al. 15 May 2014. Comisión Nacional de los Derechos Humanos (CNDH), Google México, JW Marriott, Espolea, and enehache.com. Presentacion de resultados: 1ra encuesta sobre homofobia y el mundo laboral en México. [Accessed 24 July 2015]

Milenio. 20 September 2013. Daniela Mendoza Luna. "Tener dos padres fue la falta imperdonable de una niña en NL." [Accessed 7 July 2015]

NotieSe. 16 May 2012. Leonardo Bastida Aguilar. "En México, 75 por ciento de jóvenes gays sufre violencia en escuelas." [Accessed 21 July 2015]

Organization of American States (OAS). 25 June 2012. Inter-American Commission on Human Rights. "CIDH condena asesinato de adolescente trans en México." [Accessed 22 July 2015]

Population Services International (PSI) Mexico. N.d. "About." [Accessed 24 July 2015]

Proceso. 11 May 2015. Sandra Pantoja. "México, segundo lugar mundial en crímenes por homofobia." [Accessed 21 July 2015]

_____. 3 June 2014. Luciano Campos Garza. "El bullying homofóbico, un problema invisible." [Accessed 26 July 2015]

Stanford University. N.d. Law School. "Centro de Investigación y Docencia Económicas (CIDE): México City, Mexico." [Accessed 24 July 2015]

Time Out México. 12 December 2014. Gil Camargo. "Centro Comunitario de Atención a la Diversidad Sexual." [Accessed 23 July 2015]

United Nations (UN). N.d. United Nations Organization for Education, Science and Culture (UNESCO). "Violencia de género y bullying homofóbico." [Accessed 26 July 2015]

United States (US). 25 June 2015. Department of State. "Mexico." Country Reports on Human Rights Practices for 2014. [Accessed 24 July 2015]

Youth Coalition for Sexual and Reproductive Rights. N.d. "About Us." [Accessed 17 Aug. 2015]

Additional Sources Consulted

Oral Sources: The following were unable to provide information for this Response: Jalisco - Ayuntamiento de Guadalajara, Fiscalía General, Instituto de Transparencia e Información Pública de Jalisco; Federal District - Consejo para Prevenir y Eliminar la Discriminación de la Ciudad de México, Procuraduría General de Justicia, Procuraduría Social del Distrito Federal; Mexico - Comisión Nacional de los Derechos Humanos, Procuraduría General de la Nación.

The following were unable to provide information within the time constraints of this Response: Fundación Arcoiris por el Respeto a la Diversidad Sexual, A.C.

Attempts to contact the following were unsuccessful within the time constraints of this Response: Agenda LGBT, A.C.; Centro de la Diversidad Sexual Buenas Intenciones, Yucatán; Colectivo Binni Laanu, A.C.; Colega O.A.C.; Comunidad Metropolitana, A.C.; Comunidad Orgullo GLBTI Tijuana; Género, Ética y Salud Sexual, A.C.; Guerrero - Comisión de los Derechos Humanos, Procuraduría General de Justicia; Migrantes LGBT; Quintana Roo - Comisión de Derechos Humanos, Procuraduría General de Justicia.

Internet sites, including: Amnesty International; The Atlantic; Cambio de Michoacán; Contralínea; Diario de Guerrero; Diario del Sur; Egale Canada; El Universal; Factiva; Federal District - Legislative Assembly; Freedom House; Friedrich-Ebert-Stiftung; The

Guardian; Guerrero - Comisión de los Derechos Humanos, Procuraduría General de Justicia; Human Rights Watch; Instituto para la Seguridad y la Democracia A.C.; International Crisis Group; International Gay and Lesbian Human Rights Commission; International Lesbian, Gay, Bisexual, Trans and Intersex Association; Jalisco - Fiscalía Federal del Estado; Mexico - Cámara de Diputados, Instituto Nacional de Estadística y Geografía, Procuraduría General de la República, Secretaría de Gobernación; La Nación; Noticias Terra; La Página; Quintana Roo - Comisión de Derechos Humanos, Procuraduría General de Justicia; TeleSUR; Transrespect Versus Transfobia; Washington Office on Latin America; Zócalo Saltillo.

Date modified: 2015-08-13

Copyright notice: This document is published with the permission of the copyright holder and producer Immigration and Refugee Board of Canada (IRB). The original version of this document may be found on the official website of the IRB at <http://www.irb-cisr.gc.ca/en/>. Documents earlier than 2003 may be found only on Refworld.



Mexico: Reports of sexual abuse committed by police officers against sexual minorities

13 September 2012

MEX104172.E

1. Reports of Sexual Abuse

Media sources report that in July 2012, in Tlapa, state of Guerrero, the Director of the Municipal Police and five police officers detained two homosexual boys and forced them to kiss and engage in sexual acts with each other in front of detainees and police officers, and photographed them for a local media source (*Reforma* 27 July 2012; *El Universal* 28 July 2012). *El Universal*, a national newspaper, reports that the boys were detained for urinating on the street (*ibid.*). While *El Universal* states that the mayor of Tlapa suspended the Director of the Municipal Police and the five police officers [translation] "for a few days" (*ibid.*), *Reforma*, a Mexico City-based newspaper, indicates that they were temporarily suspended and an investigation is pending (*Reforma* 27 July 2012).

Media sources report on police sexual abuse of LGBT people in Durango (*La Jornada* 10 Nov. 2009; *El Universal* 18 Feb. 2011). *El Universal* indicates that, according to the leader of an organization for gays and lesbians, LGBT people in Durango City are routinely stopped by police, detained, and subjected to verbal and physical assault (*ibid.*). The same source reports that in January and February 2011, there were 20 reports of sexual abuse of homosexuals in Durango City while they were being transferred to the Ministry of Public Security by police officers, and that in 2010, there were 60 similar cases (*ibid.*). The newspaper also reports that the leader of the gay and lesbian organization stated that this type of sexual abuse also occurs in other municipalities, including in Gómez Palacio and Lerdo, in the state of Durango (*ibid.*). The national newspaper *La Jornada* reports that this leader indicated that when police see homosexuals on the street, they assume that they are sex workers and request sexual acts or money in exchange for not imprisoning them (10 Nov. 2009). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In a telephone interview with the Research Directorate, a representative of Diversities Cohesion for Sustainability (Cohesión de Diversidades para la Sustentabilidad, CODISE), a civil association which works on improving the health and education of sexual minorities and vulnerable groups in the states of Jalisco and Nayarit (CODISE n.d.), stated that police in Tonalá, in the state of Jalisco, ordered two lesbians to remove their clothes, videotaped them, and uploaded the video on YouTube (*ibid.* 15 Aug. 2012). He added that these police officers were not punished, but rather were told to attend a training session that CODISE conducted for them (*ibid.*). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A shadow report on violations of the rights of LGBT people in Mexico by Global Rights, the International Gay and Lesbian Human Rights Commission, the International Human Rights Clinic at Harvard Law School and Colectivo Binni Laanu A.C. which was submitted to the UN

Human Rights Committee, indicates that transgendered, transsexual and "transvesti" sex workers are "particularly vulnerable to abuse and extortion on the part of state officials and other individuals" (Mar. 2010, 15). According to the CODISE representative, transsexuals have reported being sexually abused by police officers (15 Aug. 2012).

2. Reporting

Media sources indicate that LGBT people do not usually report sexual abuse by police out of fear (*El Universal* 18 Feb. 2011; *La Jornada* 10 Nov. 2009). The CODISE representative similarly stated that [translation] "very few" cases of sexual abuse of LGBT people by the police are reported for many reasons, including:

- staff at human rights commissions tend to be homophobic. Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response;
- families of LGBT people are often threatened;
- the police threaten to disclose the secret of the LGBT person's sexual orientation to their families;
- in some states, such as Jalisco, there are no laws that penalize discrimination and abuses against sexual minorities (15 Aug. 2012).

A report on homophobia sent to the Research Directorate by the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) of Mexico specifies that discrimination based on sexual orientation is considered to be a crime in the penal codes of Aguascalientes, Chiapas, Chihuahua, Coahuila, Colima, the Federal District, Durango, Tlaxcala, Veracruz, and Quintana Roo (Mexico 17 May 2010).

3. Other Police Abuses against LGBT People

According to a 2010 study conducted by the National Council for the Prevention of Discrimination (Consejo Nacional para Prevenir la Discriminación), which surveyed 52,095 people across Mexico, including vulnerable populations such as sexual minorities, 42.8 percent of LGBT people interviewed indicated that police are [translation] "intolerant" of sexual minorities, which is the highest percentage listed from the study when compared to friends, family, health service providers, media, neighbours, federal and state governments, and the church (Mexico 2011, 15, 16, 47, 50).

Several sources report on police abuses against sexual minorities, including: extortion (Global Rights et. al. Mar. 2010, 11, 12; *Milenio* 13 Mar. 2012; *Puebla Online* 14 May 2009), arbitrary detention (Global Rights et. al. Mar. 2010, 11; *Milenio* 14 June 2012; *La Jornada* 10 Mar. 2011; *NotieSe* 27 July 2009), beatings (Global Rights et. al. Mar. 2010, 12) and "torture" (AI 8 Dec. 2010; OMCT 10 Dec. 2010).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

- Amnesty International (AI). 8 December 2010. "LGBT Activist Tortured by Police." [Accessed 2 Aug. 2012]
- Cohesión de Diversidades para la Sustentabilidad (CODISE). 15 August 2012. Telephone interview with a representative.
- _____. N.d. "Nosotros." [Accessed 2 Aug. 2012]
- Global Rights, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic (Harvard Law School) and Colectivo Binni Laanu A.C. March 2010. *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico: A Shadow Report*. [Accessed 8 Aug. 2012]
- La Jornada* [Mexico City]. 10 March 2011. Javier Puga, América Farías and Arturo Alfaro. "Redada de gays en Puebla." [Accessed 3 Aug. 2012]
- _____. 10 November 2009. Saúl Maldonado. "Denuncian gays acoso policiaco en Durango." [Accessed 8 Aug. 2012]
- Mexico. 2011. Consejo Nacional para Prevenir la Discriminación (CONAPRED). *Encuesta Nacional sobre Discriminación en México - ENADIS 2010. Resultados generales*. [Accessed 16 Aug. 2012]
- _____. 17 May 2010. Comisión Nacional de los Derechos Humanos (CNDH). *Special Report by the National Human Rights Commission (CNDH) on Homophobia-related Human Rights Violations and Crimes*. Sent to the Research Directorate by a representative of the CNDH.
- Milenio* [Monterrey]. 14 June 2012. Daniela Mendoza. "Acusan a Policía Regia de detenciones arbitrarias contra comunidad gay." [Accessed 9 Aug. 2012]
- _____. 13 March 2012. Felipe Larios Gaxiola. "Autoridades de Sonora violan derechos de comunidad gay en Hermosillo." [Accessed 9 Aug. 2012]
- NotieSe. 27 July 2009. Christian Rea Tizcareño. "Derechos Humanos de NL emite recomendación por 'detención arbitraria' de transexual." [Accessed 9 Aug. 2012]
- Organización Mundial Contra la Tortura (OMCT). 10 December 2010. "Alegaciones de torturas y malos tratos infligidos al Sr. José Ricardo Maldonado representante de la comunidad LGBT y acompañante de personas afectadas por el VIH en Yucatán, México." [Accessed 7 Sept. 2012]
- Puebla Online*. 14 May 2009. Jorge Castillo. "Comunidad homosexual denuncia abusos y extorsiones policíacas." [Accessed 13 Aug. 2012]
- Reforma* [Mexico City]. 27 July 2012. Jesús Guerrero. "Piden castigo a policías por daño a gays." [Accessed 13 Aug. 2012]
- El Universal* [Mexico City]. 28 July 2012. Carlos Cabrera. "Denuncian abuso policiaco contra gays en Guerrero." [Accessed 13 Aug. 2012]
- _____. 18 February 2011. "Regidor de Durango discrimina a manifestantes homosexuales." (Factiva)

Additional Sources Consulted

Oral sources: Attempts to contact representatives from the following organizations were unsuccessful within the time constraints of this Response: Agenda LGBT; El Clóset de Sor Juana; Colega O.A.C.; Comisión de Derechos Humanos del Distrito Federal; Comisión Estatal de Derechos Humanos Jalisco; Comisión Nacional de Diversidad Sexual del Partido de la Revolución Democrática; Consejo para Prevenir y Eliminar la Discriminación de la Ciudad de México; Instituto de Acceso a la Información Pública y Protección de Datos Personales del Distrito Federal; Letra S; Liga Mexicana por la Defensa de los Derechos Humanos; Mexico — Comisión Nacional de Derechos Humanos, Consejo para Prevenir y Eliminar la Discriminación, Secretaría de Seguridad Pública; Policía Auxiliar del Distrito Federal; Procuraduría General de Justicia del Distrito Federal; Procuraduría Social del Distrito Federal, as well as a human rights lawyer and a professor at El Colegio de México.

Internet sites, including: Agenda LGBT; Al Jazeera; Comisión Estatal de Derechos Humanos Jalisco; eoi.net; Factiva; Freedom House; GayGDL.com; Human Rights Watch; International Crisis Group; International Gay and Lesbian Human Rights Commission; International Lesbian, Gay, Bisexual, Trans and Intersex Association; La Nota México; Mexico — Comisión Nacional de Derechos Humanos; Pink News; Red Nacional de Organismos Civiles de Derechos Humanos; United Nations — Integrated Regional Information Networks, Human Rights Committee, Refworld; United States — Department of State; University of Toronto — Faculty of Law International Human Rights Program.

Copyright notice: This document is published with the permission of the copyright holder and producer Immigration and Refugee Board of Canada (IRB). The original version of this document may be found on the official website of the IRB at <http://www.irb-cisr.gc.ca/en/>. Documents earlier than 2003 may be found only on Refworld.



Mexico: Treatment of sexual minorities, including legislation protecting sexual minorities, other state protection, recourse and services available; treatment of sexual minorities in the Federal District; information on the Zona Rosa

16 September 2011

MEX103804.E

Treatment of Sexual Minorities

Discrimination

Sources indicate that homophobia is prevalent in Mexico (*Adiario* 4 Jan. 2010; The Canadian Press 13 May 2010; *CronicaDigital* 4 Aug. 2011; Mexico n.d.a; *El Sol de México* 18 July 2009; *El Universal* 6 June 2010; *ibid.* 21 Feb. 2011). According to the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH), **discrimination and violence based on a person's sexual orientation or gender identity are considered to be [translation] "socially acceptable" (La Prensa 3 Jan.2011).** A study conducted by both Letra S, a non-governmental organization (NGO) that disseminates information about sexual minorities (Letra S. n.d), and the Faculty of Political and Social Science at the National Autonomous University of Mexico (Universidad Nacional Autónoma de México, UNAM), states that [translation] "3 out of every 4 homosexuals have suffered some type of discrimination" (*Adiario* 4Jan. 2010). *La Prensa* reports that the largest number of homophobic incidents take place in public, followed by prisons, homes, and the work place (3 Jan. 2011).

Media, government and non-government sources indicate that sexual minorities face employment discrimination (Global Rights et al. Mar. 2010, 6; Mexico Dec. 2008, 134; *El Sol de México* 18 July 2009; Article 19 19 June 2009) in both the private and public sector (Global Rights et al. Mar. 2010, 4). Sources also point out that discrimination against sexual minorities happens in schools (*La Prensa* 3Jan. 2011; *La Jornada de Oriente* 18 May 2011; Mexico 17 May 2010, 4; Global Rights et al. Mar. 2010, 8).

Complaints to the National Council for the Prevention of Discrimination

In correspondence with the Research Directorate, a representative of the National Council for the Prevention of Discrimination (Consejo Nacional para Prevenir la Discriminación, CONAPRED) stated that, **of the complaints about discrimination against sexual minorities that the organization receives, the most common allege:**

[translation]

- the **denial of services or access** to places that provide services to the public (e.g., sexual minorities are frequently not allowed to enter or stay in business establishments);
- **violence**, such as being assaulted by family members, neighbours or others;

- victims of **ridicule and hate** and incitement to treatment contrary to their dignity in communications issued by the media or in statements by people such as religious figures, business entrepreneurs, associations, political parties, and others; and
- the **denial of access to and maintenance of employment**. (Mexico 12 Aug. 2011)

The representative also stated that the most common complaints that sexual minorities make against federal public servants allege that they discriminated against them by denying public health services, access to employment and maintenance of employment, and social security (ibid.).

According to *El Universal*, CONAPRED received 39 complaints of alleged discrimination in 2009, and 166 in 2010; [translation] "[a]bout 60 percent of the cases were resolved by conciliation between the parties" (21 Feb. 2011). The Mexico City-based newspaper also states that in 2010, CONAPRED forwarded 53 complaint files to the Public Ministry, which found them to be crimes of discrimination (ibid.).

Violence

A 2010 National Human Rights Commission report concludes that **human rights violations and crimes based on sexual orientation or gender identity [translation] "are not isolated" events as there is a "serious structural problem of intolerance" within Mexican society** (*La Prensa* 3 Jan. 2011; *El Universal* 21 Feb. 2011). According to the Oaxaca-based regional newspaper *Adiario*, the joint Letra S and UNAM Faculty of Political and Social Science study indicates that 76.4 percent of homosexuals have been subjected to physical violence and that 53.3 percent of that violence occurred in public places (*Adiario* 4 Jan. 2010). **A shadow report on violations of the rights of lesbian, gay, bisexual and transgender (LGBT) people in Mexico** by the international and national human rights organizations Global Rights, the International Gay and Lesbian Human Rights Commission, the International Human Rights Clinic at Harvard Law School and Colectivo Binni Laanu A.C., in Mexico, **which was submitted to the United Nations (UN) Human Rights Committee, maintains that LGBT persons "face a serious threat of violence"** (Mar. 2010, 4).

According to Article 19, an organization that works to defend freedom of expression and information (Article 19 n.d.a) from its headquarters in London, England, and several regional offices around the world, including in Mexico City (ibid. n.d.b), **Latin America and the Caribbean have the highest number of homophobic killings world-wide, while Mexico ranks second highest** (Article 19 27 Oct. 2008). **A Letra S report on homophobic hate crimes, compiled with statistics from a review of 71 local and national print newspapers in Mexico City and other cities that reported cases of homicides against homosexual men, lesbians and transgendered persons** (Letra S Dec. 2009, 5), was released at the CONAPRED office in May 2010 (*La Jornada* 14 May 2010). The report states that [translation] **"between January 1995 and June 2009, the press reported 640 homophobic homicides in 11 states, a figure that could be increased to 1,656 if there was national reporting"** (*La Jornada* 14 May 2010). Records kept by the Citizens' Commission Against Homophobic Hate Crimes (la Comisión Ciudadana contra Crímenes de Odio por Homofobia) also show that **between 1995 and 2009 there were 640 registered homophobic homicides** (NOTIMEX 17 May 2010).

The Letra S report also indicates that of the 86 homophobic hate crimes in which newspapers listed the age of the victims, 55 of the victims were between the ages of 21 and 40 (Letra S Dec.

2009, 5). The report states that most of the victims were killed by sharp weapons, followed by asphyxia, beating, the use of fire arms, and [translation] "other means" (ibid.). According to The Canadian Press, which wrote on the report's release in May 2010, the report shows that homicides of gays and lesbians has increased: between 1995 and 2000, there were nearly 30 homicides a year, while between 2001 and 2009, the number rose to approximately 60 homicides a year (13 May 2010). The Director of Letra S attributes the rise in violence to more people "becom[ing] public about their sexual orientation" (The Canadian Press 13 May 2010).

Incidences of violence in states and cities

According to NotieSe, a news agency specializing in health, sexuality and HIV/AIDS (NotieSe n.d.), the state of Guerrero, with 22 registered murders, is the entity with the highest number of homophobic hate crimes so far in 2011 (13 July 2011). In 2010, according to a National Human Rights Commission special report, the Federal District reported the highest number at 317 cases, the second highest rate of homophobic crimes and assaults took place in Guanajuato with 47, of which 33 were homicides, followed by Veracruz with 40 cases (Mexico 2010, 10). The Letra S report on homophobic hate crimes indicates that, between 1995 and 2008, the federal entity with the second most homophobic crimes in Mexico was Michoacán, followed by the states of Mexico, Nuevo León, and Jalisco (Letra S Dec. 2009, 16).

The co-authored shadow report to the UN says that, in 2009, 15 individuals belonging to sexual minority groups were murdered with impunity in Guerrero state and that "in the first eight months of 2009, around 40 homosexual persons were murdered in Michoacán. The majority of these deaths were concentrated in the Tierra Caliente area" (Global Rights et al. Mar. 2010, 9). It also provides reports of the homicides of homosexual and trans-identified individuals in several other states, such as Aguascalientes, Puebla and Querétaro and the town of Juchitán, in 2009 (ibid., 9-10). According to *El Universal*, over the last 10 years in Monterrey and its metropolitan area, there have been 59 reports of homosexual homicides made to local authorities (6 June 2010). A spokesperson for the gay community cited by the newspaper said that the number of documented murders is [translation] "very low" and that the number homophobic crimes in Monterrey is actually significantly higher (*El Universal* 6 June 2010). *El Universal* also reports that the leader of a lesbian and gay community called Pride Veracruzano (Orgullo Veracruzano) claims that there are 150 homophobic-related killings a year in Veracruz (25 Aug. 2010).

Violence against human rights defenders and gay activists

According to a submission by the National Network of Human Rights Civil Organizations "All Rights for All" (Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos") to the UN Human Rights Committee, human rights defenders that work on sexual-diversity issues are often the "object of threats, aggressions, murder, politically motivated criminal charges and imprisonment for organizing protests or events promoting respect for human rights" (Red Nacional Mar.2010, para. 174). Amnesty International (AI) reports that an LGBT activist in Guerrero who organized the annual gay pride parade in Chilpancingo and who had received death threats was killed on 4 May 2011 (AI 12 May 2011).

Legislation

Mexico's Federal Law to Prevent and Eliminate Discrimination (*Ley Federal para Prevenir y Eliminar la Discriminación*), originally published on 11 June 2003 and amended on 27

November 2007, includes sexual preference as grounds for protection against discrimination (Mexico 2003, Art. 4, 8). However, gender identity is not included in anti-discrimination legislation (Mexico Dec. 2008, 134). The law defines discrimination as follows:

[Translation]

[A]ny distinction, exclusion or restriction based on ethnic or national origin, sex, age, disability, social or economic status, health, pregnancy, language, religion, opinion, sexual preference, civil status or any other consideration that would impede or void the recognition or exercise of rights and the real equality of opportunities for persons. (Mexico 2003, Art. 4)

Article 9 of the Federal Law to Prevent and Eliminate Discrimination, which is attached to this Response, also lists the forms of conduct considered discriminatory (ibid.).

According to the co-authored shadow report, Mexico does not have a federal hate crimes statute, but the Federal District has hate crimes legislation (Global Rights et al. Mar. 2010, 9).

Sixteen states have adopted state laws about discrimination since the Federal Law to Prevent and Eliminate Discrimination was approved, and thirteen states have criminalized discrimination as a penal crime (Mexico n.d.a; *El Universal* 21 Feb. 2011).

State Protection, Recourse and Services Available

Federal District Human Rights Commission

The Federal District Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF) is mandated to investigate complaints and reports of local authorities who violate human rights in the Federal District (Federal District 28 July 2011). According to the comments made by the CDHDF's Fourth General Investigator during a telephone interview by the Research Directorate, there are two types of complaints of discrimination based on sexual orientation that it investigates: discrimination in jails; and discrimination in the workforce, in government institutions, in accessing health-care services, and in the judicial system (ibid.). The Investigator added that all of the complaints that are in CDHDF's jurisdiction are documented and investigated, and that when there are structural problems of discrimination, the CDHDF tries to find general solutions, independent of solutions for that particular case (ibid.). As an example, the Investigator told the story of a transsexual woman who was prohibited from entering a metro car that was assigned specifically to women, children, the disabled and elderly persons (ibid.). The Investigator indicated that the CDHDF took steps to ensure that all transsexual women are now allowed to use these designated metro cars (ibid.).

The Investigator said that when an individual needs protection, the CDHDF requests the intervention of the Federal District's Ministry of Public Security (Secretaría de Seguridad Pública del Distrito Federal) and/or the Office of the Attorney General of the Federal District (Procuraduría General de Justicia del Distrito Federal) (Federal District 28 July 2011). The Attorney General has established distinct mechanisms for protecting individuals, which depend on the context and the type of protection needed (ibid.).

Complaints that are not related to violations committed by local authorities are forwarded to either the Attorney General of Justice of the Federal District or CONAPRED (ibid.). If they are crimes, they are sent to the Attorney General; if they are not crimes, they are sent to CONAPRED (ibid.).

National Council for the Prevention of Discrimination

CONAPRED was created in 2003 through the Federal Law to Prevent and Eliminate Discrimination and is mandated to [translation] "receive and resolve claims and complaints of discriminatory acts committed by individuals or federal authorities" (Mexico n.d.). CONAPRED also [translation] "develops actions to protect all citizens from discrimination or exclusion" (ibid.). Although CONAPRED offices are only located in Mexico City, a CONAPRED representative stated that the organization works at a national level (ibid. 12 Aug. 2011). The representative also stated that CONAPRED processes both complaints against individuals and claims against federal public servants (ibid.). If an individual begins a complaint or claim process in one part of the country, and then moves to another region, the process can continue providing CONAPRED receives the person's updated contact information since they could be required to participate in various stages of the procedure or to provide factual information (ibid.). Individuals who wish to submit a complaint or claim can do so either online, over the telephone, by e-mail, in writing or in person at an office in the Federal District (ibid.).

The CONAPRED representative stated that the process followed when someone presents a complaint or claim varies substantially: complaints usually include inviting the person that has committed the discriminatory act to mediation, during which the two parties can sign a settlement agreement and determine appropriate administrative measures, such as courses or seminars (Mexico 12 Aug. 2011). If the parties do not agree to mediation, the person who submitted the complaint will be referred to the appropriate judicial or administrative entities (ibid. 2003, Art. 81). In the case of a claim, the authorities responsible are asked to submit a report of their version of the story, which is then evaluated alongside the version submitted by the claimant (ibid. 12 Aug. 2011). Both sides are asked for written or oral evidence of the incident (ibid.). The parties may then go through a process of mediation or investigation (ibid.).

According to the CONAPRED representative, the protection CONAPRED offers consists of processing complaints and claims, and providing counselling and guidance when requested (ibid.). CONAPRED also has an Intergovernmental Group of Sexual Diversity (Grupo Intragubernamental de Diversidad Sexual), which meets approximately once a month and provides information on human rights, training and sensitization to government officials under their jurisdiction (ibid.).

Other government bodies

The CONAPRED representative stated that other government agencies that work to protect sexual minorities include the national and state human rights commissions, which accept complaints about public servants who commit human rights violations against sexual minorities; and agents of the Public Ministry, which accept complaints and initiate investigations of crimes committed against sexual minorities (ibid.).

Treatment of Sexual Minorities by Police

According to *El Universal*, a study conducted by the Metropolitan Autonomous University (Universidad Autónoma Metropolitana) indicates that 20 percent of homosexuals have been harassed by Mexico's security forces and 30 per cent have faced discrimination by police (*El Universal* 23 Dec. 2009). *El Universal* indicates that on 6 June 2010, in Monterrey, 300 people protested the homophobic actions of the Monterrey municipal police (ibid. 6 June 2010).

Amnesty International reports that in December 2010, an LGBT activist in the city of Mérida was handcuffed and blindfolded by Yucatán state judicial police who "repeatedly beat him in the face, chest, and back," and "questioned him using homophobic language" (AI 8 Dec. 2010). Amnesty International indicates that the police officers told the victim not to report the incident or they would catch him again and incarcerate him (ibid.). According to the organization, the victim filed a complaint with the state Attorney General's Office on 5 December but to date nobody has contacted him regarding any investigation into the incident or protection measures. The state judicial police work under the authority of the state Attorney General. (ibid.)

The co-authored shadow report states that trans-identified individuals face "mass detentions, extortion, and physical abuse at the hands of police and military officials" (Mar. 2010, 4). The report includes examples of authorities assaulting and arresting trans individuals and threatening them with rape and death if they make complaints (Global Rights et al. Mar. 2010, 10-12). According to NotieSe, municipal and state authorities have extorted transgendered individuals in Chihuahua, detaining them for looking homosexual and reportedly asking them for sex before allowing them to leave (6 July 2011).

The co-authored report says the laws throughout Mexico criminalize acts such as "obscene exhibitions" and "acting in such a way as to offend one or more persons" (Global Rights et al. Mar. 2010, 12). The report adds that Mexico's laws are vague and that, as a result, "they are frequently used by police officials to harass, detain, and extort" people based on their gender identity (ibid.).

According to the National Human Rights Commission, the following state authorities are most likely to be responsible for violating the human rights of sexual minorities:

1. [Translation] "Members of security bodies, particularly state and municipal." This is often evident in "arbitrary detentions, injuries, threats, theft, extortion, breaking and entering, and excessive use of law enforcement."
2. Prison authorities, including abuse by custodial staff and other inmates and poor medical care.
3. Public Ministry agencies, including through repressive treatment, discrimination, and by not investigating crimes.
4. School authorities, by committing discriminatory acts against students and teachers (Mexico 2010, 10-11).

Impunity

Sources indicate that impunity of crimes against sexual minorities is prevalent (Mexico n.d.a, 7; Red Nacional Mar. 2010; *La Prensa* 3 Jan. 2011; *Universogay.com* 23 Apr. 2011). According to news source *La Quinta Columna*, three homosexuals were killed in Puebla in April 2011, and five have been killed since the beginning of 2011 (3 May 2011). The police reportedly have not made any progress in their investigations of the murders (*La Quinta Columna* 3 May 2011). According to *Universogay.com*, 19 homicides of homosexuals have occurred in the city of Chihuahua in the first four months of 2011, and the perpetrators have not been detained by the police (23 Apr. 2011). The National Network of Human Rights Civil Organizations reported that in 2010, local authorities had not yet started investigating the 2005 murder of a human rights, sexual diversity and HIV/AIDS activist working in Puebla and Mexico City (Red Nacional Mar. 2010, para. 175).

Several sources consulted by the Research Directorate indicate that **homicides against sexual minorities are often dismissed as "crimes of passion"** (*CronicaDigital* 4 Aug. 2011; EFE 25 July 2011; Global Rights et al. Mar. 2010, 9; *La Jornada de Oriente* 18 May 2011; *Reforma* 28 July 2011). *La Jornada de Oriente* reports that, according to a representative of the Puebla Pride Committee (Comité Orgullo Puebla), 10 homophobic hate crimes have remained unpunished since 2005 (18 May 2011). The representative said that eight of the victims were tortured, either by strangling, sharp weapons, gun shots to the head and face or skull, and found naked (*La Jornada de Oriente* 18 May 2011). The representative also states that families often do not continue investigations for fear of facing discrimination and because authorities usually determine such cases to be crimes of passion (ibid.). NotieSe reports that in Guerrero, protestors called on the public to condemn the state government for its handling of homophobic crimes and demanded that these crimes be investigated without prejudice (13 July 2011).

Treatment of Sexual Minorities in the Federal District

In Mexico City, amendments to the Federal District Civil Code (*Código civil para el Distrito Federal*) and Code of Civil Procedure (*Código de procedimientos civiles para el Distrito Federal*) permitting same-sex marriage were published in the Official Gazette of the Federal District on 29 December 2009 (Federal District 2009). The amendments became effective on 4 March 2010 (EFE 5 Jan. 2011; BBC 4 Mar.2010). For more information on the Supreme Court rulings regarding same-sex marriage, its implementation, and societal attitudes, see Response to Information Request MEX103798.E.

According to the Letra S report on homophobic hate crimes, **between 1995 and 2008**, the majority of such crimes took place in the Federal District (Letra S Dec. 2009, 5). The report notes that in those years, **143 homophobic homicides occurred in the Federal District**, of which 109 were committed against men, **29 against transvestites, transsexuals and transgendered persons**, and 5 against women (ibid.). As recently as 23 July 2011, a 25-year-old gay rights activist and member of the Sexual Diversity Coordinating Committee (Coordinadora para la Diversidad Sexual) for the Democratic Revolution Party (Partido de la Revolución Democrática, PRD) was killed in his home (Mexico 24 July 2011) in Mexico City with "brutal wounds" (EFE 25 July 2011).

As already mentioned, the CDHDF is mandated to investigate complaints against local authorities in the Federal District (Federal District 28 July 2011). The CDHDF Fourth General Investigator provided the Research Directorate with the following year-by-year number of formal complaints it received about violence against sexual minorities in the Federal District (the statistics start in 2006, the year the CDHDF began registering human rights violations against sexual minorities) (Federal District 28 July 2011): 10 in 2006, 40 in 2007, 33 in 2008, 34 in 2009, and 49 in 2010 (ibid.). The Investigator indicated that these numbers represent only the formal complaints the organization received; not all cases are reported since people still face other obstacles and discrimination based on their sexual orientation (ibid.). According to co-authored shadow report, **"11% of LGBT in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation"** (Global Rights et. al Mar.2010, 11).

El Universal reports the coordinator of NotieSe as saying that **sexual minorities often do not report discrimination because of the treatment they receive from staff in the public ministries, including humiliation** (*El Universal* 21 Feb. 2011). The NotieSe coordinator demonstrated his point by relating the story of a college student who was beaten by his peers and, when he

reported it to the Public Ministry, was told: [translation] "They hit you? Well, of course, for being a fag" (ibid.). Corroborating information could not be found by the Research Directorate within the time constraints of this Response.

Zona Rosa

Zona Rosa is a financial and commercial district in Mexico City (Mexico City Guide 12 July 2011) that spans a 29-square block area (Fodor's Travel n.d.). The Zona Rosa is considered "a hub for the homosexual community" (AFP 28 July 2010). Since the neighbourhood began to decline in the 1980s, a large number of businesses were opened by the gay community (Mexico City Guide 12 July 2011).

According to Mexican news agency NOTIMEX, the head of a local Ministry of Tourism office (Secretaría de Turismo) stated that corruption, prostitution, the distribution of drugs, and illegal businesses are proliferating in the Zona Rosa (3 July 2011). NOTIMEX also reports that on March 14, 2010, a homosexual couple was attacked and threatened in Zona Rosa by four people who were allegedly members of an organization called [translation] "Citizen's Justice" (Justicia ciudadana) (31 Mar. 2010).

The Fourth General Investigator explained that there had been complaints of police extortion and police [translation] "bothering" sexual minorities in the Zona Rosa (Federal District 28 July 2011). But in recent years the Ministry of Public Security (Secretaría de Seguridad Pública) has implemented police training and complaints about police violence in the Zona Rosa have been [translation] "erradicated" (ibid.). However, according to Agence France-Presse (AFP), a member of the gay community in Zona Rosa said that "[o]ne of the most important things is training for justice officials" who do not know "how to respond to attacks on gay people" (28 July 2010).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Adiario [Oaxaca]. 4 January 2010. Mariana Saynes. "México, el segundo en crímenes por homofobia." [Accessed 11 Aug. 2011]

Agence France-Presse (AFP). 28 July 2010. Jennifer González. "Mexican Capital Aims to Be Oasis for Gays." (Factiva)

Amnesty International (AI). 12 May 2011. "LGBT Activist Killed in Homophobic Attack." (AMR 41/028/2011) [Accessed 8 Aug. 2011]

_____. 8 December 2010. "LGBT Activist Tortured by Police." (AMR 41/088/10) [Accessed 8 Aug. 2011]

Article 19. 19 June 2009. "Mexico: The Right to Freedom of Expression of Activists Threatened by Homophobia." (Refworld) [Accessed 8 Aug. 2011]

_____. 27 October 2008. "Statement." (Refworld) [Accessed 8 Aug. 2011]

_____. N.d.a. "Mandate." [Accessed 11 Aug. 2011]

_____. N.d.b. "Contact Us." [Accessed 14 Sept. 2011]

British Broadcasting Corporation (BBC). 4 March 2010. "Gay Marriage Law Comes into Effect in Mexico City." [Accessed 19 Aug. 2011]

The Canadian Press. 13 May 2010. "Killings Based on Homophobia Rise in Mexico Despite Government Tolerance Campaign, Report Says." (Factiva) [Accessed 16 Aug. 2011]

CrónicaDigital [Tuxpan]. 4 August 2011. "Repunta la homofobia en Veracruz." [Accessed 8 Aug. 2011]

EFE News Service. 25 July 2011. "Gay Rights Activist Murdered in Mexico City." (Factiva)

_____. 5 January 2011. "Over 1,200 Same-sex Marriages Performed in Mexico City in 2010." (Factiva)

Federal District. 15 August 2011. Comisión de Derechos Humanos del Distrito Federal (CDHDF). Correspondence from the Fourth General Investigator to the Research Directorate.

_____. 28 July 2011. Comisión de Derechos Humanos del Distrito Federal (CDHDF). Telephone interview with the Fourth General Investigator.

_____. 2009. *Decreto por el que se reforman diversas disposiciones del Código Civil para el Distrito Federal y del Código de Procedimientos Civiles para el Distrito Federal*. Translated by the Translation Bureau, Public Works and Government Services Canada. (Asociación Nacional de Abogados Democráticos) [Accessed 25 July 2011]

Fodor's Travel. N.d. "Bosque de Chapultepec and Zona Rosa." [Accessed 22 Aug. 2011]

Global Rights, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic (Harvard Law School) and Colectivo Binni Laanu A.C. March 2010. *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico: A Shadow Report*. [Accessed 20 July 2011]

La Jornada [Mexico City]. 14 May 2010. "Se duplica en 10 años el número de asesinatos de odio contra homosexuales." (Factiva)

La Jornada de Oriente [Puebla]. 18 May 2011. Arturo Aflaro Galán. "Impunes, 10 crímenes de odio y homofobia en la entidad: Comité Orgullo Puebla." [Accessed 8 Aug. 2011]

Letra S - Sida, Cultura y Vida Cotidiana A.C. December 2009. *Informe de crímenes de odio por homofobia: México 1995-2008. Resultados Preliminares*. [Accessed 5 Aug. 2011]

_____. N.d. "¿Quiénes Somos?" [Accessed 12 Aug. 2011]

Mexico. 12 August 2011. Consejo Nacional para Prevenir la Discriminación (CONAPRED). Correspondence from a representative to the Research Directorate.

_____. 24 July 2011. Consejo Nacional para Prevenir la Discriminación (CONAPRED). "Condena Conapred asesinato de Christian Sánchez y exige tolerancia cero a la homofobia." <<http://www.conapred.org.mx/redes/index.php?contenido=boletin&id=360&id_opcion=103&p=213> [Accessed 11 Aug. 2011]

_____. 17 May 2010. Consejo Nacional para Prevenir la Discriminación (CONAPRED). *Documento informativo de homofobia*. [Accessed 27 July 2011]

- _____. 2010. Comisión Nacional de los Derechos Humanos (CNDH). *Informe especial de la Comisión Nacional de los Derechos Humanos sobre violaciones a los derechos humanos y delitos cometidos por homofobia*. [Accessed 14 Sept. 2011]
- _____. December 2008. Consejo Nacional para Prevenir la Discriminación (CONAPRED). *La transgeneridad y la transexualidad en México: en búsqueda del reconocimiento de la identidad de género y la lucha contra la discriminación*. [Accessed 19 Aug. 2011]
- _____. 2003. Amended 27 November 2007. *Ley federal para prevenir y eliminar la discriminación*. Translated by the Translation Bureau, Public Works and Government Services Canada. <="" p="">
- _____. N.d. Consejo Nacional para Prevenir la Discriminación (CONAPRED). "¿Quiénes Somos?" [Accessed 11 Aug. 2011]
- Mexico City Guide. 12 July 2011. "Zona Rosa." [Accessed 16 Aug. 2011]
- NotieSe [Mexico City]. 13 July 2011. "Crímenes por homophobia 'expediente negro' del gobierno de Guerrero: Activistas." [Accessed 8 Aug. 2011]
- _____. 6 July 2011. "Atacan con armas de fuego a comunidad transsexual de Chihuahua." [Accessed 8 Aug. 2011]
- _____. N.d. "Todo Sobre Nosotros." [Accessed 17 Aug. 2011]
- NOTIMEX, Agencia de Noticias del Estado Mexicana. 3 July 2011. "Proponen entidad autónoma para rescatar la Zona Rosa." (Factiva)
- _____. 17 May 2010. "Reportan 640 muertes por homofobia desde 1995 en el país." (Factiva)
- _____. 31 March 2010. "El subsecretario de gobierno del Distrito Federal,..." (Factiva)
- La Prensa* [Mexico City]. 3 January 2011. "Distrito Federal, el más homofóbico del país." [Accessed 8 Aug. 2011]
- La Quinta Columna* [Heroica Puebla de Zaragoza, Puebla]. 3 May 2011. Yonadab Cabrera Cruz. "Ola de asesinatos ronda a los gays." [Accessed 8 Aug. 2011]
- Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos." March 2010. *Information Presented by Organizations Forming Part of the Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos" (National Network of Human Rights Civil Organizations "All Rights for All") to the UN Human Rights Committee for Consideration as Part of Its Fifth Periodical Report on Mexico Pursuant to Article 40 of the International Covenant on Civil and Political Rights*. [Accessed 8 Aug. 2011]
- Reforma* [Mexico City]. 28 July 2011. Erika P. Bucio. "Sacan biografías del clóset." (Factiva)
- El Sol de México*. 18 July 2009. Fernando Ríos. "Minimizan autoridades asesinatos de homosexuales." [Accessed 10 Aug. 2011]
- El Universal* [Mexico City]. 21 February 2011. Thelma Gomez Durán. "¡Tiene sida y es gay!" [Accessed 29 July 2011]
- _____. 25 August 2010. "Documentan 150 crímenes homofóbicos en Veracruz." (Factiva)
- _____. 6 June 2010. "NL-Marcha." (Factiva)
- _____. 23 December 2009. "Pierde el trabajo y la libertad por ser gay." [Accessed 19 Aug. 2011]

Universogay.com. 23 April 2011. Alexander Rocha. "Asesinan a 19 personas Homosexuales." [Accessed 8 Aug. 2011]

Additional Sources Consulted

Oral sources: Attempts to contact representatives of the Comité Lesbico Gay de Occidente A.C., Comunidad Transgenero SC, Frente para las Garantías Humanas en Tijuana, Grupo Lésbico Universitario, and Letra S were unsuccessful within the time constraints of this Response.

Internet sites, including: European Country of Origin Information Network, Human Rights Watch, International Gay and Lesbian Human Rights Commission, International Lesbian and Gay Association, United States Department of State.

Attachment

Mexico. 2003 (amended 27 November 2007). "Chapter II: Measures to Prevent Discrimination". *Ley federal para prevenir y eliminar la discriminación*. Translated by the Translation Bureau, Public Works and Government Services Canada. [Accessed 27 July 2011]

Copyright notice: This document is published with the permission of the copyright holder and producer Immigration and Refugee Board of Canada (IRB). The original version of this document may be found on the official website of the IRB at <http://www.irb-cisr.gc.ca/en/>. Documents earlier than 2003 may be found only on Refworld.



RESPONSES TO INFORMATION REQUESTS (RIRs)

[New Search](#) | [About RIR's](#) | [Help](#)

21 April 2010

MEX103460.FE

Mexico: The situation of transgender people, particularly in Mexico City, Cancún, Guadalajara and Acapulco, including how they are treated and the support services available to victims of ill treatment
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

According to a report on lesbian, gay, bisexual and transgender (LGBT) people in Mexico, published in 2010 by Global Rights and other organizations, although the government has created the National Council for the Prevention of Discrimination (Consejo Nacional para Prevenir la Discriminación, CONAPRED), an organization responsible for dealing with complaints of discrimination in the public and private sectors that has been active in the field of LGBT rights, "LGBT persons continue to face discrimination and human rights violations" (Global Rights et al. Mar. 2010, 4). The report also indicates that Mexican society "remains highly repressive in its attitude towards LGBTI [lesbian, gay, bisexual, transgender/transsexual and intersex] persons" and that LGBTs "face a serious threat of violence" (ibid.).

Mexico City (Federal District)

With the aim of contributing to the elimination of all kinds of discrimination, the Office of the Attorney General of the Federal District (Procuraduría General de Justicia del Distrito Federal, PGJDF) sent correspondence to its employees in November 2009 that asked them to treat transsexuals and all other non-heterosexual people with dignity and respect (*Reforma* 11 Nov. 2009).

According to an article published on 19 February 2009 by Universo Gay, a Spanish portal for LGBTs, under an order from family court, the Office of the Civil Registrar of the Federal District (Registro Civil del Distrito Federal) issued the first birth certificate to a person who was born male, but who had undergone sexual reassignment. According to the same source, the birth certificate indicating the bearer's new gender was issued as a result of a series of reforms made to the Civil Code (Código Civil), the Penal Code (Código Penal) and the Federal District Health Law (*Ley de Salud para el Distrito Federal*), which were approved on 29 August 2008 by local elected officials (Universo Gay 19 Feb. 2009).

An article posted on the information portal for transsexuals, *Diario Digital Transsexual*, indicates that because of lengthy delays and high costs, changing one's name after sexual reassignment is [translation] "unattainable" for most applicants, even though it is legal in Mexico City (22 Feb. 2010). In fact, at least six months and approximately 70,000 pesos [1 peso = \$0.08 Canadian dollars (XE.com 3 Feb. 2010)] are required to complete a name change (*Diario Digital Transsexual* 22 Feb. 2010). Moreover, completing the change seems to depend on the [translation] "good will" of some civil servants (ibid.). The same source notes that, previously, a transsexual's former identity was indicated in the margin of the original birth certificate, but that since the reform of the Federal District Civil Code, that practice has been abolished (ibid.). Since the reforms came into effect on 13 March 2009 (ibid.), applicants can change some of the information that appears on their birth certificate, such as their name or gender (ibid.; Global Rights et al. Mar. 2010, 13).

An article published by Notimex, a news agency in the State of Mexico, indicates that the PGJDF, according to Agreement A/02/2010, plans to launch a special agency dedicated to investigating homicides of women and people with a sexual orientation or preference other than heterosexual (Agencia Especializada de Investigación del Delito de Homicidio doloso, cometido en agravio de mujeres y personas con orientación o preferencia sexual y por identidad o expresión de género) (Notimex 8 Mar. 2010). The agreement stipulates that the agency's staff will undergo training provided by the PGJDF's Professional Training Institute (Instituto de Formación Profesional de la PGJDF) that will address gender equality and human rights (ibid.). Additional information on the creation of this new agency could not be found among the sources consulted by the Research Directorate.

Cancún

According to the Global Rights report, in April 2008 and December 2009, approximately 40 sex workers were robbed, beaten and arrested by police in the surrounding areas of the municipality of Supermanzana 63 (Global Rights et al. Mar. 2010, 12). The president of the municipality acknowledged the police action and justified it as "cleaning garbage from the streets" (ibid.).

Guadalajara

During a 13 April 2010 telephone interview with the Research Directorate, a representative of the Jalisco State Human Rights Commission (Comisión Estatal de los Derechos Humanos de Jalisco, CEDHJ) stated that **transvestites, lesbians, gays and transsexuals are among [translation] "vulnerable groups" that [translation] "face discrimination and are sometimes assaulted by police officers."** He also stated that those groups [translation] "live together" and that they respect each other and are united in their fight because they are all in the same vulnerable situation (Jalisco 13 Apr. 2010). He noted that although the State of Jalisco is [translation] "very conservative," it has shown some progress over the years in protecting human rights (ibid.). He added that many services are available to that community and, particularly, that victims can file complaints with the CEDHJ by presenting evidence (ibid.). He stated that, in addition to that, the Commission offers help and training and organizes workshops and forums (ibid.).

Acapulco

Information on the situation of transgender people in the City of Acapulco could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Diario Digital Transexual. 22 February 2010. "Cambio de nombre y sexo en Mexico DF; un derecho inalcanzable por alto coste económico." <<http://www.carlaantonelli.com/notis-22022010-cambio-nombre-sexo-mexico-df-derecho-inalcanzable-por-alto-coste.htm>> [Accessed 13 Apr. 2010]

Global Rights, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic of Harvard Law School and Colectivo Binni Laanu. March 2010. *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico. A Shadow Report*. <http://www.globalrights.org/site/DocServer/LGBT_ICCPR_Shadow_Report_Mexico.pdf?docID=11184> [Accessed 12 Apr. 2010]

Jalisco. 13 April 2010. Comisión Estatal de los Derechos Humanos de Jalisco (CEDHJ). Telephone interview with a representative.

Notimex [Mexico]. 8 March 2010. "Crea PGJDF agencia para homicidios por homofobia." (*Es más*) <<http://www2.esmas.com/noticierostelevisa/mexico/df/145305/crea-pgjdf-agencia-homicidios-homofobia>> [Accessed 7 Apr. 2010]

Reforma [Mexico]. 11 November 2009. Alberto Acosta. "Combate PGJ homofobia interna." (Factiva)

Universo Gay. 19 February 2009. Andrés Bacigalupo. "México concede la primera acta de reasignación de identidad a una transexual." <http://noticias.universogay.com/mexico-concede-la-primera-acta-de-reasignacion-de-identidad-a-una-transexual__19022009.html> [Accessed 12 Apr. 2010]

XE.com. 13 April 2010. "Résultats du convertisseur universel de devises." <<http://www.xe.com/ucc/convert.cgi?Amount=1&From=MXN&To=CAD&image.x=48&image.y=15>> [Accessed 3 Feb. 2010]

Additional Sources Consulted

Oral sources: Representatives of the Comisión de Derechos Humanos del Estado de Quintana Roo (CDHEQROO), the Comisión de Defensa de los Derechos Humanos del Estado de Guerrero (CODDEHUMGRO) and the Comisión de Derechos Humanos del Distrito Federal (CDHDF) could not provide information within the time constraints of this Response.

Internet sites, including: 365gay, Amnesty International (AI), Anodis, Centro de Estudios y Proyectos para el Desarrollo Humano Integral (CEPRODEHI), Consejo Nacional para Prevenir la Discriminación (CONAPRED), Freedom House, GAYGDL.com, Human Rights Watch, International Lesbian and Gay Association (ILGA), Mexico - Secretaría de Desarrollo Social (SEDESOL), Mexico - Sistema Nacional para el Desarrollo Integral de la Familia (DIF) Cancún, Quintana Roo - Procuraduría General de Justicia, Transsexuallegal, United States (US) Department of State, *El Universal* [Mexico], Washington Office on Latin America (WOLA).

The attached reproduction is a copy of an official work that is published by the Government of Canada. The reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.



**MAY
2016**

REPORT ON HUMAN RIGHTS CONDITIONS OF TRANSGENDER WOMEN IN MEXICO



Cornell University
Law School
LGBT Clinic



Transgender Law Center

Copyright © 2016

Transgender Law Center and Cornell University Law School LGBT Clinic

This guide may be used and reproduced without permission of Transgender Law Center and Cornell University Law School so long as it is properly cited. Excerpts may be taken if (a) they are properly cited AND (b) they are used within their proper context AND (c) a note is included that the excerpt is not legal advice.

Transgender Law Center

Transgender Law Center is the largest national organization dedicated to advancing the rights of transgender and gender nonconforming people through litigation, policy advocacy, and public education. TLC works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

Transgender Law Center

1629 Telegraph Ave, Suite 400

Oakland, CA 94612

p 415.865.0176

f 877.847.1278

info@transgenderlawcenter.org

www.transgenderlawcenter.org

Cornell Law School LGBT Clinic

The Cornell Law School LGBT Clinic (“the Clinic”) is one of only a handful of law school clinics fighting specifically for the legal rights of lesbian, gay, bisexual, and transgender people. The Clinic provides free legal help to low-income LGBT individuals in a variety of cases, including immigration removal proceedings, asylum applications, appeals before the BIA, and family law, and prisoners’ rights matters. In addition to representing individuals in need of legal assistance, the Clinic undertakes advocacy projects in conjunction with other LGBT organizations to advance LGBT rights.

Cornell Law School LGBT Clinic

Susan Hazeldean

158 Myron Taylor Hall

Ithaca, NY 14853-4901

www.lawschool.cornell.edu/Clinical-Programs/lgbtclinic/

Cover Photo Courtesy of El/La Para TransLatinas

TABLE OF CONTENTS

INTRODUCTION	3
EXECUTIVE SUMMARY	4
U.S. IMMIGRATION SYSTEM	5
LAWS AIMED AT PROTECTING LGBT PEOPLE IN MEXICO	9
THE LGBT COMMUNITY IN MEXICO	9
LIMITED ANTIDISCRIMINATION LAWS.....	9
LIMITED SAME-SEX RELATIONSHIP RECOGNITION.....	11
NAME CHANGE RIGHTS.....	12
LACK OF LEGAL PROTECTIONS FOR TRANSGENDER PEOPLE.....	12
MORALITY LAWS	122
EXPANSION OF LGBT RIGHTS HAS LED TO BACKLASH	14
VIOLENCE AGAINST TRANSGENDER WOMEN.....	14
RECENT TRANSPHOBIC MURDERS OF PROMINENT TRANSGENDER WOMEN.....	17
POLICE VIOLENCE	18
MILITARY VIOLENCE	188
DRUG CARTEL AND GANG VIOLENCE.....	19
MEXICAN GOVERNMENT AND POLICE ARE LINKED TO ORGANIZED CRIME .	20
SOCIETAL FACTORS THAT LEAD TO VIOLENCE AGAINST TRANSGENDER WOMEN	211
FAMILY REJECTION.....	211
GENDER-BASED VIOLENCE	222
RELIGION.....	222
ECONOMIC MARGINALIZATION	233
LACK OF GENDER-CONFORMING IDENTITY DOCUMENTS	233
LACK OF ADEQUATE HEALTH CARE	244
PREVALENCE OF AND LACK OF TREATMENT FOR HIV/AIDS	244
EVALUATING ASYLUM CLAIMS MADE BY MEXICAN TRANSGENDER WOMEN	255
THE EFFECT OF SAME-SEX MARRIAGE & ANTI-DISCRIMINATION LAWS ON VIOLENCE	255
RELOCATION PRESUMPTION	266
GAY PRIDE MARCHES AND “GAY TOURISM”	266
CONDITIONS FOR TRANSGENDER WOMEN IN U.S. IMMIGRATION DETENTION FACILITIES	28
RECOMMENDATIONS	322
CONCLUSION	344

INTRODUCTION

This report's purpose is to assess the country conditions in Mexico so that immigration judges and asylum officers can be fully informed about the issues facing transgender asylum applicants. This report examines whether recent legal reforms in Mexico have improved conditions for transgender women.¹ It finds that transgender women in Mexico still face pervasive discrimination, hatred, violence, police abuse, rape, torture, and vicious murder. These problems have actually worsened since same-sex marriage became available in the country in 2010. The report also suggests ways to improve the information about county conditions available to U.S. immigration judges and asylum officers so they can better adjudicate the asylum, withholding of removal, and Convention Against Torture claims of Mexican transgender women.

The Cornell Law School LGBT Clinic² and Transgender Law Center co-authored this report. The authors collected information for this report through news sources, academic research, expert witness testimony, and individual telephone interviews with advocates at non-governmental organizations (NGOs) in Mexico and the United States. Transgender Law Center, a national organization based in Oakland, California, works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. Transgender Law Center provides legal assistance and information to transgender individuals and their families and engages in impact litigation and policy advocacy to advance transgender rights. The LGBT Clinic at Cornell Law School is one of only a handful of law school clinics in the United States dedicated to serving members of the lesbian, gay, bisexual, and transgender (LGBT) community.³ The clinic represents LGBT individuals in various legal matters and undertakes advocacy projects in conjunction with other LGBT organizations.

EXECUTIVE SUMMARY

Many transgender Mexican women seek asylum in the United States claiming that, because of their gender identity or expression, they will face rape, torture, or murder if they return to Mexico. In these cases, immigration judges and asylum officers must determine how likely it is that the asylum-seeker will face persecution if she is removed. Despite recent legal reforms in Mexico, legal advocates and individuals living in both Mexico and the U.S. report that rates of violence against transgender women are higher than ever. Specifically, violence against the LGBT community has actually increased since the recognition of same-sex marriage throughout Mexico because of backlash to these progressive changes in the law.

Despite the legal changes for same-sex couples in recent years, transgender women in Mexico still face pervasive persecution based on their gender identity and expression. Indeed, violence against LGBT people has actually increased, with transgender women bearing the brunt of this escalation. Changes in the laws have made the LGBT communities more visible to the public and more vulnerable to homophobic and transphobic violence. Increased visibility has actually increased public misperceptions and false stereotypes about the gay and transgender communities. This has produced fears about these communities, such as that being gay or transgender is “contagious” or that all transgender individuals are HIV positive. These fears have in turn led to hate crimes and murders of LGBT people, particularly transgender women.

Immigration judges in the United States often conflate the particular social groups of transgender women and gay men. Moreover, immigration judges sometimes give excessive weight to reports of minor societal advancements for gay communities in Mexico. Consequently, without thoroughly examining the actual conditions in Mexico for transgender women, immigration judges are not able to assess asylum cases fully and accurately.

The report recommends that information distinguishing between issues facing the gay and transgender communities be made available in Executive Office for Immigration Review (EOIR) materials. For example, the EOIR can update their training modules with information about the transgender community specifically, so that judges can fully understand the distinct issues facing transgender women. In addition, applicants and their advocates can provide documentation of anti-transgender abuse to ensure that judges understand the issues specific to this community and make more sound findings in asylum, withholding of removal, and Convention Against Torture cases.

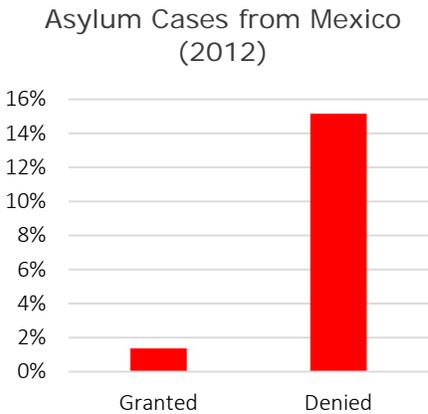
U.S. IMMIGRATION SYSTEM

Every year, thousands of Mexican citizens seek asylum or related forms of humanitarian relief in the United States.

In 2012, U.S. immigration courts received 9,206 asylum applications from Mexican people.⁴ That year, only 126 Mexican applicants were granted asylum by the immigration courts while 1,395 cases were denied.⁵ The asylum office granted asylum to another 337 Mexican applicants.⁶ There are no statistics on how many of those Mexican asylum-seekers were transgender people seeking asylum because they feared persecution based on their gender identity.⁷

*Approximately 11.4 million Mexican immigrants live in the United States. Of those 11.4 million, approximately **51% are undocumented**, 32% are permanent residents, and 16% are naturalized U.S. citizens.*

Figure 1



An immigrant is eligible for asylum in the U.S. if she has a well-founded fear of persecution based on her “race, religion, nationality, membership in a particular social group, or political opinion.”⁸ The Board of Immigration Appeals (BIA) first recognized a gay man as a member of a “particular social group” in the 1990 *In re Toboso-Alfonso* case.⁹ The BIA found that “homosexuals” in Cuba constitute a particular social group.¹⁰ In 1994, the Attorney General designated the *Toboso-Alfonso* decision as “precedent in all proceedings involving the same issue or issues.”¹¹ Since then, several courts of appeal have similarly recognized “homosexuals” as a particular social group.¹²

In 2000, the Ninth Circuit Court of Appeals decided *Hernandez-Montiel v. INS*, finding that a transgender person from Mexico qualified for asylum as a member of a “particular social group.”¹³ But that decision did not refer to the applicant as transgender; the court instead called Hernandez-Montiel a “gay man with a female sexual identity,”¹⁴ Hernandez-Montiel had lived as a woman since the age of twelve, took female hormones, and identified as “a transsexual.”¹⁵ The immigration judge who initially decided Hernandez-Montiel’s case found her ineligible for asylum because he said she had not been persecuted on account of an “immutable” characteristic. Rather, the immigration judge found she could have chosen not to dress as a woman. On appeal, the Ninth Circuit found that Hernandez-Montiel’s identity as a “gay man with a female sexual identity” was either an “innate characteristic or one so fundamental to her identity or conscience that she either could not should not be required to change it.”¹⁶ The court therefore held that Hernandez-Montiel was persecuted on account of her membership in a particular social group.

Obviously the decision to recognize Hernandez-Montiel's eligibility for asylum was positive, but by defining her particular social group as "gay men with female sexual identities," the court misleadingly conflated transgender women with gay men.¹⁷ Some transgender women, including those from Mexico, may experience their gender identity and sexual orientation as interrelated in complex ways. Many transgender women who are attracted to men may go through a period of identifying as gay men, or being perceived by others as gay men, prior to coming out as transgender women. For some transgender women, the terms "gay" and "transgender" are not mutually exclusive categories, but overlapping, and they may use both terms to describe themselves. Regardless, when transgender women and feminine gay men face persecution, the root cause of both is likely the combination of cultural gender norms,¹⁸ misogyny in general and the particular vitriol targeted at people who express femininity despite being assigned a male sex at birth.

Nonetheless, it is important for adjudicators to be aware that sexual orientation and gender identity are distinct components of identity.¹⁹ Gender identity describes "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body... and other expressions of gender, including dress, speech and mannerisms."²⁰ Sexual orientation, on the other hand, is "each person's capacity for... sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."²¹ Transgender women are as diverse in their sexual orientations as non-transgender women. They may identify as straight, lesbian, bisexual, queer, or any other sexual orientation.²²

When asylum decisions refer to transgender women as gay men with female sexual identities,²³ it is important to be aware that this may be an inaccurate and therefore disrespectful way of describing the individual's gender identity. This inaccuracy can have serious and harmful consequences as it may contribute to misunderstandings regarding the deadly dangerous country conditions for transgender women in Mexico, as described below.

In 2015, in *Avendano-Hernandez v. Lynch*, a case of a transgender woman fleeing persecution and torture from Mexico, the Ninth Circuit recognized the error in conflating gender identity and sexual orientation and the harmful consequences of such a conflation.²⁴ In denying Avendano-Hernandez's claim, the BIA had primarily relied on Mexico's passage of laws protecting the gay and lesbian community, in particular the passage of same-sex marriage laws in Mexico City. In overturning the BIA, the Ninth Circuit declared the relationship between gender identity and sexual orientation to be distinct, though sometimes overlapping, and criticized the BIA's analysis as "fundamentally flawed because it mistakenly assumed that [] laws [protecting the gay and lesbian community] would also benefit Avendano-Hernandez, who faces unique challenges as a transgender woman."²⁵

The court's decision is explicit that laws recognizing same-sex marriage do little to protect a transgender woman from discrimination, harassment and violent attacks in daily life in Mexico.²⁶ The court also recognized that paradoxically, the passage of laws protecting the LGBT community in Mexico has actually worsened conditions for

the LGBT community as the public and authorities react to expressions of sexual orientation and gender identity that the culture fears.²⁷

The court ultimately granted Avendano-Hernandez relief on the record, reasoning that transgender persons in Mexico are particularly visible and vulnerable to harassment and persecution due to their public nonconformance with gender roles, that the Mexican police specifically target the transgender community for extortion and sexual favors, that there is an epidemic of unsolved violent crimes against transgender persons in Mexico, that Mexico has one of the highest documented numbers of transgender murders in the world, and that Avendano-Hernandez, who takes female hormones and dresses as a woman, is a conspicuous target for harassment and abuse.²⁸

In order to establish her eligibility for asylum, an applicant must demonstrate that there is at least a 10% chance that she will experience harm that rises to the level of persecution.²⁹ If she can show that she was persecuted in the past, the applicant will be presumed to have a well-founded fear of future persecution unless country conditions have so improved as to negate her fear.³⁰ The persecution need not be inflicted by government officials; harm inflicted by private actors can also constitute persecution if the government is unable or unwilling to prevent it.³¹ But in cases where a non-state actor is the persecutor, the asylum-seeker must show that she cannot avoid harm by moving to another region of the country.³²

Generally, an applicant can only obtain asylum if she applies within one year of her last entry into the United States.³³ Unfortunately, the one-year deadline prevents many bona fide refugees from qualifying for asylum relief.³⁴ The only exceptions are granted when an applicant can show that a “changed circumstance” or “extraordinary circumstances” justified the delay in filing.³⁵ There is no exhaustive list of what might constitute changed or extraordinary circumstances, but serious mental illness or being an unaccompanied child have qualified as “extraordinary circumstances,”³⁶ and a recent HIV diagnosis, recently coming out as transgender, or progressing in one’s transition can qualify as a “changed circumstance” justifying a late asylum application.³⁷ Even if an applicant can show that she faced changed or extraordinary circumstances, she still must apply for asylum within a “reasonable” period of time.³⁸

Applicants can seek asylum “affirmatively” by submitting an application to the United States Citizenship and Immigration Services (USCIS) if they are not in removal proceedings.³⁹ Immigrants who are in removal proceedings before an immigration court must apply for humanitarian relief “defensively” by requesting asylum in the court proceeding.⁴⁰ People in removal proceedings can also apply for withholding of removal or relief under the Convention Against Torture (CAT).⁴¹ These related forms of relief have higher burdens of proof and offer less protection than asylum, but they may be the only relief available to applicants who entered the U.S. more than one year from the time that they want to file for asylum and do not qualify for an exception to the one-year deadline⁴² or for those with criminal convictions that bar asylum relief.⁴³ Being granted withholding of removal or relief under CAT protects the recipient from removal to the country where she would face persecution or torture, but it does not lead to permanent residency or citizenship.⁴⁴

There is no time limit for applying for these forms of relief. An immigration judge must grant withholding of removal if the applicant is found to have a “clear probability of persecution in his or her country of origin, based on race, religion, nationality, membership in a particular social group, or political opinion,” provided no mandatory bars apply.⁴⁵ Immigrants in removal proceedings can receive relief from removal under the CAT if it is “more likely than not” that they will be tortured if removed from the United States.⁴⁶ Applicants can qualify for CAT relief even when their criminal convictions bar them from withholding of removal and asylum.

LAWS AIMED AT PROTECTING LGBT PEOPLE IN MEXICO

THE LGBT COMMUNITY IN MEXICO

Mexico is a federal republic composed of thirty-one states and the Federal District of Mexico City. As of 2015, it has a population of approximately 121 million citizens.⁴⁷ Although there have been some prevalence-based studies attempting to assess the number of LGBT people in other countries,⁴⁸ there have been no federal population-based surveys, federal censuses, or national research studies assessing the LGBT population in Mexico. As a result, it is impossible to know the size of the Mexican LGBT community.

There are few population-based data sources that estimate the number of transgender people in any country.⁴⁹ Those that do exist suggest that transgender people constitute 0.1% to 0.5% of the overall population.⁵⁰ As such, transgender women likely constitute a small minority even within the Mexican LGBT community. Gathering data about the Mexican LGBT community is hampered by the fact that many individuals are reluctant to reveal their sexual orientation or gender identity because they fear harassment, violence, assault, and other negative societal consequences that may follow from such a disclosure.

LIMITED ANTIDISCRIMINATION LAWS

Mexico has enacted antidiscrimination laws that forbid discrimination on the basis of sexual orientation at the federal level. In 2003, the Federal Congress passed the “Federal Law to Prevent and Eliminate Discrimination” that includes “sexual preference” as a protected category. The law defines discrimination as:

Every distinction, exclusion or restriction based on ethnic or national origin, sex, age, disability, social or economic status, health, pregnancy, language, religion, opinion, sexual preferences, civil status or any other, that impedes recognition or enjoyment of rights and real equality in terms of opportunities for people.⁵¹

Article 9 of the law defines “discriminatory behavior” as:

Impeding access to public or private education; prohibiting free choice of employment, restricting access, permanency or promotion in employment; denying or restricting information on reproductive rights; denying medical services; impeding participation in civil, political or any other kind of organizations; impeding the exercise of property rights; offending, ridiculing or promoting violence through messages and images displayed in communications media; impeding access to social security and its benefits; impeding access to any public service or

private institution providing services to the public; limiting freedom of movement; exploiting or treating in an abusive or degrading way; restricting participation in sports, recreation or cultural activities; incitement to hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion; promoting or indulging in physical or psychological abuse based on physical appearance or dress, talk, mannerisms or for openly acknowledging one's sexual preferences.⁵²

Various state laws also prohibit anti-gay discrimination.⁵³ It is important to note, however, that there are no federal laws that explicitly protect transgender individuals from discrimination on the basis of their gender identity (i.e., their transgender status) as opposed to sexual orientation. Mexico has also enacted legislation to protect women generally from gender-based violence.⁵⁴ But transgender women are not explicitly included in this legislation either.⁵⁵

The National Council to Prevent Discrimination (CONAPRED) was created by the 2003 Federal Law to Prevent and Eliminate Discrimination.⁵⁶ The agency is tasked with promoting policies and measures that contribute to cultural and social development, while advancing social inclusion. People who suffer discrimination committed by private individuals or by federal authorities can file a complaint with CONAPRED. When an aggrieved person files a complaint, the Council undertakes a settlement process between the parties. If they do not reach an agreement, CONAPRED can undertake an independent investigation. If it determines that human rights violations have been committed, it can order restitution measures including financial compensation, a public reprimand of the offender, a public or private apology, and a vow from the offender to never repeat the act. About 60% of cases filed regarding sexual orientation discrimination in 2009-10 were resolved by conciliation.⁵⁷ In 2010 CONAPRED forwarded 53 complaint files about anti-gay discrimination to the Public Ministry, which found them to be unlawful discrimination.⁵⁸

Despite the existence of these formal protections around sexual orientation, advocates maintain that these laws have not prevented discrimination and violence.⁵⁹ LGBT individuals face many barriers in exercising their rights under the antidiscrimination statutes. LGBT individuals who experience discrimination may be afraid to disclose their sexual orientation or gender identity to a federal agency and may be concerned about potential retaliation by public officials. This concern is especially relevant since the law does not have a clear enforcement mechanism or any provision that protects against retaliation.

The adoption of the antidiscrimination laws is certainly a positive step, but it is far from clear that their enactment has actually led to an improvement in the treatment of LGBT people generally or transgender women in particular. For example, although Mexico City has an agency charged with receiving discrimination complaints, from January 2012 to April 2013 the agency had received only one official complaint of human rights abuse against a transgender individual.⁶⁰ During the same period there were at least eight violent murders of transgender women in Mexico City.⁶¹ In fact, despite having the greatest number of legal reforms for and businesses catering to

non-transgender gay people in the country, Mexico City “has the highest total” number of “homicides of LGBT people due to homophobia or transphobia.”⁶²

The absence of any complaints is likely due to the myriad reasons transgender women do not report when they are victims of discrimination or hate crimes: concerns about disclosing sexual orientation or gender identity, fears of retaliation, lack of confidence in national agencies, a long history of corruption in Mexican investigative agencies, and doubts about the agency’s ability to investigate and remedy these violations.

As noted, federal antidiscrimination laws only provide explicit protections based on sexual orientation and do not protect against gender identity discrimination. Moreover, these federal antidiscrimination laws do not protect transgender communities from persecution because the Mexican government is unable to enforce them, especially because the police themselves are often the perpetrators of violence against transgender people.⁶³ Transgender women victimized by such violence are also unlikely to report the crimes because they fear retaliation from police or believe police will not accurately investigate their claims.

LIMITED SAME-SEX RELATIONSHIP RECOGNITION

Mexico has also adopted laws granting rights to people in same-sex relationships. In 2006, Mexico City’s legislature approved the “Ley de Sociedades de Convivencia” (Law Regarding Cohabitation Partnerships) which allowed civil unions between same-sex couples.⁶⁴ On December 21, 2009, the Legislative Assembly approved legislation allowing same-sex marriage in Mexico City.⁶⁵ The bill changed the definition of marriage in the city’s Civil Code from “a free union between a man and a woman” to “a free union between two people.”⁶⁶ The law also allows same-sex couples to adopt children, apply jointly for bank loans, inherit from one another, and be included in spousal insurance policies. In August 2010, the Mexican Supreme Court held that same-sex marriages registered in Mexico City must be recognized in all of Mexico.⁶⁷ In July 2015, the Mexican Supreme Court released a “jurisprudential thesis” that effectively legalized same-sex marriage in all thirty-one states in Mexico.⁶⁸

However, formal statutory advances for same-sex couples in Mexico have not reduced persecution against transgender women. In fact, as discussed in more detail later in this report, transgender women have borne the brunt of a violent backlash against same-sex marriage and other such advances. They are at a particularly intensified risk of persecution both because they are often imputed to be gay men and because they are vilified, stigmatized, and brutalized for being transgender women. This increased vulnerability also occurs because transgender women “may be more visible [and] viewed as more transgressive of social norms.”⁶⁹

NAME CHANGE RIGHTS

Mexico City has created some avenues for transgender people to conform their identity documents to their gender identity. In 2004, Mexico City amended its Civil Code to permit an individual to change the name and gender marker on their birth certificate.⁷⁰ Specifically, the Mexico City Civil Code was amended to allow modification of a person's birth certificate "upon request to change a name or any other essential data affecting a person's civil status, filiations, nationality, sex and identity."⁷¹ In 2014, Mexico City also passed a law that permits transgender individuals to legally change their gender without a court order.⁷²

LACK OF LEGAL PROTECTIONS FOR TRANSGENDER PEOPLE

As described earlier, transgender women have limited formal legal protections in Mexico against discrimination and hate crimes. Only Mexico City has an antidiscrimination law that explicitly protects against gender identity discrimination.⁷³ Other protections that exist exclusively in Mexico City include name changes, legal recognition of gender changes,⁷⁴ and specialized healthcare for transgender people.⁷⁵ Transgender women continue to experience pervasive discrimination in public and in their private lives.⁷⁶ Even a representative of CONAPRED stated that "tolerance towards groups such as homosexuals is still 'practically the same' even after the State [Mexico] recognized their rights."⁷⁷ The 2013 U.S. State Department Human Rights Report on Mexico stated that "discrimination based on sexual orientation and gender identity was prevalent[.]"⁷⁸ It also noted that "the government did not always investigate and punish those complicit in abuses."⁷⁹

Transgender women often do not report hate crimes or police abuse because the authorities rarely investigate these crimes.⁸⁰ When the police do get involved, they frequently minimize the crime and mischaracterize it. For example, in violent murder cases the police usually determine that the cases are "crimes of passion" instead of hate crimes.⁸¹ Holding police and military abusers accountable is also difficult.⁸² The process for punishing the police and military is "extremely slow and inadequate."⁸³ Transgender women avoid reporting police abuse out of fear of police retaliation against them or their family members.⁸⁴ Further, human rights commissions tend to be anti-LGBT and will often disregard complaints by transgender women.⁸⁵ Transgender women cannot depend on inadequate and ineffective laws penalizing hate crimes to protect their rights.

MORALITY LAWS

Some Mexican communities have explicitly targeted transgender women by enacting morality laws that criminalize "cross-dressing." In 2002, the city of Tecate, Mexico amended its Police and Good Governance Code to prohibit "men dressed as women in public spaces."⁸⁶ This revision "was coded in terms of infractions against morality."⁸⁷ Upon passing the law, the mayor of Tecate stated that Town Hall officials and the majority of the population supported it.⁸⁸ A coalition across the political spectrum spoke out in favor of the morality law.⁸⁹

Supporters stated that Tecate's prohibition of gender nonconformity was needed to protect against social disturbance; they regarded "cross-dressing" as a threat to order, morality, harmony, mutual respect, and children.⁹⁰ They implied transgender women were pedophiles. In explaining his support for the law, counsel advisor José Luis Rojo claimed that transgender women disrupt the public peace and "take advantage of children."⁹¹ A senior councilman, Cozme Casares, added that he and others supported the measure because they believed it would prevent the spread of AIDS and sex work.⁹²

Local transgender women reported a dramatic increase in police harassment following the law's passage. A woman named Gabriela reported that a police officer had "pulled [her] out of the doorway of a pool hall by her hair."⁹³ Transgender women were frequently accused of being involved in sex work, even when they were simply running errands like going to buy milk. Transgender women stopped by the police frequently faced extortion; "[t]he police used... the threat of arrest... to secure money or sexual favors from [transgender women]."⁹⁴ The passage of morality laws like those in Tecate criminalizes transgender women and sanctions police harassment and private discrimination. The passage and retention of these laws reflect continued societal hostility towards transgender people.

EXPANSION OF LGBT RIGHTS HAS LED TO BACKLASH

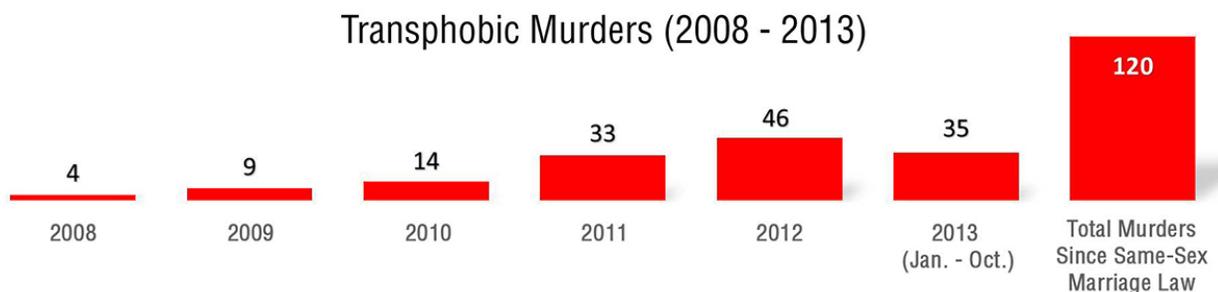
Violence and discrimination against the LGBT community remains pervasive throughout Mexico.⁹⁵ Legal recognition of same-sex couples has increased societal awareness of the LGBT community and made LGBT people much more visible. Ironically, increased awareness of LGBT people appears to have produced significant backlash.

VIOLENCE AGAINST TRANSGENDER WOMEN

In order to win asylum, an applicant must show she has a well-founded fear of persecution either from state actors or from private parties that the government is unwilling or unable to control.⁹⁶ Even if Mexico's prohibition of anti-gay discrimination and enactment of some formal protections for same-sex couples could be read to indicate that certain authorities are willing to prevent anti-gay abuse (or, more accurately, that they are willing to pay lip service to the notion of protecting LGBT people), it does not necessarily mean that the Mexican government is able to protect LGBT people generally or transgender women specifically from the horrific violence they face. In fact, many transgender women face violence from government actors themselves, often in the form of abuse from police and harassment by the military.

Since Mexico recognized same-sex marriage in 2010, several prominent advocates in the transgender community have been brutally murdered.⁹⁷ Many of these killings occurred in Mexico City, despite its adoption of a hate crimes statute and antidiscrimination laws. In 2010, a Mexican National Survey about discrimination found that 83.4% of LGBT Mexicans had faced discrimination because of their "sexual preference."⁹⁸ In 2011, the same survey reported the principal basis of discrimination was "sexual preference."⁹⁹ In 2012, however, "gender identity" was the most frequent basis for discrimination, showing the growing rates of discrimination against the transgender community.¹⁰⁰ It is clear that the Mexican government is unable to effectively protect transgender women.

Figure 2a



Transgender women regularly experience harassment and hate crimes at the hands of members of the public. The following are only a few examples of the many atrocities that transgender women have experienced in Mexico. A prosecutor in Chihuahua belittled a transgender woman who sought redress for abuse and violence she experienced, asking her, “So why are you walking in the streets?”¹⁰¹ In November 2011 in Chihuahua, a group of men kidnapped two transgender women in Hotel Carmen.¹⁰² Days later, the dismembered bodies of these women were found in a van.¹⁰³ In June 2012 in Mexico City, the body of a transgender woman was dismembered. Her remains were found abandoned in different neighborhoods in the Benito Juárez district.¹⁰⁴ In June 2013, police found the body of the transgender woman who headed the Special Unit for Attention to Members of the Lesbian, Gay, Bisexual, Transsexual, Transgender, Transsexual and Intersex (LGBTTTI) Community of the Attorney General of the Federal District (PGJDF).¹⁰⁵ In July 2013, two attackers released pepper spray into a crowd of 500 at a beauty contest for transgender women.¹⁰⁶



Figure 2b

Geographical depiction of transphobic murders in Mexico between 2008 and 2013.¹ Note that many have occurred close to Mexico City (Distrito Federal).

Mexico has the second-highest index of crimes motivated by transphobia in Latin America, behind Brazil.¹⁰⁷ Reports of hate crimes—particularly transphobic murders—continue to rise,¹⁰⁸ including in Mexico City.¹⁰⁹ Most hate crimes against the LGBT community go uninvestigated.¹¹⁰ In many instances, police dismiss investigations of homophobic and transphobic murders by categorizing them as “crimes of passion.”¹¹¹ Indeed, it is estimated that almost 90% of crimes in Mexico go unreported.¹¹² It follows then that the actual number of transphobic murders in Mexico is likely much higher.

It is also critical to note that all members of the LGBT community are not similarly situated when it comes to homophobic and transphobic violence and persecution. In fact, some LGBT people are far more vulnerable than others. Transgender women are particularly likely to be singled out for abuse. Even in the United States, transgender people report far higher rates of violence and mistreatment than non-transgender lesbians and gay men.¹¹³ In Mexico, transgender people are “heavily stigmatized and discriminated against, even by members of the gay community.”¹¹⁴ It is therefore important to avoid erroneously conflating the experiences of non-

transgender lesbian and gay people with those of transgender women. For example, in *Lopez-Berera v. Holder*, the BIA affirmed the denial of asylum to an HIV-positive transgender woman from Mexico, inappropriately relying on dicta from a case about healthcare access for *gay men*.¹¹⁵ On appeal, the government filed an unopposed motion to remand the case to the BIA for reconsideration.¹¹⁶ Adjudicators must always examine evidence for the particular social group of transgender women and not deny asylum based on modest improvements in legal rights for non-transgender gay people.

In 2011, the year following the implementation of same-sex marriage across the country, there were more hate crimes against transgender people than in any year in recent history.¹¹⁷ Activists were particular targets of this backlash.¹¹⁸ On May 3, 2011, an LGBT activist named Quetzalcoatl Leija Herrera was found beaten to death.¹¹⁹ In July 2011, Cristian Ivan Sanchez Venancio, a member of the Revolutionary Democratic Party's Coordinating Group for Sexual Diversity and an organizer of Mexico City's annual LGBT Pride march, was found stabbed to death.¹²⁰ On July 6, 2011, men in two vehicles opened fire on a group of transgender women in Chihuahua killing one and wounding several.¹²¹ In the state of Veracruz, activists noted that not only were LGBT people being killed at a high rate in 2011, but they were also increasingly being tortured before their deaths.¹²² On August 18, 2012, a transgender woman was found dead on the street in a suburb of Mexico City. She had been beaten horribly and then decapitated.¹²³

Figure 3



164 Assassinations in 27 States (2007 - 2012)

Of the transphobic murders between 2007 and 2012, many took place in Mexico City (DF), where the city has enacted same-sex marriage laws and laws allowing transgender individuals to change the gender markers on their birth certificates.¹²⁴

RECENT TRANSPHOBIC MURDERS OF PROMINENT TRANSGENDER WOMEN

"The paradox is that as the LGBT community makes these advances in Latin America, there appears to be higher levels of violence against them It seems to be a backlash and may be due to the greater visibility of LGBT communities. In a sense, the violence is a symptom of the achievements made by the movement."¹²⁵



Barbara Lopez Lezama¹²⁶

Ms. Lezama was murdered on April 30, 2011. The assailant strangled her with a cord and inflicted blunt force trauma to her head. She was 24 years old. Barbara worked as a stylist and enjoyed knitting. Barbara was also active in the community: she worked with street children and those who were living with HIV/AIDS.



Agnes Torres Sulca¹²⁷

Ms. Torres Sulca was found murdered in a ditch outside of Puebla on March 12, 2012. Her throat had been slashed and there were several burn marks across her body. Ms. Torres Sulca was a 28-year-old psychologist and educator and is remembered as an activist and ardent defender of human rights in Mexico's LGBT community. Authorities closed her case in three weeks without identifying the perpetrator.



Hilary Molina Mendiola¹²⁸

Ms. Mendiola was murdered on September 23, 2013 in Mexico City. She was pulled from a vehicle and thrown off a bridge by two men.

Virgen Castro Carrillo¹²⁹

Ms. Carrillo, a 30-year-old transgender woman, was murdered sometime between March 19 and March 21, 2009. Ms. Carrillo was from Sinaloa, Mexico. Her body was found in the Tamazula River. After conducting an investigation, police suspected that a man killed Ms. Carrillo for being transgender and then threw her body into the river.

Fernanda Valle¹³⁰

On June 19, 2010, Fernanda Valle, the Vice President of Transgénero Hidalgo (Transgender Hidalgo) "disappeared." Ms. Valle's body was eventually found tied up and tortured with two bullets in the head. The President of Transgénero Hidalgo, Karen Quintero, demanded a full investigation, but the Hidalgo authorities did not adequately investigate the crime.

POLICE VIOLENCE

Transgender women in Mexico face brutal violence not only from private citizens, but also from state officials. Police officers and the military subject transgender women to arrest, extortion, and physical abuse.¹³¹ Many transgender women have been victims of police violence or know someone who has been a victim.¹³²

According to Victor Clark, professor at San Diego State University and the director of the Binational Center for Human Rights in Tijuana, Mexico, the police and military are the “primary predators” targeting transgender women.¹³³ Mexican police target transgender women and arbitrarily arrest them for pretextual reasons¹³⁴ such as “disturbing the peace” because they were wearing female clothing; for being perceived to be sex workers even if they were not; for failing to carry a valid health card; for allegedly carrying drugs; or for being said to be gay.¹³⁵

For example, in March 2014, police officers in Chihuahua, Mexico arrested five transgender women for not carrying a health card, even though this is not a crime.¹³⁶ At the police station, male police officers forced the transgender women to undress in front of them.¹³⁷ The police then illegally forced the women to take HIV tests.¹³⁸ The police held the transgender women in jail for 36 hours and demanded 200 pesos from each woman for release.¹³⁹

For decades the Mexican police forces have been implicated in cases of arbitrary detention, torture, and other human rights violations that are often unpunished.¹⁴⁰ Police officers often extort transgender women for sex or money in return for not arresting them or for releasing them from jail.¹⁴¹ Many transgender women have to pay almost daily bribes to avoid being arrested.¹⁴² A 2010 study by the National Council for the Prevention of Discrimination (Consejo Nacional Para Prevenir la Discriminación) reported that 42.8% of LGBT interviewees indicated that the police are “intolerant” of sexual minorities.¹⁴³ In a 2008 study by Mexico City’s Human Rights Commission, 11% of LGBT persons reported experiencing threats, extortion, or arrest by police because of their sexual orientation.¹⁴⁴

A transgender woman in Tijuana, Mexico, reported the police abuse she suffered after being arrested to the Binational Center for Human Rights in Tijuana: “I was working as a sex worker, talking with a client, [when] the municipal police arrived and asked me for my identification documents. Everything was in check, [but] they [the police] accused me of being outside of the area [sex work tolerance zone] and arrested me, handcuffed me, and took me to a municipal judge. The police talked with the judge in codes and took me to the 20 [municipal jail]. They [the police] put me in a cell with 20 men all of whom were mocking me. I paid 600 pesos to the guards to not undress me.”

MILITARY VIOLENCE

The military in Mexico continues to commit human rights violations against the civilian population across the country, including against transgender women. Former president Felipe Calderon (2006-2012) waged a “War on Drugs” and ordered the

military to combat drug cartels and organized crime. However, instead of ensuring peace for civilians, the military has itself inflicted harm in areas of increased militarization. Soldiers assigned to policing and public security tasks often lack sufficient training to properly take on law enforcement roles.¹⁴⁵ Often, soldiers operate under militarized rules of engagement and use of force that increases the likelihood of mistreatment of civilians.¹⁴⁶

Transgender women were already visible targets for police and military abuse, but once increased militarization began under Calderon, transgender women suffered increased aggression. Military troops engage in the same abuses as the police by making transgender women the object of arbitrary arrests, beatings, extortions, and robberies.¹⁴⁷ In May 2007, for example, members of the Military Police beat approximately 40 transgender women in Ciudad Juarez, leaving them hospitalized and in serious condition.¹⁴⁸

Mercedes Fernandez, president of the Chihuahua Lesbian Gay Movement, described conditions for transgender women who face military persecution: "They [transgender women] can't even go and buy their groceries because they are immediately transferred to the authorities where they are accused of engaging in prostitution. They take them away even if they are holding their grocery bags. They don't have liberty of movement."¹⁵⁰

In the article "Abuses Against Transsexuals in Ciudad Juarez Continue to Rise," Deborah Alvarez, a transgender activist declared:

"They [the military] pick up girls [transgender women] for no reason, they come into their apartments, slap them, insult them and push them."¹⁴⁹

Human rights violations by the military continue under the current president Enrique Peña Nieto, who took office in 2012.¹⁵¹ Like the police, the military is rarely punished for the abuses reported by transgender women. Further, the military command structure prevents accountability for abuses.¹⁵² The government instead punishes the victims of military violence by accusing them of criminal acts and blaming the victims for the harms they suffered at the hands of the military.¹⁵³

DRUG CARTEL AND GANG VIOLENCE

In 2012, drug cartels and gangs were responsible for the vast majority of killings and abductions in Mexico.¹⁵⁵ In July 2013 the government reported that, of 869 victims of homicides related to organized crime in the previous month, 830 were themselves allegedly responsible for crimes.¹⁵⁶

Police often work with the cartels and gangs, with 98% of all crimes going unpunished. Vulnerable communities, including transgender women, are often victims of drug cartel and gang violence. Transgender women fall victim to cartel kidnappings, extortions, and human trafficking. One transgender woman described how cartel members forced her into sex work in Merida. Another transgender woman

Ana Frutos, a transgender woman from Guadalajara, testified before a U.S. Asylum Officer: "Even though I knew I would be an easy target for police and gang abuse, I made my transition to womanhood because my identity as a woman is what defines me. For me, hiding my true gender identity is impossible."¹⁵⁴

was targeted for rape and robbery while traveling by bus.¹⁵⁷ In another case, a transgender woman named Joahana in Cancun was tortured to death by drug traffickers who carved a letter “Z” for the Zeta cartel into her body.¹⁵⁸ If a cartel targets a transgender woman, it is nearly impossible to escape the cartel’s power. An immigration attorney in the U.S. described in an interview how his transgender female client unknowingly dated a cartel member. After doing so, she could not escape persecution from the cartel.¹⁵⁹

LINKS BETWEEN MEXICAN GOVERNMENT, POLICE AND ORGANIZED CRIME

The Mexican government and cartels have been linked numerous times to incidents involving human rights violations, and cartels have been revealed to be successfully infiltrating police and military forces. In 2009, three officers from the Attorney General’s Organized Crime Investigations Unit (SIEDO) along with ten soldiers were arrested for their ties to organized crime, with the acknowledgment that there were still many officers with probable ties to cartels.¹⁶⁰ Other officials with ties to organized crime include Héctor Santos Saucedo, then-head of Coahuila’s state investigations, who was connected to the notorious Zetas in 2010.¹⁶¹ Occasionally the extent of the connection is not revealed until years later, such as with the San Fernando massacres carried out in Tamaulipas in 2010-11. In 2014 a freedom of information request revealed there were “direct links between the San Fernando police, the Zetas and the San Fernando killings.”¹⁶²

The disappearance of 43 students from Ayotzinapa in 2014 and their parents’ subsequent refusal to accept the half-answers from the government have put a spotlight on the connection between police and organized crime. The first reports indicated that the students were seized by local police acting on orders from the corrupt mayor of Iguala and then turned over to a local drug gang; however further information has begun to indicate that federal police were likely involved in the incident.¹⁶³ Transgender women, who already find themselves to be targeted by police and cartels separately, are even less likely to report any discrimination or violence they experience if they risk being targeted by the organizations that they are reporting against.

SOCIETAL FACTORS THAT LEAD TO VIOLENCE AGAINST TRANSGENDER WOMEN

*“To society, I am not a person. To society, I am trash—do you understand?”
– Anonymous transgender woman in Mexico.¹⁶⁴*

Negative attitudes towards the LGBT community remain very common in Mexico.¹⁶⁵ Homophobic and transphobic comments from public figures, such as former President Felipe Calderon, diminish the quality and dignity of transgender women’s lives by perpetuating widespread hatred and violence.¹⁶⁶ There is also a nationwide backlash against advances in LGBT rights, resulting in increased levels of persecution against transgender women who tend to be the most visible and marginalized members of the LGBT community.¹⁶⁷

FAMILY REJECTION

Many transgender women face abuse and rejection at the hands of their own families. The abuse ranges from physical, verbal, and sexual attacks to murder.¹⁶⁸ A recent survey of transgender women in Mexico City found that 45% had experienced abuse from their families.¹⁶⁹ As many as 70% transgender women and girls in Latin America are estimated to run away from or be thrown out of their homes.¹⁷⁰ The consequences of such family rejection include psychological trauma and emotional suffering, which often lead to mental health problems, suicide attempts, failure to complete education, and unemployment.¹⁷¹

A transgender woman named Yokanza Martinez Balez of Puebla described the rejection she faced after her transition in an interview with a journalist.¹⁷² Ms. Martinez Balez began living as a woman at the age of 15. Her family forced her to leave home. She dropped out of high school, migrated north to Sonora, and became a sex worker.¹⁷³

Another transgender woman, Gaby Morales Arellano, was forced by her parents to leave home shortly after she began transitioning to live as a woman.¹⁷⁴ Her dreams of becoming a lawyer ended because she had to take whatever job she could to survive.¹⁷⁵ She explained, “There is a lot of discrimination when you come out of the closet and you face all of these critics, first your family and your neighbors who say, ‘Why is he like that? He should be normal.’ My family thought they could beat me and correct me.”¹⁷⁶

Another Mexican transgender woman who fled to the United States and sought asylum did so to escape severe physical and mental abuse from both her family and her community. She had sought help from the police in Mexico, but they ignored her pleas for protection. Without protection from her family or the police, gang members beat her severely and left her bleeding from head wounds. Fearing for her life, she fled to the United States, where she was able to receive asylum.¹⁷⁷

GENDER-BASED VIOLENCE

Violence against women is very prevalent in Mexico, particularly in the forms of domestic violence and murders (femicide). According to a 2012 report by the Mexican Secretary of State, the number of female murder victims increased dramatically over the previous three years, particularly in the states of Chiapas, Chihuahua, Durango, Guerrero, Michoacan, Oaxaca, Sinaloa, Sonora, and the Federal District.¹⁷⁸ While Mexico has enacted statutes criminalizing domestic violence and femicide, their rates remain high.¹⁷⁹ In a 2012 study, researchers reported that 67% of Mexican women had been the target of a crime.¹⁸⁰ Despite the government's effort to eliminate violence against women by enacting these protective laws, women continue to be subjected to violence and femicide at staggering rates.

Violence against non-transgender women is relevant to assessing conditions for transgender women because both populations experience high rates of gender-based violence that the Mexican government has been unable to control or prevent. Indeed, the overwhelming number of non-transgender women being murdered in Mexico has drawn the attention of many academics and human rights activists. Some commentators have pointed to social attitudes regarding gender roles as a factor contributing to the high rates of violence against women generally, gay and bisexual men, and transgender women.¹⁸¹

RELIGION

According to the 2010 Mexican Census, approximately 83% of citizens identify themselves as Roman Catholic.¹⁸² Obviously, Catholic individuals hold diverse beliefs, but the Catholic Church hierarchy in Mexico has historically failed to support increased rights for women and has actively campaigned against rights for LGBT people.¹⁸³ The Church has taken a particularly vocal stance against same-sex marriage.¹⁸⁴ Even though same-sex marriage does not directly benefit transgender women, as noted elsewhere in this report, the backlash against the legal recognition of same-sex marriage has greatly increased rates of discrimination and persecution against transgender individuals.

Although non-Catholic Christian churches make up on a small number of the total churches in Mexico, there are still areas of the country in which they are becoming very influential.¹⁸⁵ The first half of the century saw the majority of converts located in urban areas, but gradually this has shifted to rural, poorer, and indigenous communities.¹⁸⁶ These populations are often Jehovah's Witnesses or members of the Church of Jesus Christ of Latter-day Saints, whose views of LGBT individuals are comparable to that of the Catholic Church; as a result, transgender people often face similar levels of discrimination and persecution from members of those churches as well.¹⁸⁷

Many religious leaders in Mexico have expressed opposition to LGBT rights. For example, Cardinal Javier Lozano Barragán denounced same-sex marriage, saying it would be like considering "cockroaches" part of a family.¹⁸⁸ After the passage of

Mexico City's same-sex marriage law, the Archbishop of Mexico City, Cardinal Norberto Rivera Carrera, declared that same-sex marriage is one of Mexico's leading problems along with violence, poverty, and unemployment.¹⁸⁹ Such publicly stated views by prominent figures in the Mexican Catholic Church hierarchy likely contribute to the pervasive anti-LGBT views in Mexican society, given that many Mexican Catholics respect and follow the Church's teachings.

ECONOMIC MARGINALIZATION

Mexico's federal antidiscrimination laws do not prohibit discrimination on the basis of gender identity. The lack of protection leaves transgender women especially vulnerable to employment discrimination.¹⁹³

As a consequence, few legal employment opportunities exist for transgender women. Approximately one out of three gay people in Mexico report that they must remain "in the closet" to avoid being fired from their jobs.¹⁹⁴ But for many transgender women—who largely lack access to gender-confirming health care due to high costs, and are generally denied the ability to change the name and/or gender on ID documents to match their gender presentation¹⁹⁵—it may be difficult or impossible to hide their transgender status, despite the economic penalty that brings. A fortunate few can work as hairstylists or perhaps open a salon if they have enough money or family support.¹⁹⁶ But many transgender women face such socioeconomic marginalization that they must turn to sex work to survive.¹⁹⁷ This results in yet more violence and persecution from both community members and police.¹⁹⁸

It should be noted that transgender people cannot simply "hide" who they are and thereby escape persecution by living in accordance with their birth-assigned gender role. Gender dysphoria is a serious condition, recognized by every major medical association, the only treatment for which is to live in accordance with the gender with which they identify, rather than the gender assigned at birth.¹⁹⁰ Attempting to suppress one's gender identity can have dire health consequences.¹⁹¹ Moreover, a person's gender identity is a fundamental component of identity, which cannot be required to be changed or hidden as a condition of protection under asylum laws.¹⁹²

Mexico City prohibits gender identity discrimination and provides a legal mechanism for name and gender changes, but even there, in practice, transgender women still endure rampant employment discrimination.¹⁹⁹ The Coordinating Committee for the Development of Diagnosis and Human Rights Program of the Federal District²⁰⁰ found that despite formal legal protections, transgender women in Mexico City are still discriminated against and denied their labor rights.²⁰¹

LACK OF GENDER-CONFORMING IDENTITY DOCUMENTS

As noted, only Mexico City permits transgender people to legally change their name and gender to correspond to their gender identity. Even where such mechanisms are technically available, however, legal name changes are not accessible in practice for many transgender women. This is in part due to "lengthy delays and high costs—at least six months and approximately 70,000 pesos [approximately

\$7,000 USD] are required, and completion sometimes depend[s] on the ‘good will’ of some civil servants.”²⁰² Without the ability to obtain a legal name change, transgender women cannot obtain a national voter identification card with a name that reflects their female gender identity.²⁰³ The voter identification card is Mexico’s preferred identification card.²⁰⁴ It is necessary for exercising the right to vote, to acquire property, and to obtain medical assistance in a public hospital.²⁰⁵ Being forced to present a voter identification card with an old “male” name on it makes transgender women even more vulnerable to discrimination, abuse, and violence.²⁰⁶

LACK OF ADEQUATE HEALTH CARE

Transgender women lack adequate health care in Mexico.²⁰⁷ Many transgender women resist seeking medical help because they must disclose their transgender status and subsequently face hostility and threats of violence from medical providers.²⁰⁸ Medical care providers often do not want to provide medical attention to transgender patients. Providers have mocked and humiliated transgender patients using offensive language, threats, aggression, and hostility.²⁰⁹ Consequently, transgender women do not routinely access preventive or emergency care.²¹⁰

In particular, medical care to support gender transition—such as hormones or surgeries—is almost entirely unavailable to most transgender women in Mexico. While medical authorities uniformly recognize the medical necessity of transition-related treatment, such care is not covered under Mexico’s national health plan and licensed providers (for those who can afford to pay out of pocket) are scarce.²¹¹ Even where it is available, such care can be prohibitively expensive for transgender women already suffering the effects of economic marginalization discussed earlier.²¹² Without access to gender-affirming medical care, many transgender women permanently damage their skin and muscles by injecting dangerous black-market feminizing liquid silicone or other fillers.²¹³

PREVALENCE OF AND LACK OF TREATMENT FOR HIV/AIDS

Transgender women are also largely denied access to adequate healthcare for other life-threatening conditions, such as HIV/AIDS.²¹⁴ In Latin America, transgender women face the highest prevalence of HIV of any group, with a 35% infection rate.²¹⁵ Mexico City has the highest number of documented HIV cases in all of Mexico.²¹⁶ Despite these high infection rates, medical treatment for HIV and AIDS is largely unavailable in less urban areas due to prohibitive costs.²¹⁷ Even in urban areas that have free antiretroviral drugs available they are usually reserved for the sickest people.²¹⁸ Many in Mexican society hold misconceptions about the LGBT community and HIV that further contribute to the widespread stigma associated with both HIV and LGBT people.²¹⁹ A national survey found that 59% of Mexicans believe that HIV/AIDS is caused by homosexuality.²²⁰ These misconceptions and stigma exist even among medical providers.²²¹ In fact, most hospitals view homosexuality as a risk factor for HIV and often discriminate against those who do seek treatment.²²² The Commission on Human Rights in Mexico City (CDHDF) also reported that HIV/AIDS clinics often actively mistreat and discriminate against transgender people living with HIV/AIDS.²²³

EVALUATING ASYLUM CLAIMS MADE BY MEXICAN TRANSGENDER WOMEN

"I would rather die than live that life. It's like living in hell. Here I feel like I'm in my refuge, at home. ... Here I feel like a person." – Anonymous Mexican transgender woman in the United States²²⁴

When a transgender woman seeks asylum in the United States because she fears persecution in Mexico, an asylum officer or immigration judge must decide whether she qualifies for asylum or any other humanitarian relief. These determinations are extremely difficult to make, since asylum claims by their nature involve events in a foreign country. Frequently there are no available witnesses to the incidents other than the survivor herself. Immigration judges therefore have no choice but to render life or death decisions on the basis of limited information. It is therefore critical that adjudicators consider information that accurately reflects the reality of life in Mexico for transgender women.

Unfortunately, a number of misperceptions exist about the conditions for LGBT people, particularly transgender women, in Mexico. Since inaccurate information about country conditions has the potential to compromise the adjudication of asylum claims, it is essential to examine common tropes carefully to determine whether they are accurate. Additionally, it is vital for adjudicators to remember that transgender women in Mexico make up a particular social group that is distinct from gay men (though transgender women are frequently mistaken for feminine gay men). While conditions related to LGBT Mexicans generally may be relevant, adjudicators must address evidence that specifically relates to persecution of the particular social group at issue, transgender women in Mexico. The importance of not conflating the social group of transgender women with other potentially less persecuted members of the LGBT community is equally true in the contexts of transgender asylum seekers from countries other than Mexico.

THE EFFECT OF SAME-SEX MARRIAGE AND ANTI-DISCRIMINATION LAWS ON VIOLENCE

As noted above, Mexico began recognizing same-sex marriages throughout the country in 2011. Recently enacted laws also prohibit discrimination on the basis of "sexual preference," and Mexico City law also prohibits gender identity discrimination. Based on these changes in the law, some immigration judges have mistakenly concluded that LGBT people no longer face homophobic and transphobic violence in Mexico. Instead, the advances in LGBT rights has caused a nationwide backlash from those who oppose the changes, resulting in increased levels of persecution against transgender women who tend to be the most visible and marginalized members of the LGBT community.²²⁵

Although Mexico's prohibition of anti-gay discrimination and enactment of some formal protections for same-sex couples may appear to show that authorities are

willing to attempt to prevent anti-gay abuse, this does not necessarily translate into them actually being capable of protecting LGBT people generally or transgender women specifically from the horrific violence they face.

Homophobic and anti-transgender violence continues to be rampant in Mexico, including Mexico City. Indeed, Mexico City has the highest rate of transphobic murders in the country. Just as the adoption of laws prohibiting violence against women generally has failed to end the rampant abuse of non-transgender women in Mexico, prohibitions on anti-gay discrimination have not diminished attacks on LGBT Mexicans. In fact, the evidence suggests that same-sex marriage and other formal legal protections have actually made homophobic and transphobic violence worse by inciting a backlash from people opposed to LGBT rights.

RELOCATION PRESUMPTION

Some immigration judges, citing the changed laws in Mexico City, hold that asylum-seekers can return to Mexico and relocate to Mexico City without fear of persecution.²²⁶ As discussed above, however, formal changes in laws permitting same-sex couples to marry and adopt children have not improved conditions for transgender women in Mexico City. In fact, rates of violence and murder have actually *increased* in Mexico City as well as throughout the nation since the changes in same-sex marriage and adoption laws.

Police harassment against the LGBT community remains high in Mexico City as well. Despite the reputation of the Zona Rosa district of Mexico City as an LGBT neighborhood,²²⁷ extortion and harassment particularly of transgender women continues there.²²⁸ As described above, Mexico City also has the highest rate of transphobic murders in the country. Moving to Mexico City will therefore not protect transgender women from persecution: they will remain vulnerable no matter where they reside in Mexico.

GAY PRIDE MARCHES AND “GAY TOURISM”

Gay pride demonstrations began in Mexico City in 1979. Now, Mexico City hosts a gay pride march each year in the Zona Rosa. Despite this, the violence against the gay community has not ceased or even decreased. According to the Citizens’ Commission against Hate Crimes, there are on average three homophobic murders each month in Mexico.²²⁹

Moreover, there are significant differences between gay pride parades in the United States and gay pride marches in Mexico City, and the two should not be conflated. According to Professor Victor Clark-Alfaro, the purpose of gay pride marches in Mexico is to bring awareness to and to protest violence and abuse faced by LGBT communities in Mexico. He notes that in assessing country conditions some immigration judges have alluded to gay pride marches being like “parties.” Mr. Alfaro clarified, “They were trying to say it was a fun parade, but in reality it was a protest.”²³⁰

Another common misperception relates to the significance of “gay tourism” and its implication for the domestic LGBT community in Mexico, particularly transgender people. In asylum cases, government attorneys sometimes submit as evidence of country conditions news articles and blogs about how “gay-friendly” parts of Mexico are for foreign tourists.²³¹ Some immigration judges have found these online articles and blogs to be persuasive and indicative of improved country conditions for LGBT people in Mexico and cited them when denying transgender women’s asylum claims.

Although tourism constitutes a large part of the Mexican economy, the existence of some tourist destinations that cater to wealthy gay men from other countries is not and could not plausibly be indicative of the safety of low-income Mexican transgender women against hate crimes and violence. Tourism guides do not constitute journalism or human rights reporting, but instead serve the purpose of promotional materials to attract wealthy non-transgender foreigners to spend money at particular clubs and hotels.²³² Even foreign tourists have suffered horrific hate crimes; in one example, Ronald Bentley Main, a real-estate agent and former president of the Greater Seattle Business Association, and his partner, Martin Orozco Gutierrez, were found stabbed to death in Martin’s home in Chapala, Mexico, a city just outside of Guadalajara.²³³

It is important to remember that conditions for tourists are very different from the experience of ordinary Mexican citizens. And the conditions for gay tourists are completely separate from the experiences of transgender Mexican women living in Mexico.²³⁴ News articles about “gay tourism” are not evidence of the day-to-day experiences of gay or transgender Mexican citizens. Most Mexican transgender women do not have the financial security to go to expensive nightclubs, hotels, or resorts that cater to rich, white, gay foreigners.²³⁵ Using tourist gay travel guides as country conditions evidence turns opinion and off-the-cuff remarks into documented fact, allowing flimsy and generalized assertions to become the basis for legal conclusions.²³⁶ This type of “evidence” should not be given credence in asylum cases involving transgender women.

CONDITIONS FOR TRANSGENDER WOMEN IN U.S. IMMIGRATION DETENTION FACILITIES

Many transgender women who flee sexual violence in their home countries face further abuse when seeking asylum in the United States.²³⁷ LGBT immigrants in immigrant detention facilities are exposed to an increased risk of mistreatment, much like LGBT inmates in prison, who studies show are 13 to 15 times more likely than other inmates to be sexually assaulted.²³⁸ After receiving information on gay and transgender individuals who have faced solitary confinement, torture, and mistreatment, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment declared that the treatment of LGBT immigrants in U.S. detention facilities was a violation of the Convention Against Torture.²³⁹

Since many transgender women seek asylum after experiencing extreme violence in their countries of origin, they are especially vulnerable to the mental health strain of being held in detention.²⁴⁰ Studies show that detention is a threat to the psychological health of immigrants and can worsen the intense psychological distress often carried by asylum-seekers fleeing persecution.²⁴¹ Asylum cases also generally take longer to resolve than other removal cases, leading asylum-seekers to spend more time in immigration facilities than other immigrants.²⁴² While the average length of stay for an immigrant in detention is 30 days, the average length for asylum-seekers is 102.4 days.²⁴³ Some transgender women have been detained for years while fighting their asylum cases.²⁴⁴

Heartland Alliance's National Immigrant Justice Center filed a report in 2011 documenting the nationwide mistreatment of immigrant transgender women held in detention.²⁴⁵ The report indicated a systematic problem of ill-treatment, and included complaints by transgender women of sexual assault, denial of medical care, extended periods of solitary confinement, discrimination and abuse, and an ineffectual grievance and appeals process.²⁴⁶ Transgender women in detention also face mistreatment because they are typically confined with men, where they are regularly subject to abuse by detained men and guards and denied access to healthcare, and where their identities are fundamentally dishonored.²⁴⁷ Despite ICE's issuance of a "Transgender Care Memorandum" in 2015,²⁴⁸ the memorandum entirely lacks enforceability: signing onto the contact modification is optional for facilities. As of March 2016 no facilities have signed a modification to their contacts to permit transgender women to be housed with cisgender women.

A 2010 report by Human Rights Watch regarding sexual assault in immigrant detention facilities found that instances of people detained by ICE being sexually assaulted, abused, and harassed "cannot be dismissed as a series of isolated incidents" and concluded that "there are systemic failures at issue."²⁴⁹ The American Civil Liberties Union filed a lawsuit against U.S. Immigration and Customs Enforcement (ICE) in 2011 upon discovering that nearly 200 cases of sexual assault had taken place in ICE detention facilities since 2007.²⁵⁰

Many facilities send transgender immigrants to solitary confinement in order to isolate them from the general population, an effort that may be intended in some cases to protect them from the near-pervasive violence and sexual assault they face.²⁵¹ However, solitary confinement frequently results in a number of negative psychological effects, including “hyper-sensitivity to external stimuli, hallucinations, panic attacks, obsessive thoughts, and paranoia[,]”²⁵² as well as “impulsive, self-directed violence.”²⁵³ Even after release from solitary confinement, those effects linger, and they can permanently damage an individual’s ability to function.²⁵⁴

The U.N. Special Rapporteur on torture has stated that the psychological effects of solitary confinement may become irreversible after 15 days.²⁵⁵ There have been many reports of transgender women being held in isolation in detention facilities for much longer, however. For example, advocates from the organization Americans for Immigrant Justice reported that transgender immigrants detained at the Krome Service Processing Center in Miami, Florida were being held in solitary confinement for periods of up to six months at a time.²⁵⁶ Other transgender women have reported being subjected to solitary confinement even longer.²⁵⁷

María, a Mexican transgender woman who fled persecution in Mexico City, reported that the five months in 2010 that she spent in immigration detention, where she was kept in solitary confinement, were “true hell.”²⁵⁸ Detained transgender women are frequently held in isolation for up to 23 hours a day, “often without access to library resources, telephones, outdoor recreation, religious services, or legal services that are otherwise available to other people.”²⁵⁹ A counselor at a New Jersey detention center reported that “the treatment of people in solitary confinement is inhumane. There are many violations of human rights. One of them is that inmates in solitary confinement are forced to take tranquilizers in order to keep them calm.”²⁶⁰ Many transgender women have given up on their very strong asylum cases because their detention conditions were too unbearable to withstand, especially on top of the trauma that they already suffered from their experiences in Mexico. The New Jersey counselor also reported that during the first trimester of 2013, at least 10 transgender women in the facility were pressured into signing voluntary deportation documents.²⁶¹

Transgender women in detention facilities also often face a lack of access to adequate medical treatment.²⁶² HIV-positive transgender women are particularly vulnerable.²⁶³ Victoria Arellano, an HIV-positive transgender woman, died in 2007 while being held in a large men’s detention cell in an ICE facility after authorities refused to provide her with medical attention and her medication.²⁶⁴ As recently as November 2014, there were still reports of transgender women living with HIV being denied access to HIV medication.

Transgender immigrants in detention are also commonly denied all gender-confirming medical treatment, including hormone therapy, which many United States Courts of Appeal have found must be provided to prisoners diagnosed with gender dysphoria under the Eighth Amendment’s guarantee of basic medical care for incarcerated individuals.²⁶⁵ Although ICE’s Performance-Based National Detention Standards provide for access to hormone therapy for transgender women who had

already been receiving hormone therapy before being detained, these guidelines are seldom followed.²⁶⁶ One Mexican transgender woman held in immigration detention at the Santa Ana City Jail reported being refused hormone therapy, which she had been on for the past 10 years.²⁶⁷ Distraught, and not receiving treatment for trauma-related depression, she attempted suicide.²⁶⁸ Following her suicide attempt, authorities put her in solitary confinement.²⁶⁹

While in detention, transgender women also face instances of mistreatment and humiliation from facility staff and ICE personnel.²⁷⁰ One transgender woman held in Theo Lacy Facility in California reported that she was called a “faggot” by guards on a number of occasions, and was also mocked because she was dying of AIDS.²⁷¹ Moreover, guards singled her out for public searches where they forced her to undress and then ridiculed her bare breasts.²⁷² When staff members are themselves the source of abuse against transgender women, “protective” measures such as solitary confinement are particularly ineffective.²⁷³

Surveys conducted by the Department of Justice have found that LGBTQ people face much higher rates of sexual assault than other incarcerated people.²⁷⁴ Another study found that transgender women in male prisons are 13 times more likely to be sexually assaulted than the general population, with 59% reporting experiencing sexual assault.²⁷⁵ Although transgender women only account for 1 out of 500 detained immigrants, one out of every five confirmed cases of sexual assault in ICE facilities involved transgender survivors.²⁷⁶ Incidents include a case of a guard who sexually assaulted a transgender woman while she was in “protective custody.”²⁷⁷ Another reported incident involved an ICE officer who forced a transgender woman to remove her shirt while he ejaculated into a cup and demanded that she drink his semen.²⁷⁸ The officer admitted to the abuse, but served only two days in a county jail, while the victim remained locked with men in ICE detention for another five months.²⁷⁹

Johanna, a transgender woman from El Salvador, left for the United States after she was gang-raped.²⁸⁰ After living in the U.S. for 12 years, Johanna was apprehended by ICE and placed in an all-male detention facility.²⁸¹ While in the facility, Johanna was sexually assaulted by another detained immigrant.²⁸² Unable to bear the conditions of her detention, Johanna agreed to be deported.²⁸³ She would flee again to the United States two more times.²⁸⁴ Each time she faced sexual abuse in all-male ICE detention facilities and months of solitary confinement. Johanna ultimately won withholding of removal due to the severe violence and persecution she experienced in El Salvador.²⁸⁵ If she had been released or if alternatives to detention had been used in the first instance, Johanna would have been spared repeated sexual assaults and months of solitary confinement she suffered in U.S. custody.

Although in recent years the Department of Homeland Security has stated an intention to improve the treatment of LGBT immigrants in its custody, transgender women continue to be subjected to horrific treatment by ICE.²⁸⁶ For example, in 2014, Marichuy Leal Gamino, a 23-year-old transgender woman originally from Mexico, was detained with men at the Eloy Detention Center. Gamino faced repeated instances of mistreatment, culminating in a sexual assault by her cellmate.²⁸⁷ After reporting the abuse to the staff of the facility, she said that they tried to get her to

sign a statement saying that she consented to the sexual assault.²⁸⁸ This series of events occurred nine years after the passage of the Prison Rape Elimination Act and nearly a year after DHS announced its regulations to implement the Act, which include explicit protections for transgender immigrants.²⁸⁹

Many detained transgender women continue at the time of this writing to experience transphobic abuse from guards, denial of HIV medicine and hormones, being forced to shower with men, sexual violence from guards and other detained immigrants, and solitary confinement.²⁹⁰ Detention conditions for transgender women are both a human rights and access to justice concern. When transgender women give up on their asylum claims under existing immigration law solely because detention conditions are unbearable, this is a grave obstacle to fair adjudication.

RECOMMENDATIONS

As a signatory to the 1967 Protocol Relating to the Status of Refugees, the United States has international obligations to ensure that those who flee persecution can seek asylum.²⁹¹ Under Article 3 of the Convention Against Torture, the United States may not remove any person to countries where they would face cruel, inhuman, or degrading treatment rising to the level of torture.²⁹² Many Mexican transgender women flee Mexico because of persecution. As explained above, transgender women commonly suffer sexual and physical abuse at the hands of state and private actors that should be considered equivalent to torture. The Mexican government is unwilling and unable to protect transgender women from this persecution.

Based on the evidence surveyed above, several key changes are essential to improve the accuracy and fairness of adjudication of Mexican transgender women's claims for asylum in the United States:

- Executive Office for Immigration Review (EOIR) materials given to immigration judges regarding country conditions in Mexico should explicitly discuss the distinct experiences of both gay and transgender people.
- EOIR should provide specific training for immigration judges on transgender issues. Immigration judges should be informed about the nature of sexual orientation and gender identity so that they can properly adjudicate transgender respondents' claims. For example, immigration judges should understand that being transgender relates to one's gender identity and is not a sexual orientation, although many transgender women experience persecution both for being transgender women and because some in society may perceive them to be gay men. The U.S. Citizenship and Immigrations Services Refugee, Asylum and International Operations (USCIS RAIO) Directorate – Officer Training provides asylum officers with a comprehensive training course on LGBT Refugee and Asylum claims. EOIR should produce a similar training for immigration judges.
- The United States must end the practice of imprisoning Mexican transgender women in immigration detention during the pendency of their removal cases. Transgender women in detention are often subjected to sexual and physical assault from both guards and other detained immigrants. Many transgender prisoners are placed in solitary confinement. Physical assault, sexual violence, and solitary confinement all subject detained immigrants to physical and psychological harm and undermine their ability to pursue asylum or other humanitarian relief.
- Attorneys representing Mexican transgender women should provide immigration judges or asylum officers with country conditions materials as specifically related to transgender women as possible. Given the evolving, complex situation in Mexico and the fact that legal advances for same-sex couples have paradoxically led to increased anti-gay and anti-transgender violence, expert witness testimony is vitally important. If at all possible,

attorneys should retain an expert witness familiar with the conditions on the ground in Mexico to testify on behalf of transgender asylum seekers.

In addition, experiences described by immigration lawyers representing transgender women suggest the following reforms will be critical as well:

- The EOIR should provide immigration judges with specific training on providing vulnerable populations, especially victims of sexual abuse, with a respectful, clear, and concise adjudication. Immigration judges should be more sensitive to the trauma that many survivors have to relive during their asylum hearings. Immigration judges should be trained to facilitate a non-hostile environment. Asylum seekers must never be shackled during their testimony.
- Immigration judges should receive guidance from EOIR on how to respectfully interact with transgender women and men, including by using their chosen names and the pronouns that reflect the person's gender identity.

CONCLUSION

Transgender women face pervasive violence and serious human rights violations throughout Mexico. The Mexican government has not been able to prevent violent attacks on transgender women or provide effective redress for survivors. The recognition of same-sex marriage, while laudable, has not ended violence against transgender women. To the contrary, the Mexican LGBT community has experienced even more violence as increased formal equality has produced a terrifying backlash. Transgender women continue to face beatings, rape, police harassment, torture, and murder in Mexico. Despite limited formal legal advances, state and non-state actors are rarely held responsible for crimes against transgender women.

It is therefore critical that asylum officers and immigration judges do not misunderstand the effect that same-sex marriage laws have had on the daily experiences of transgender women in Mexico. Indeed, ironically, these legal changes have led to an increase in the persecution of transgender women because of backlash and increased visibility. As such, many transgender women will continue to bring credible claims for asylum in the United States because of the violent persecution and torture they risk on a daily basis in Mexico.

¹ A transgender individual is a person whose gender identity or gender expression does not match the gender the person was assigned at birth. The term transgender woman refers to someone who was designated male at birth, but identifies as a woman. A transgender man is someone who was designated female at birth but identifies as a man. Being transgender is independent of sexual orientation. *GLAAD Media Reference Guide – Transgender Issues*, GLAAD, <http://www.glaad.org/reference/transgender> (last visited Dec. 26, 2015).

² Lyndsey Marcellino, Johanna Fernandez, Benjamin Figoten, Cesie Alvarez, Halimah Famuyide, and Susan Hazeldean authored this report on behalf of the Cornell LGBT Clinic.

³ The clinic authors would like to thank Amy Abeloff, Kristen Brennan, Marta Guzman, Oscar Lopez, Vanessa Morales, and Delia Ramirez for their assistance with translating documents from Spanish into English.

⁴ Exec. Office for Immigration Review, FY 2012 STATISTICAL YEAR BOOK (2012), <http://www.justice.gov/eoir/statspub/fy12syb.pdf>.

⁵ *Id.*

⁶ *Id.* Another 138 cases were “abandoned,” 1,906 were “withdrawn.” and 2,335 were considered “other.”

⁷ USCIS and EOIR keep records of how many people apply for asylum based on membership in a particular social group, but not for which specific particular social group, so there is no way to know how many sought asylum based on particular social group. For example, they do not distinguish between “homosexual” or “gay” or “transgender.”

⁸ 8 U.S.C. § 101(a)(42)(A).

⁹ *Toboso-Alfonso*, 20 I. & N. Dec. 819 (B.I.A. 1990).

¹⁰ *Id.*

¹¹ Att’y Gen. Ord. No. 1895-94 (June 19, 1994).

¹² *See, e.g., Amanfi v. Ashcroft*, 328 F.3d 719, 721 (3d Cir. 2003) (stating that “homosexuals” constitute a social group); *see Lwin v. INS*, 144 F.3d 505, 511 (7th Cir. 1998) (noting that “gay men and lesbians in Cuba” constitute a particular social group); *see Karouni v. Gonzalez*, 399 F.3d 1163, 1172 (9th Cir. 2005) (holding that “all alien homosexuals are members of a ‘particular social group.’”).

¹³ *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1089 (9th Cir. 2000). *See* Susan Hazeldean, *Confounding Identities: The Paradox of LGBT Youth Under Asylum Law*, 45 U.C. DAVIS L.R. 373, 380 (2012) (noting that Hernandez-Montiel likely identified as transgender).

¹⁴ *Hernandez-Montiel*, 225 F.3d at 511.

¹⁵ *See id.* at 1087, 1088, 1095 n.7.

¹⁶ *See id.* at 1093.

¹⁷ Michael Santos, *In the Shadows: The Difficulties of Implementing Current Immigration Policies in Adjudicating Gender-Diverse Asylum Cases in Immigration Courts*, HARV. KENNEDY SCHOOL OF GOVERNMENT LGBTQ POLICY JOURNAL (2012), <http://www.hkslgbtq.com/in-the-shadows-the-difficulties-of-implementing-current-immigration-policies-in-adjudicating-gender-diverse-asylum-cases-in-immigration-courts/> [hereinafter *Shadow Report*].

¹⁸ Andrew A. Reding, *Mexico: Update on Treatment of Homosexuals*, U.S. Citizenship and Migration Services (2000), <http://www.worldpolicy.org/sites/default/files/uploaded/image/1999-Mexico-QAMEX00-001-LGBT.pdf>.

¹⁹ Gender identity describes “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body . . . And other expressions of gender, including dress, speech and mannerisms.” *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* INT’L COMM’N OF JURISTS 6 (2007), http://www.yogyakartaprinciples.org/principles_en.pdf. Sexual orientation, on the other hand, describes “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” *Id.*

²⁰ *Id.*

²¹ *Id.*

-
- ²² *Answers to Your Questions: About Transgender People, Gender Identity, and Gender Expression*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2011), <http://www.apa.org/topics/lgbt/transgender.pdf>; Ellen A. Jenkins, *Taking the Square Peg Out of the Round Hole: Addressing the Misclassification of Transgendered Asylum Seekers*, 40 GOLDEN GATE U. L. REV. 67, 70 (2009), <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?Article=2008&context=ggulrev>; *Shadow Report*, *supra* n.17 (“The transgender community is diverse; many transgender individuals do not self-identify as gay. . . . The transgender community encompasses a broad range of sexual orientations, and some transgender individuals self-identify as heterosexual.”).
- ²³ See, e.g., *Reyes-Reyes v. Ashcroft*, 384 F.3d 782,787 (9th Cir. 2004).
- ²⁴ *Avendano-Hernandez v. Lynch*, 2015 WL 515521 (9th Cir. 2015).
- ²⁵ See *id.* at 7.
- ²⁶ *Id.*
- ²⁷ See *id.* at 8.
- ²⁸ See *id.* at 7-8.
- ²⁹ *INS v. Cardozo-Fonseca*, 480 U.S. 421, 430 (1987).
- ³⁰ 8 C.F.R. § 208(b)(1).
- ³¹ See *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004) (finding abuse at the hands of their family members could constitute persecution when the government was unable or unwilling to control the persecutors); *Nabulwala v. Gonzales*, 481 F.3d 1115, 1118 (8th Cir. 2007) (holding an immigration judge erred in concluding that to qualify for asylum the applicant had to demonstrate government persecution).
- ³² See *Reyes-Reyes v. Ashcroft*, 480 U.S. 421, 430 (1987).
- ³³ 8 U.S.C.A. § 1158(a)(2)(B); 8 C.F.R. §§ 208.4(a)(2), 1208.4(a)(2).
- ³⁴ See Victoria Neilson and Aaron Morris, *The Gay Bar: The Effect Of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal*, 8 N.Y. CITY L. REV. 233 (2005).
- ³⁵ 8 C.F.R. §§ 204.4(a)(2)(ii), 1208.4(a)(ii).
- ³⁶ *Id.*
- ³⁷ See U.S. Citizenship and Immigration Servs., *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims* 48 (2011), <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf>.
- ³⁸ 8 C.F.R. §§ 204.4(a)(4) to (5), 1208.4(a)(4) to (5).
- ³⁹ See U.S. Citizenship and Immigration Services, *Obtaining Asylum in the U.S.*, <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>.
- ⁴⁰ *Id.*
- ⁴¹ See 8 U.S.C. § 1231(b)(3).
- ⁴² See *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001).
- ⁴³ See *Zheng v. Holder*, 644 F.3d 829, 835 (9th Cir. 2011).
- ⁴⁴ See *supra* note 41.
- ⁴⁵ *Id.*; *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).
- ⁴⁶ 8 C.F.R. § 208.17.
- ⁴⁷ Central Intelligence Agency, *The World Factbook – Mexico*, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>.
- ⁴⁸ See, e.g., Anthony Bogaert, *The Prevalence of Male Homosexuality: The Effect of Fraternal Birth Order and Variations in Family Size*, JOURNAL OF THEORETICAL BIOLOGY, 230, 33–37 (2004).
- ⁴⁹ Gary J. Gates, *How Many People are Lesbian, Gay, Bisexual, and Transgender?*, WILLIAMS INSTITUTE 5, 5 (April 2011).
- ⁵⁰ See *id.* at 5–6 (suggesting that transgender people make up 0.3% of the U.S. population).
- ⁵¹ *Ley Federal para Prevenir y Eliminar la Discriminación [LFPED]* [Federal Law to Prevent and Eliminate Discrimination], Art. 9, DIARIO OFICIAL DE LE FEDERACIÓN [DO], (June 11, 2003) (Mex.) [hereinafter LFPED].

⁵² *Id.*

⁵³ *Guía de Acción contra la Discriminación, "Institución Comprometida con la Inclusión" (ICI)* [Guide Against Discrimination], (2012)

http://www.conapred.org.mx/index.php?Contenido=noticias&id=727&id_opcion=108&op=214.

⁵⁴ *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia* [General Law of Access for Women to a Life Free of Violence], Art., DIARIO OFICIAL DE LA FEDERACION [DO] 21 (Feb. 1, 2007) (Mex.) [hereinafter Art]; Código Penal Federal [Federal Criminal Code], DIARIO OFICIAL DE LA FEDERACION [DO], Capítulo V, Femicidio, Artículo 325 (Mex.).

⁵⁵ See Art 27 - 32.

⁵⁶ LFPED, *supra* n. 51.

⁵⁷ *Treatment of Sexual Minorities, Other State Protection, Recourse and Services Available; Treatment of Sexual Minorities in the Federal District; Information on the Zona Rosa*, RESEARCH DIRECTORATE, IMMIGRATION AND REFUGEE BOARD OF CANADA, MEXICO (Sept. 16, 2011).

⁵⁸ *Id.*

⁵⁹ Thelma Gomez Durán, *Tiene Sida y Es Gay!*, EL UNIVERSAL (Feb. 21, 2011).

⁶⁰ *CDHDF y OSC rechazan toda manifestación, agresiones y crímenes contra la población LGBTTTI* [CDHDF and OSC reject all manifestations, aggressions and crimes against the LGBTTTI population], La Comisión de Derechos Humanos del Distrito Federal (CDHDF) (2013)

<http://cdhdfbeta.cdhdf.org.mx/2013/05/cdhdf-y-osc-rechazan-toda-manifestacion-agresiones-y-crimenes-contra-la-poblacion-lgbttti/>.

⁶¹ Transgender Europe, *Transrespect Versus Transphobia Worldwide*, TDOR 2012 (April 21, 2014), http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/tdor2012.htm.

⁶² See Brianfo, *Mexico Celebrates First Annual International Day Against Transphobia*, JUSTICE IN MEXICO PROJECT (May 21, 2014), <https://justiceinmexico.wordpress.com/2014/05/21/mexico-celebrates-first-annual-international-day-against-homophobia/>.

⁶³ *LGBT Persecution in Mexico and Canada's Refugee Program: Backgrounder*, EGALÉ CAN. 2-3 (2013), <http://egale.ca/wp-content/uploads/2013/08/Backgrounder-Mexico-and-Bill-C-31.pdf>.

⁶⁴ Erich Adolfo Moncada Cota, *Mexico City Approves Same Sex Unions*, OH MY NEWS (Nov. 19, 2006), http://english.ohmynews.com/articleview/article_view.asp?Menu=c10400&no=329768&rel_no=1.

⁶⁵ *Código Civil Federal* [Federal Civil Code], Art. 146, DIARIO OFICIAL DE LE FEDERACIÓN [DO] (Jan. 7, 2014) (Mex.) ("Marriage is the union of two people free for the community of life, where both respect, equality and mutual assistance are sought. Must be held before a judge and civil registration formalities stipulated by the present code.")

⁶⁶ *Id.*

⁶⁷ *Ratifica Corte: Bodas Gay, Validas en el Pais* [Court Affirms: Gay Weddings, Valid in the Country], EL UNIVERSAL NACION (Aug. 10, 2010), <http://www.eluniversal.com.mx/notas/700789.html>.

⁶⁸ *Mexico Effectively Legalises Same-Sex Marriage*, THE INDEPENDENT (June 15, 2015), <http://www.independent.co.uk/news/world/americas/mexico-legalises-samesex-marriage-10319898.html>.

⁶⁹ *The Night is Another Country: Impunity and Violence Against Transgender Women Human Rights Defenders in Latin America*, REDLACTRANS 38 (2012), http://www.aidsalliance.org/assets/000/000/405/90623-Impunity-and-violence-against-transgender-women-human-rights-defenders-in-Latin-America_original.pdf?1405586435 [hereinafter REDLACTRANS].

⁷⁰ *Código Civil Federal* [Federal Civil Code], Art. 135, DIARIO OFICIAL DE LE FEDERACIÓN [DO] (June 11, 2003) (Mex.) (permits an individual to request a new birth certificate to reflect a change of sex).

⁷¹ *Id.*

⁷² Michael K. Lavers, *Mexico City Lawmakers Approve Transgender Rights Bill*, WASHINGTON BLADE (Nov. 14, 2014), <http://www.washingtonblade.com/2014/11/14/mexico-city-lawmakers-approve-trans-rights-bill/>.

⁷³ LFPED, *supra* n.51.

⁷⁴ Lavers, *supra* n.72.

⁷⁵ Organization For Refuge, Asylum & Migration, *The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa: Blind Alleys Part II*

Country Findings: Mexico, 5 (2013), <http://www.refworld.org/docid/524d445e4.html> [hereinafter *ORAM Report*]. See also *Un Estudio Comparativo de la Situación de los Derechos Humanos de las Personas Transgénero* [Comparative Study on the Situation of Human Rights of Transgender People], *TRANSGENER RESPECT VERSUS TRANSPHOBIA WORLDWIDE* 90 (2012), http://www.transrespect-transphobia.org/en_US/tvt-project/publications.htm.

⁷⁶ See *Shadow Report*, *supra* note 17.

⁷⁷ Francisco Iglesias, *According to Conapred, Rejection of Gays is "Still the Same" During the Last Five Years*, *MILENIO* (April 4, 2011).

⁷⁸ U.S. Dep't of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices, Mexico*, 31 (2014) [hereinafter *State Dep't Report*].

⁷⁹ *Id.*

⁸⁰ *Diagnóstico de Derechos Humanos del Distrito Federal* [Coordinating Committee for the Continual Implementation and Programing of Human Rights in Mexico City], *COMITÉ COORDINADOR PARA LA ELABORACIÓN DEL DIAGNÓSTICO Y PROGRAMA DE DERECHOS HUMANOS* (May 2008), <http://www.pdh.df.gob.mx/index.php/diagnostico-en-derechos-humanos> [hereinafter *Comité Coordinador*].

⁸¹ *Mexico Country Report for Use in Refugee Claims Based on Persecution Relating to Sexual Orientation and Gender Identity*, *UNIVERSITY OF TORONTO FACULTY OF LAW INTERNATIONAL HUMAN RIGHTS PROGRAM* 13 (2009), http://ihrp.law.utoronto.ca/utfl_file/count/documents/SOGI/Mexico%20-%20SOGI%20Country%20Report%202011,%20Final%20Copy.pdf [hereinafter *Toronto Report*]; See also *Shadow Report*, *supra* note 17.

⁸² See *Shadow Report*, *supra* note 17.

⁸³ Amnesty International, *Mexico Laws Without Justice: Human Rights Violations and Impunity in the Public Security and Criminal Justice System*, 21 (2007), <http://www.amnesty.org/en/library/asset/AMR41/002/2007/en/7aa562fb-d3c5-11dd-8743-d305bea2b2c7/amr410022007en.pdf>.

⁸⁴ *Mexico: Reports of Sexual Abuse Committed by Police Officers Against Homosexuals, and Against Other Vulnerable Individuals (2006-November 2007)*, *RESEARCH DIRECTORATE, IMMIGRATION AND REFUGEE BOARD OF CANADA* (Jan. 9, 2008), <http://www.refworld.org/docid/47ce6d7fc.html>.

⁸⁵ *Id.*

⁸⁶ *TRANSGENER MIGRATIONS: THE BODIES, BORDERS, AND POLITICS OF TRANSITION* 32 (Trystan T. Cotton, ed., 2012).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See *id.*

⁹² *Id.*

⁹³ *Id.* at 51.

⁹⁴ *Id.*

⁹⁵ See *Shadow Report*, *supra* note 17.

⁹⁶ INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A)(2005).

⁹⁷ *Transgender Europe, Transgender Murder Monitoring: March 2013*, *TRANSGENER RESPECT VERSUS TRANSPHOBIA WORLDWIDE* (May 5, 2015), http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/march-2013.htm.

⁹⁸ *El Combate a la homofobia: Entre Avances y Desafíos* [National Council to Prevent Discrimination, *Combating Homophobia: Between Progress and Challenges*], *CONSEJO NACIONAL PARA PREVENIR LA DISCRIMINACIÓN* 6 (2013), http://www.conapred.org.mx/documentos_cedoc/documentohomofobia_ACCSS.pdf.

⁹⁹ See *id.* at 7.

¹⁰⁰ *Id.*

¹⁰¹ Press Release, Columbia Law School, *Sexuality and Gender Law Clinic at Columbia Law School Secures Asylum for Transgender Mexican Woman, Grant of Asylum Highlights Dangers Transgender*

People Face for Expressing True Gender Identity (Jun. 25, 2009) [*hereinafter* Columbia Law School], https://www.law.columbia.edu/media_inquiries/news_events/2009/june2009/AsylTransMexi.

¹⁰² CENTRO DE APOYO A LAS IDENTIDADES TRANS [Support Center for Transgender Identities], *Informe de Crímenes de Mujeres Trans en México: Invisibilidad=Impunidad* [Report on Mexican Crimes Against Transgender Women: Invisibility=Impunity], 18 (2013), <http://www.amecopress.net/IMG/pdf/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Leonard Bastida Aguilar, *Asesinan en Hidalgo a Funcionaria Capitalina Transexual* [Transexual Public Official from Capital Killed], NOTIESE AGENCIA ESPECIALIZADA DE NOTICIAS EN SALUD, SEXUALIDAD, SIDA, (June 2013), http://www.notiese.org/notiese.php?Ctn_id=6664.

¹⁰⁶ *Denuncian Ataque Homofóbico en Durango Durante Certamen Gay* [Homophobic Attack Reported in Durango During a Gay Beauty Pageant], EXCELSIOR ESPECIALES (July 10, 2013), <http://www.excelsior.com.mx/nacional/2013/10/07/922258>.

¹⁰⁷ Transgender Europe, *supra* note 97.

¹⁰⁸ *Tipifican crímenes de odio por homofobia en el DF* [Homophobic hate crimes are criminalized in Mexico City], NOTIESE AGENCIA ESPECIALIZADA DE NOTICIAS EN SALUD, SEXUALIDAD, SIDA, (Aug. 20, 2009) http://www.notiese.org/notiese.php?Ctn_id=3154.

¹⁰⁹ *Id.*

¹¹⁰ *Impunes, 80% de Crímenes por Homofobia: CDHDF* [80% of Homophobic Crimes Go Unpunished], EL ECONOMISTA (May 17, 2009), <http://eleconomista.com.mx/distrito-federal/2009/05/17/impunes-80-crimenes-homofobia-cdhdf>.

¹¹¹ *Minimizan Autoridades Crímenes de Odio: CDHDF* [Authorities Minimize Hate Crimes: CDHDF], ANODIS, (Jul. 20, 2009).

¹¹² *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, NEW YORK: HUMAN RIGHTS WATCH (Nov. 2011), <https://www.hrw.org/report/2011/11/09/neither-rights-nor-security/killings-torture-and-disappearances-mexicos-war-drugs>.

¹¹³ Community United Against Violence *Lesbian Gay, Bisexual, Queer, and HIV-Affected Hate Violence in 2013*, NATIONAL COALITION OF ANTI VIOLENCE PROGRAMS 101 (2013), <http://www.equalitymi.org/files/2013-ncavp-hv.pdf>.

¹¹⁴ C. Infante et al., *Sex Work in Mexico: Vulnerability of Male, Travesti, Transgender and Transsexual Sex Workers*, 11(2) CULTURE, HEALTH & SEXUALITY 125, 131 (Feb. 2009).

¹¹⁵ Amicus Brief of Lambda Legal et al. at 26, *Lopez-Barrera v. Holder*, No.11-71250 (2011) (discussing the BIA's reliance on *Castro-Martinez v. Holder*, 641 F.3d 1103, 1109 (9th Cir. 2011)) [*hereinafter* Lambda Legal Amicus Brief], http://www.lambdalegal.org/sites/default/files/lopez_us_20111129_amicus-lambda-legal-et-al.pdf.

¹¹⁶ Order, *Lopez-Barrera v. Holder*, No. 11-71250 (9th Cir. Apr. 9, 2012).

¹¹⁷ Affidavit of Dr. Thomas Davies, Paragraph 36 [document on file with authors].

¹¹⁸ See Rebekah Curtis, *Transgender People Murdered as World Resists Change*, REUTERS, (Nov. 17, 2011), <http://www.reuters.com/article/2011/11/17/us-transgender-idustre7af1ua20111117>.

¹¹⁹ Laura Reyes Michel, *Guerrero: matan a golpes a un defensor de los derechos de los homosexuales*, CNN Mexico (May 6, 2011), <http://mexico.cnn.com/nacional/2011/05/06/guerrero-matan-a-golpes-a-un-defensor-de-los-derechos-de-los-homosexuales>.

¹²⁰ *Gay Rights Activist Murdered in Mexico City*, FOX NEWS LATINO (Jul. 2011), <http://latino.foxnews.com/latino/news/2011/07/25/gay-rights-activist-murdered-in-mexico-city/>.

¹²¹ Leonardo Bastida Aguilar, *Atacan con Armas de Fuego a Comunidad Transexual de Chihuahua* [Chihuahua Transexual Community Are Attacked with Firearms], NOTIESE AGENCIA ESPECIALIZADA DE NOTICIAS EN SALUD, SEXUALIDAD, SIDA (July 6, 2011), http://www.notiese.org/notiese.php?Ctn_id=5057.

¹²² *Repunta la Homofobia en Veracruz* [Homophobia in Veracruz Increases], CRONICADIGITAL (Aug. 4, 2011).

¹²³ *Golpeado y Degollado Encuentran a Presunto Homosexual* [Alleged homosexual found beaten and slain], LA PRENSA, (Aug. 18, 2012), <http://www.oem.com.mx/laprensa/notas/n2662158.htm>.

¹²⁴ See Centro de Apoyo a las Identidades Trans, *supra* note 103.

¹²⁵ Simeon Tegel, *Latin American has a Homophobic Killing Problem*, THE TUSCON SENTINEL (Dec. 30, 2013), http://www.tucson sentinel.com/nationworld/report/123013_lat_am_homophobia/latin-america-has-homophobic-killings-problem/ (quoting Graeme Reid, LGBT Director of Human Rights Watch).

¹²⁶ Elizabeth Rodriguez Lezama, *Exige la Comunidad LGTB Esclarecer Crimen de Transexual Ocurrido en Puebla* [LGBT Community Demands Investigation of Transsexual Crime that Occurred in Puebla], LA JORNADA DE ORIENTE (May 2, 2011), <http://www.lajornadadeoriente.com.mx/2011/05/02/puebla/jus409.php>.

¹²⁷ Agnes Hernandez, *Mexican Transgender Activist, Brutally Murdered*, HUFFINGTON POST, (Mar. 15, 2012), http://www.huffingtonpost.com/2012/03/15/agnes-hernandez-hate-crime-mexican-transgender-activist-brutally-murdered_n_1345867.html.

¹²⁸ *Sujetos Arrojan a Transexual de Puente en Circuito Interior* [Transsexual Suspects Thrown from a Bridge in the Circuito Interior], TERRA MEXICO (Sept. 23, 2013), <http://noticias.terra.com.mx/mexico/df/sujetos-arrojan-a-transexual-de-puente-en-circuito-interior,6e82a48712d41410vgnvcm20000099cceb0arcrd.html>.

¹²⁹ Carsten Balzer and Jan Simon Hutta, *List of names of 162 reported murdered trans persons from November 20th 2008 to November 12th 2009* (Nov. 2012), <http://www.transrespect-transphobia.org/uploads/downloads/TMM/TGEU-TMM-namelist-TDOR09-en.pdf>.

¹³⁰ *Por qué asesinaron a Fernanda?* [Why did they murder Fernanda?], DESDE ABAJO, (Jun. 23, 2010).

¹³¹ Frida Garcia & Oralia Gomez, *Mujeres Trans: Discriminación y Lucha por Derechos* [Transgender Women: Discrimination and the Fight for Rights], REFERENCIAS 63 (Nov. 2011), <http://www.corteidh.or.cr/tablas/r27476.pdf>; see Shadow Report, *supra* note 17.

¹³² *Id.*

¹³³ Victor Clark-Alfaro, *Transgéneros: Derechos Negados, Derechos Violados* [Transgender: Denied Rights, Rights Violated Binational Center Of Human Rights], CENTRO BINACIONAL DE DERECHOS HUMANOS [BINATIONAL CENTER FOR HUMAN RIGHTS] 3 (2011) [hereinafter CBDH Report].

¹³⁴ See REDLACTRANS, *supra* note 69 at 23.

¹³⁵ See CBDH Report, *supra* note 134.

¹³⁶ Leonardo Bastida Aguilar, *Acción Urgente en Defensa de los Derechos de Trabajadoras Sexuales Transgender de Chihuahua* [Urgent Action in Defense of Transgender Sex Workers' Rights in Chihuahua], LETRA S (Mar. 13, 2014).

¹³⁷ *Id.*

¹³⁸ *Id.*; see also *Trabajadoras Sexuales Transgénero Acusan Abuso Policial en Tijuana* [Transgender Sex Workers Allege Police Abuse in Tijuana], LA NOTA ROJA DE MEXICO LA POLICIACA (Mar. 14, 2014), <http://www.lapolicia.com/nota-roja/trabajadoras-sexuales-transgenero-acusan-abuso-policial-en-chihuahua/>.

¹³⁹ See Aguilar, *supra* note 137.

¹⁴⁰ Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, WASHINGTON OFFICE OF LATIN AMERICA (2014), <http://www.wola.org/sites/default/files/Mexicos%20Police.pdf>.

¹⁴¹ See REDLACTRANS, *supra* note 69.

¹⁴² See Shadow Report, *supra* note 17.

¹⁴³ *Pronunciamento de la Asamblea Consultiva del Conapred sobre Resolución por Disposición dirigida al IMSS e ISSSTE por discriminación a matrimonios entre personas del mismo sexo* [CONAPRED Assembly Counsel on Resolution for Disposition directed to IMSS and ISSSTE for the discrimination of same sex marriages], CONAPRED, http://www.conapred.org.mx/index.php?Contenido=noticias&id=714&id_opcion=446&op=447 (last visited Dec 28, 2015).

¹⁴⁴ See Shadow Report, *supra* note 17.

¹⁴⁵ *Out of Control: Torture and Other Ill-Treatment in Mexico*, AMNESTY INTERNATIONAL, 19 (Sept. 2014), <http://www.amnestyusa.org/sites/default/files/amr410202014en.pdf>.

¹⁴⁶ *Id.*

¹⁴⁷ *Crecen los abusos contra mujeres transexuales en Ciudad Juárez, Denuncian palizas, extorsiones y abusos de autoridad* [Abuses against transsexuals in Ciudad Juarez continue to rise. Reports of

beatings, extortion and abuses of authority], AMECOPRESS (Oct. 31, 2008), <http://www.amecopress.net/spip.php?Article1733> [hereinafter Ciudad Juarez.]

¹⁴⁸ Consejo Nacional para Prevenir la Discriminación, *La Transgeneridad y la Transexualidad en Mexico: En Busqueda del Reconocimiento de la Identidad de Género y la Lucha contra la Discriminación* [National Council to Prevent Discrimination, The Transgender and Transsexuality in Mexico: In Search of Recognition of Gender Identity and Combating Discrimination], TRANSEXULEGAL (Dec. 2008).

¹⁴⁹ See Ciudad Juarez, *supra* note 148.

¹⁵⁰ Mario Alberto Reyes, *En Chihuahua no cesan agresiones contra transexuales* [In Chihuahua aggressions against transsexuals never stop], Notie Se, (Apr. 7, 2008), http://www.notiese.org/notiese.php?Ctn_id=1911.

¹⁵¹ Jose Miguel Vivanco, *Mexico: President's Disappointing First Year on Human Rights, Abuses Continue with Impunity under Peña Nieto*, HUMAN RIGHTS WATCH (Nov. 26, 2013), <http://www.hrw.org/news/2013/11/26/mexico-president-s-disappointing-first-year-human-rights>.

¹⁵² *Id.*

¹⁵³ See *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, HUMAN RIGHTS WATCH (Nov. 9, 2011), <https://www.hrw.org/report/2011/11/09/neither-rights-nor-security/killings-torture-and-disappearances-mexicos-war-drugs>.

¹⁵⁴ *EU refugia a transgénero discriminado y perseguido en México* [US grants refuge status to a transgender discriminated against and persecuted in Mexico], ZOCALO SALTILLO (Jun. 25, 2009), <http://www.zocalo.com.mx/seccion/articulo/eu-refugia-a-transgenero-discriminado-y-perseguido-en-mexico>; See also Columbia Law School, *supra* note 102.

¹⁵⁵ *Annual Report 2013*, AMNESTY INT'L 177 (2013), http://files.amnesty.org/air13/amnestyinternational_annualreport2013_complete_en.pdf.

¹⁵⁶ See Ciudad Juarez, *supra* note 148.

¹⁵⁷ ORAM Report, *supra* note 75.

¹⁵⁸ Carsten Balzer & Jan Simon Hutta, *List of 265 reported murdered transgender persons from November 15th 2011 to November 14th 2012*, TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE, TRANSGENDER EUR., 6, 12, 27, 44, 51, 53, 55, 68 (2012), <http://www.transrespect-transphobia.org/uploads/downloads/TMM/tvt-TMM-TDOR2012-Namelist-en.pdf>.

¹⁵⁹ Interview with Ally Bolour, Immigration Law Attorney, Law Offices of Ally Bolour (Mar. 11, 2014).

¹⁶⁰ Jesse Franzblau, *Why Is the US Still Spending Billions to Fund Mexico's Corrupt Drug War?*, THE NATION (Feb. 27, 2015), <http://www.thenation.com/article/us-connection-mexicos-drug-war-corruption/>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Centro de Apoyo a las Identidades Trans, *Informe de Crímenes de Mujeres Trans en México, Invisibilidad=Impunidad*, AMECOPRESS (2013), <http://www.amecopress.net/IMG/pdf/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf>.

¹⁶⁵ See *Shadow Report*, *supra* note 17.

¹⁶⁶ See Andres Duque, *Mexican President Felipe Calderón in Hot Water Over Comment Perceived as Homophobic*, BLABBEANDO (Oct. 5, 2011), <http://blabbeando.blogspot.com/2011/10/mexican-president-felipe-calderon-in.html#.vsasl-Hu-UE>.

¹⁶⁷ See Columbia Law School, *supra* note 102.

¹⁶⁸ See REDLACTRANS, *supra* note 69 at 26.

¹⁶⁹ Rocio Suarez, *Diagnóstico Discriminación y Exclusión Laboral de la Población Travesti, Transgénero y Transexual En La Ciudad De México* [Survey on Discrimination and Labor Exclusion of the Transvestite, Transgender, and Transsexual Population in Mexico City], NOTIESE AGENCIA ESPECIALIZADA DE NOTICIAS EN SALUD, SEXUALIDAD, SIDA (Sept. 8, 2009), http://www.notiese.org/notiese.php?Ctn_id=3195.

¹⁷⁰ *Id.*

¹⁷¹ *La Transgeneridad y la Transexualidad en Mexico: En Busqueda del Reconocimiento de la Identidad de Género y la Lucha contra la Discriminación* [Being Transgender and Transsexuality in Mexico: In Search of Recognition of Gender Identity and Combating Discrimination], CONSEJO NACIONAL PARA PREVENIR LA DISCRIMINACIÓN [National Council to Prevent Discrimination] (Dec. 2008).

¹⁷² See Amy Liberman, *Transgenders in Mexico Dream of Escape*, WENEWS (July 18, 2013), <http://womensenews.org/story/lesbian-and-transgender/130717/transgenders-in-mexico-dream-escape#.u1kxx-zdviy>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Case: In re Y.G.*, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/cases-and-policy/cases-and-advocacy/in-re-y-g/>.

¹⁷⁸ State Dep't Report, *supra* note 78.

¹⁷⁹ Estudio Nacional sobre las Fuentes, Orígenes y Factores que Producen y Reproducen la Violencia contra las Mujeres [National Study Concerning the Sources, Origins, and Factors that Produce and Reproduce the Violence against Women], CONAVIM (2013), <http://www.conavim.gob.mx/work/models/CONAVIM/Resource/103/1/images/estudiosnacionalestomovolumeni.pdf>.

¹⁸⁰ *Id.*

¹⁸¹ See e.g., Matthew C. Gutmann, *THE MEANINGS OF MACHO: BEING A MAN IN MEXICO CITY*, 2 (1996); Roger N. Lancaster, *LIFE IS HARD: MACHISMO, DANGER, AND THE INTIMACY OF POWER IN NICARAGUA* (1992); see also Davies Aff. ¶ 36.

¹⁸² See *Bureau of Democracy: Human Rights and Labor, International Religious Freedom Report*, U.S. DEP'T OF STATE, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm>.

¹⁸³ See Julian Miglierini, *Mexico's Catholic Church fans flames of gay rights row*, BBC NEWS (Aug. 28, 2010), <http://www.bbc.com/news/world-latin-america-11119011>; Mary Cuddehe, *Mexico's Anti-Abortion Backlash*, THE NATION (Jan. 4, 2012), <http://www.thenation.com/article/mexicos-anti-abortion-backlash/>.

¹⁸⁴ *Id.*

¹⁸⁵ Toomas Gross, *Protestantism and Modernity: The Implications of Religious Change in Contemporary Rural Oaxaca*, 64:4 *Sociology of Religion*, 481 (2003).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Cardinal Ridicules Same-Sex Marriages*, L.A. TIMES (Oct. 13, 2004), <http://articles.latimes.com/2004/oct/13/world/fg-briefs13.4>.

¹⁸⁹ See ORAM Report, *supra* note 75.

¹⁹⁰ *Gender Identity*, Am. Psychiatric Publishing (2013), <http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>.

¹⁹¹ See World Professional Assn. for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (2007), http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf [hereinafter *Standards*].

¹⁹² *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (“Sexual orientation and sexual identity are immutable; they are so fundamental to one's identity that a person should not be required to abandon them.”).

¹⁹³ Debra A. Castillo et. al, *Violence And Transvestite/Transgender Sex Workers In Tijuana*, in *GENDER VIOLENCE AT THE US-MEXICO BORDER: MEDIA REPRESENTATION AND PUBLIC RESPONSE* 15 (Hector Dominguez-Ruvulcaba & Ignacio Corona eds., 2010).

¹⁹⁴ *1 de cada 3 homosexuales en México sufre discriminación laboral* [1 in 3 homosexual Mexicans suffer work discrimination], DIARIO PRESENTE (May 15, 2014),

<http://www.diariopresente.com.mx/section/nacional/108469/1-de-cada-3-homosexuales-en-mexico-sufre-discriminacion-laboral/>.

¹⁹⁵ *Id.*

¹⁹⁶ See Liberman, *supra* note 173.

¹⁹⁷ *Id.*

¹⁹⁸ See *Toronto Report*, *supra* note 81.

¹⁹⁹ Rocio Suarez, *Discriminación y exclusión laboral de la población transgénero de la Ciudad* [Work Discrimination and Exclusion of the Transgender Population in the City], NOTIESE (Sept. 8, 2009), http://www.notiese.org/notiese.php?Ctn_id=3195.

²⁰⁰ See *Programa de Derechos Humanos del Distrito Federal* [The Federal District's Human Rights Program], CIUDAD DE MEXICO [Mexico City] (Aug. 2009), <http://www.derechoshumanosdf.org.mx/docs/programa.pdf>.

²⁰¹ *Diagnóstico de derechos humanos del Distrito Federal* [Survey of Human Rights in Mexico City], CONSEJO NACIONAL PARA PREVENIR LA DISCRIMINACIÓN [National Council to Prevent Discrimination], (May 2008).

²⁰² See *Toronto Report*, *supra* note 81 at 16.

²⁰³ See *Shadow Report*, *supra* note 17.

²⁰⁴ David Agren, *Mexico's national voter IDs part of culture*, USA TODAY (Jan. 25, 2012), <http://usatoday30.usatoday.com/news/world/story/2012-01-22/mexico-national-voter-ID-cards/52779410/1>.

²⁰⁵ *Issue Paper: Mexico State Protection (Dec.2003-Mar.2005)*, IMMIGRATION AND REFUGEE BOARD OF CANADA 13 (May 2005), http://www.justice.gov/eoir/vll/country/canada_coi/mexico/ISSUES_PAPER_STATE-PROTECTION.pdf.

²⁰⁶ Ashley Lourdes Hunter, *National Coming Out Day: "Today I am Honoring My Truth"* (Oct. 10, 2014), <http://www.hrc.org/blog/entry/national-coming-out-day-today-i-am-honoring-my-truth>.

²⁰⁷ C. Infante, *supra* note 115.

²⁰⁸ See *Transgender Europe*, *supra* note 97.

²⁰⁹ See *Comité Coordinador*, *supra* note 80.

²¹⁰ See Wendy Glauser et al., *Health care system stigmatizes and discriminates against transgender people*, HEALTHY DEBATE (Jul. 2, 2015), <http://healthydebate.ca/2015/07/topic/transgender-health-access>.

²¹¹ *Standards*, *supra* note 193; See *Shadow Report*, *supra* note 17.

²¹² See Debra A. Castillo, *supra* note 191.

²¹³ See Infante, *supra* note 115.

²¹⁴ Consejo Nacional Para Prevenir La Discriminación, *El Combate a la homofobia: Entre Avances y Desafíos* [National Council to Prevent Discrimination, Combating Homophobia: Between Progress and Challenges], (2013), http://www.conapred.org.mx/documentos_cedoc/documentohomofobia_ACCSS.pdf.

²¹⁵ See REDLACTRANS, *supra* note 69 at 8.

²¹⁶ See *Comité Coordinador*, *supra* note 80.

²¹⁷ Alexandra Mcanarney, *Efforts to Provide HIV-AIDS and Other Health Services to Migrants Face Major Obstacles*, AMERICAS PROGRAM (Feb. 9, 2013), <http://www.cipamericas.org/archives/8948>.

²¹⁸ *Id.*

²¹⁹ Consejo Nacional Para Prevenir La Discriminación [National Council to Prevent Discrimination], *El Combate a la homofobia: Entre Avances y Desafíos* [Combating Homophobia: Between Progress and Challenges], (2013), http://www.conapred.org.mx/documentos_cedoc/documentohomofobia_ACCSS.pdf.

²²⁰ *Id.* at 10.

²²¹ Ricardo Baruch, *La población LGBT y los servicios de salud en México* [The LGBT population and health services in Mexico], (Sept. 15, 2011), <http://homozapping.com.mx/2011/09/la-poblacion-lgbt-y-los-servicios-de-salud-en-mexico/>.

-
- ²²² *Documento informativo de homophobia* [Information Document on Homophobia], Consejo Nacional para Prevenir la Discriminación [National Council to Prevent Discrimination] (Oct. 26, 2011); *HIV/AIDS Health Profile*, USAID MEXICO (Sept. 2010), http://pdf.usaid.gov/pdf_docs/pdacu639.pdf.
- ²²³ See Comité Coordinador, *supra* note 80.
- ²²⁴ Lauren Smiley, *Border Crossers*, SF WEEKLY (Nov. 26, 2008), <http://www.sfweekly.com/2008-11-26/news/border-crossers/>.
- ²²⁵ See Columbia Law School, *supra* note 102.
- ²²⁶ See Lambda Legal Amicus Brief, *supra* note 117 at 22.
- ²²⁷ Immigration Refugee Board of Canada, *Responses to Information Requests* 5 (Sept. 16, 2011), http://www.justice.gov/eoir/vll/country/canada_coi/mexico/MEX103804.E.pdf.
- ²²⁸ *Id.*
- ²²⁹ *Informe Especial Sobre la Homofobia y Crímenes de Odio* [Special Report on Homophobia and Hate Crimes], COMISION DE DERECHOS HUMANOS DEL DISTRICITO FEDERAL [Human Rights Commission of Mexico City] (CDHDF) (July 27, 2007).
- ²³⁰ Interview with Victor Clarke-Alfaro, Professor of Latin American Studies, San Diego State University (Feb.17, 2014).
- ²³¹ U.S. Dep't of Homeland Security, Submission of Additional Mexico Country Background Materials (2012) [document on file with authors].
- ²³² Nicole Laviolette, *Independent human rights documentation and sexual minorities: an ongoing challenge for the Canadian refugee determination process*, 13 INT'L J. HUM. RTS. 437, 449 (2009).
- ²³³ Shaun Knittel, *Gay Seattle Expatriate Murdered in his Mexico Home*, SOUTH FLORIDA GAY NEWS (Mar. 18, 2013) <http://southfloridagaynews.com/World/gay-seattle-expatriate-murdered-in-his-mexico-home.html>.
- ²³⁴ Felisa Cardona, *Mexican transgender asylum seeker allowed to stay in US*, DENVER POST (Nov. 9, 2010) http://www.denverpost.com/ci_16560073.
- ²³⁵ Saseen Kawzally, *Oh, the fun we'll have! Selling (out) gay Beirut*, MENASSAT (Aug. 19, 2009), <http://www.menassat.com/?Q=en/news-articles/7131-nyt-tbd>.
- ²³⁶ See Jenni Millbank, *Imagining Otherness: Refugee Claims on the Basis of Sexuality in Canada and Australia*, 26 MELB. U. L. REV. 144, 156 (2002).
- ²³⁷ Cristina Costantini, Jorge Rivas & Kristofer Rios, *Why Did the U.S. Lock Up These Women With Men?*, FUSION (Nov. 19, 2014), <http://interactive.fusion.net/trans/>.
- ²³⁸ Sharita Gruberg, *Dignity Denied: LGBT Immigrants in U.S. Immigration Detention*, CENTER FOR AMERICAN PROGRESS 1 (Nov. 2013), <https://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement-1.pdf>.
- ²³⁹ United Nations, Juan E. Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment A/66/268* (Aug. 5, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>.
- ²⁴⁰ See Gruberg, *supra* note 239 at 3.
- ²⁴¹ *Id.*
- ²⁴² *Id.*
- ²⁴³ *Id.*
- ²⁴⁴ See *Rahimzadeh v. Holder*, 613 F.3d 916, 918 (9th Cir. 2010); *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1087 (9th Cir. 2000).
- ²⁴⁵ Mary Meg McCarthy & Eric Berndt, *Letter re: Submission of Civil Rights Complaints regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody*, HEARTLAND ALLIANCE'S NATIONAL IMMIGRANT JUSTICE CENTER (Apr. 13, 2011), http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED_0.pdf.
- ²⁴⁶ *Id.*
- ²⁴⁷ *Id.*

-
- ²⁴⁸ U.S. Immigration and Custom Enforcement, 2015 Transgender Care Memorandum (2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.
- ²⁴⁹ Human Rights Watch, *Detained and at Risk* 3 (2010), <http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf>.
- ²⁵⁰ American Civil Liberties Union, *ACLU of Texas Today Files Lawsuit on Behalf of Women Assaulted at T. Don Hutto Detention Center* (Oct. 19, 2011), <https://www.aclu.org/news/documents-obtained-aclu-show-sexual-abuse-immigration-detainees-widespread-national-problem>. See Gruberg, *supra* note 241 at 6.
- ²⁵¹ *Id.*
- ²⁵² *Id.*
- ²⁵³ National Center for Transgender Equality, *Our Moment for Reform: Immigration and Transgender People* 20 (2013), http://transequality.org/Resources/CIR_en.pdf.
- ²⁵⁴ *Id.*
- ²⁵⁵ United Nations, Juan E. Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment* A/66/268 (Aug. 5, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>. See Gruberg, *supra* note 239 at 6.
- ²⁵⁶ *Id.*
- ²⁵⁷ See Costantini et al., *supra* note 238.
- ²⁵⁸ Cristina Loboguerrero, *Transgender Immigrants Detail Detention Abuse*, VOICES OF NY (Aug. 29, 2013), <http://www.voicesofny.org/2013/08/transgender-immigrants-detail-detention-abuse/>.
- ²⁵⁹ See NATIONAL CENTER FOR TRANSGENDER EQUALITY, *supra* note 254.
- ²⁶⁰ See Loboguerrero, *supra* note 259.
- ²⁶¹ *Id.*
- ²⁶² See Gruberg, *supra* note 239 at 7.
- ²⁶³ *Id.*
- ²⁶⁴ *Id.*
- ²⁶⁵ *Id.*
- ²⁶⁶ *Id.*
- ²⁶⁷ See McCarthy & Berndt, *supra* note 246 at 4.
- ²⁶⁸ *Id.*
- ²⁶⁹ *Id.*
- ²⁷⁰ *Id.*
- ²⁷¹ *Id.* at 6.
- ²⁷² *Id.*
- ²⁷³ See National Center for Transgender Equality, *supra* note 254.
- ²⁷⁴ U.S. Dept. of Justice, Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012*, 30 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.
- ²⁷⁵ Lori Sexton et al., *Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons*, 27 JUSTICE QUARTERLY 6, 12 (2010).
- ²⁷⁶ U.S. Government Accountability Office, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, GAO HIGHLIGHTS 60 (Dec. 6, 2013), <http://www.gao.gov/assets/660/659145.pdf>.
- ²⁷⁷ *Id.*
- ²⁷⁸ Cristina Constantini, et. al., *Why Did the U.S. Lock Up these Women With Men?*, FUSION.COM (Nov. 17, 2014) <http://interactive.fusion.net/trans/>.
- ²⁷⁹ *Id.*
- ²⁸⁰ See Advocates for Informed Choice, et al., *Immigration Organizations Ask President to Release Detained LGBTQ Immigrant* 1 (2014), <http://transgenderlawcenter.org/archives/11302>.
- ²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ Zack Ford, *Transgender Woman Says Immigration Detention Officials Told Her To Pretend Her Rape Was Consensual*, THINKPROGRESS.ORG (Aug. 5, 2014), <http://thinkprogress.org/lgbt/2014/08/05/3467761/transgenderimmigrationrape/>.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Dept. of Homeland Security, DHS Announces Finalization of Prison Rape Elimination Act Standards (Feb. 28, 2014), <https://www.dhs.gov/news/2014/02/28/dhs-announces-finalization-prison-rape-elimination-act-standards>.

²⁹⁰ These conditions are also documented in a report from Human Rights Watch, *“Do You See How Much I’m Suffering Here?”: Abuse Against Transgender Women in US Immigration Detention* (forthcoming March 2016).

²⁹¹ United Nations High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, UNHCR (2011), <http://www.unhcr.org/3b66c2aa10.html>.

²⁹² United Nations High Commissioner for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (1987), <http://www.ohchr.org/EN/professionalinterest/Pages/CAT.aspx>.



Transgender women in Mexico face human rights violations

By [Janet Arelis Quezada, Spanish Language Media Strategist at GLAAD](#) |

May 27, 2016



Photo Credit: Cornell University Law School LGBT Clinic and Transgender Law Clinic

A new report from the Transgender Law Center and the Cornell University Law School LGBT Clinic details the human rights violations faced by Mexican transgender women. The authors strongly suggest that immigration judges take into account the specific conditions faced by Mexican transgender asylum seekers when they decide their cases. Currently there are no specific protections against discrimination for transgender women in the country. Only in Mexico City can transgender citizens change their gender markers and name on official documents, but even there the process takes a long time and a prohibitive \$7,000 (USD). Data and testimony from Mexican transgender women fill the pages with descriptions of the police abuse, employment discrimination, citations, extortion and harassment for walking while transgender, lack of health care, rejection and abuse by family and community members and other violations that make their home country "a living hell." The report also points out the high level of violence faced by transgender women in the country; Mexico is second only to Brazil in the number of transgender women murdered violently last year.

The report seeks to reverse a trend by some immigration judges that use the fact that Mexico effectively has marriage equality and that Mexico City has passed protections for transgender people as signs that call into question the claims of persecution. What the data and accounts make clear is that 1) judges shouldn't conflate advances for lesbian and gay couples wishing to marry with rights for transgender women, 2) the system

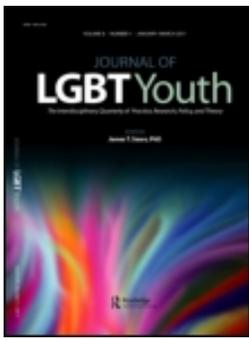
should take into account the backlash towards LGBT people and how transgender women have been made more visible as a result and therefore bear a brunt of that backlash.

A section of the document also addresses the abuses and challenges that transgender women have long decried once they are detained in the United States and await decisions on their asylum cases. [As has been widely reported](#), although transgender migrants represent only 1 out of every 500 detainees they represent 1 out of every 5 of the confirmed cases of sexual assaults that occur in detention. Before the groundbreaking decision by the Ninth Circuit Court of Appeals in 2015 in the *Avendano-Hernandez v. Lynch* case, judges routinely failed to take into account the specific nature of discrimination that transgender women in Mexico and other countries endure. Advocates hope that now with that precedent and with this report that documents the actual condition of transgender women in Mexico, transgender asylum seekers will be heard, released and granted asylum not detained, doubly victimized and deported back to a country that is unsafe for them.

GLAAD reached out to professor Guillermo de los Reyes who has served as an expert witness in some of these cases for a reaction to the report:

"What I can say is that it is important that the precariousness and vulnerable position that transgender people live in Mexico be known and understood, especially that of transgender women. In my experience as an expert, we have had to work hard to show that despite the changes that have been made relating to marriage equality in Mexico, the country still has not made any advances that impact the lives of transgender people. For them it is still a matter of life or death, not just about whether their rights are acknowledged. That's why I have dedicated these years to demonstrating the actual reality [transgender women face.]"

You can read the full report [here](#).



Homophobic bullying in Mexico: Results of a national survey

Ricardo Baruch-Dominguez, Cesar Infante-Xibille & Claudio E. Saloma-Zuñiga

To cite this article: Ricardo Baruch-Dominguez, Cesar Infante-Xibille & Claudio E. Saloma-Zuñiga (2016) Homophobic bullying in Mexico: Results of a national survey, Journal of LGBT Youth, 13:1-2, 18-27, DOI: [10.1080/19361653.2015.1099498](https://doi.org/10.1080/19361653.2015.1099498)

To link to this article: <http://dx.doi.org/10.1080/19361653.2015.1099498>



Published online: 04 May 2016.



Submit your article to this journal [↗](#)



Article views: 259



View related articles [↗](#)



View Crossmark data [↗](#)

Homophobic bullying in Mexico: Results of a national survey

Ricardo Baruch-Dominguez^a, Cesar Infante-Xibille^a, and Claudio E. Saloma-Zuñiga^b

^aCentro de Investigación de Sistemas de Salud, Instituto Nacional de Salud Publica, Cuernavaca, Mexico;

^bUniversidad de Ciencias Empresariales y Sociales, Buenos Aires, Argentina

ABSTRACT

Homophobic and transphobic bullying, through teasing, physical violence, and other forms of aggression, is a problem that affects lesbian, gay, bisexual, and transgender students at all levels of education. Even though there have been legal changes in Mexico to protect human rights of lesbian, gay, bisexual, and transgender people, schools are spaces where discrimination and violence toward them are still common. In 2012, using an online survey asking participants about their experiences with bullying, its consequences, and responses from adults, the authors collected responses from 912 participants younger than 30 years of age who self-identified as lesbian, gay, bisexual, or transgender and who lived in the 32 states of Mexico. Two thirds of participants said that they were victims of bullying during their school years; the majority of these students indicated that they did not have support from teachers or parents to avoid or stop the violence. The consequences of bullying were truancy, dropouts, depression, and suicide attempts. Attitudes that normalize bullying may impede the effective prevention of or response to homophobic and transphobic bullying by teachers and parents. To eliminate homophobic bullying in school, there is a need for sexual diversity trainings for teachers and media campaigns for the general public.

ARTICLE HISTORY

Received 21 June 2015

Accepted 21 September 2015

KEYWORDS

Homophobia; bullying; teachers; LGBT

Introduction

In the context of school, the concept of *bullying* can be defined as physical, psychological, or verbal abuse and violence from one or more students toward another student (Ramos-Jiménez, Wall-Medrano, & Esparza del Villar, 2013, p. 1). *Homophobic and transphobic bullying*¹ is the same kind of violence toward students who identify themselves as lesbian, gay, bisexual, or transgender (LGBT) or students who are perceived as such by others (UNESCO, 2012). Even though homophobic

CONTACT Ricardo Baruch-Dominguez ✉ ricardo.baruch@gmail.com 📧 Centro de Investigación de Sistemas de Salud, Instituto Nacional de Salud Publica, Av. Universidad #655, Santa Maria Ahuacatitlan, Cuernavaca, 62100 Mexico. Color versions of one or more of the figures in the article can be found online at www.tandfonline.com/wjly.

© 2016 Taylor & Francis

bullying is a problem that has always existed, the study of its consequences is very recent in Latin America.

The LGBT population in Mexico is one of the most discriminated group in society, according to surveys including the National Survey on Discrimination (2010), in which 43% of the surveyed population would be unwilling to share a house with a gay or lesbian person. In addition, the 2012 National Survey of Youth Values (Instituto Mexicano de la Juventud/Universidad Nacional Autónoma de México [IMJUVE/UNAM], 2012) reports that 33% of youth interviewed are against same-sex marriage, and 48% are against adoption by same-sex couples. **Despite widespread discrimination, very few strategies have been implemented by either governments or civil society organizations to ensure that human rights of nonheterosexual and noncisgender people are respected.** Because of stigma and discrimination toward LGBT people, it is very unlikely that victims of homophobic bullying report the situation to adults. Even if bullying is reported, adults are likely to minimize the situation or ignore it altogether (Berna & Cascone Platero, 2009, p. 2). Studies show that children and adolescents in general rarely report bullying, but homophobic bullying is even less likely to be reported to adults, including parents or school authorities (UNESCO, 2012).

Homophobic bullying is not only experienced by individuals who identify as LGBT but also by people who do not conform to typical gender stereotypes (De Castro, Villalobos, & Rojas, 2015, p. 7). This is particularly important to consider because many children, adolescents, and young people do not recognize themselves as LGBT. Therefore, many victims of homophobic bullying may not yet have realized that they have a different sexual orientation or gender identity or that they may also be heterosexual and/or cisgender. According to a survey among high school students in Mexico, 33.4% of men and 19.2% of women reported being victims of homophobic bullying without even being LGBT (De Castro, Villalobos, Rojas, Allen, & Salas, 2015).

In this article, we analyze some results of the First National Survey on Homophobic Bullying, which was conducted in Mexico in 2012. The survey's objective was to understand the state of violence toward LGBT people in Mexico during their school years to propose actions that can be taken to help eradicate homophobic bullying. In particular, we discuss problems related to the lack of attention from teachers and other school authorities as well as the consequences reported by participants in the survey.

Method

In April 2012, a national online cross-sectional survey was administered to 912 individuals between the ages of 18 and 29 years. The inclusion criteria were that participants self-identity as LGBT and live in Mexico. The Mexican government's definition of *youth* is a person between the ages of 18 and 29 years. Individuals

who identified themselves as heterosexual and cisgender or as older than 29 years were automatically excluded.

The survey was developed using the website Survey Monkey. It was shared with the public using the social network platforms, including Facebook and Twitter, of several NGOs that work on human rights and health issues. The survey could be completed in approximately 15 minutes, and it included multiple-choice questions as well as a section where participants could include comments or testimonials about their experiences related to bullying. The survey explored five areas: (a) sociodemographic characteristics of participants, (b) perceived reasons for bullying, (c) type of bullying, (d) consequences of bullying, and (e) support of adults. The last two areas will be explored in this article.

The beginning of the survey contained an informed consent statement regarding confidentiality and the use of the information. The survey was anonymous, but participants had the opportunity to share their e-mail if they wanted to receive the results of the study.

Questions were developed by members of the Youth Coalition for Sexual and Reproductive Rights, an international nongovernmental organization, in collaboration with the National Commission of Human Rights and the National Institute of Public Health, based on their previous experience with research about homophobia and violence toward LGBT people.

Results

The results of the study showed that 67% of people surveyed ($n = 912$) had been victims of bullying based on their sexual orientation or gender identity at some point in their school career. Participants who reported not having been victims of bullying ($n = 306$) most commonly stated that the reason was that their orientation “was not obvious” (they were not effeminate if they were men or masculine if they were women), or because they were not “out of the closet” when they were at school (Table 1).

We also examined whether there were demographic differences in respondent reports of bullying in school. With regard to gender, gay and bisexual men had the highest percentage (74%), followed by transgender individuals (66%) and then lesbian and bisexual women (50%). With regard to age, there were no substantive differences across groups. Also, there were no significant differences in the percentage of respondents who experienced bullying by state or location. This finding was somewhat surprising as the rates were very similar in states that are historically considered very conservative, such as Jalisco and Puebla, and those that are considered more liberal, such as Mexico City and Veracruz.

School staff behavior

Almost half of participants who experienced bullying (48%) mentioned that there was no reaction by teachers and other school authorities toward bullying. Adults did nothing because they thought bullying was normal among children, adolescents, and young

Table 1. Sample description ($n = 912$).

Variable	n	%
Age (years)		
18–20	193	21.1
21–23	342	37.5
24–26	273	29.9
27–29	104	11.4
Orientation/identity		
Gay and bisexual men	694	76
Lesbian and bisexual women	191	20.9
Trans (men and women)	27	2.9
Highest educational level		
University	510	55.9
High school	337	36.8
Junior or elementary school	63	6.7
State		
México City	443	48.5
Estado de México	114	12.5
Jalisco	68	7.4
Veracruz	68	7.4
Puebla	58	6.3
Nuevo León	57	6.2
Quintana Roo	54	5.9
Other	50	5.4

people, according to the majority of testimonies. Only 17% of teachers scolded or punished the bullies, as Figure 1 shows. **Only 1 in 6 took action to eliminate homophobic bullying, which shows a tremendous lack of support for the victims.**

In the responses to the open-ended questions in the survey, these findings were reinforced by comments from many participants who shared their experiences with their teachers and principals:

During sports class, the teacher would make a line for men and another one for women and he would ask me to stay in the middle. Everybody laughed at me, even the teacher.
—Gay man, 23 years old

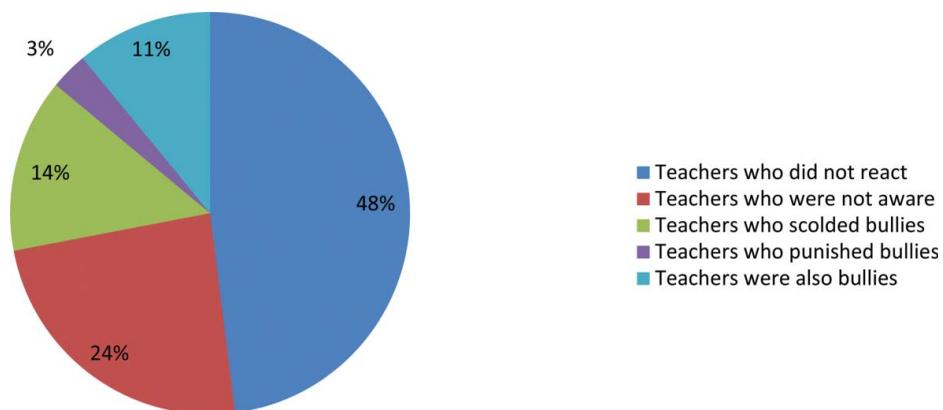


Figure 1. Teachers' and school authorities' reaction to homophobic bullying.

Some participants expressed that teachers themselves promoted teasing and bullying toward LGBT people:

I went to a school for boys only. I had a teacher who used to expose anyone who complained to their parents about anything. She would ask you to wear a skirt and put a flower in your hair if you did that. Can you imagine how much bullying you would receive after that in a school for boys only?

—Bisexual man, 21 years old

Gender stereotypes were associated with bullying, even more than sexual orientation (Table 2). Teachers tend to reinforce these stereotypes about how men or women are supposed to act according to traditional norms:

Very often I was teased right in my high school teacher's face and instead of asking my classmates to stop, he would continue the game with them. He used to call me with a man's name and everybody at school started saying that I was a lesbian. Even though I knew back then that I liked girls, it took me a long time to accept it because of fear that I would be even more bullied if I came out.

—Lesbian woman, 25 years old

Not only teachers but also school principals were involved in bullying LGBT students. Some principals tried to forbid any behavior that might suggest homosexuality among their students:

The principal of my junior high school said I should inject some female hormones because I acted too masculine. He was the one who needed a professional, not me, I was happy with who I was and who I am today

—Bisexual woman, 19 years old

The principal called my parents to ask them to "help me" because I was too feminine and I shouldn't be acting like that in school.

—Gay man, 29 years old

There were very few positive comments regarding teachers' affirmative role in trying to control bullying. It is important to take into consideration that, according to the participants in the survey, very few teachers were aware of the bullying that was happening in the school. Still, only a small number of those who were aware were reported to have acted in a positive way.

I always tried to avoid bullying and whenever it happened, I would always go with my teachers and ask for help. They were very supportive because I was also a very good student. I didn't care much about the comments that my classmates made but I knew I could always find some support in case I needed it.

—Lesbian woman, 28 years old

Table 2. Participants who had experienced bullying at school ($n = 912$).

	18–29 years old (%)	18–24 years old (%)	25–29 years old (%)
General	67	64	70
Gay and bisexual men	74	72	76
Lesbian and bisexual women	50	49	51
Transgender men and women	66	70	62

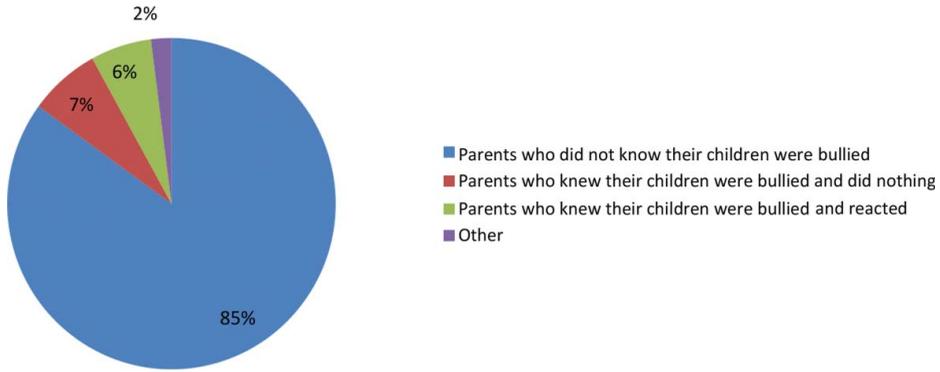


Figure 2. Parents' reaction to homophobic bullying.

Parental reactions

In many cases parents did support their children, but often, however, the response was late (Figure 2). It was uncommon for the situation to be reported to adults, which made it difficult for parents to respond in a timely manner:

Some classmates said that I was molesting them which of course was false. The principal wanted to expel me but my parents talked to him and said that I would never do something like that. At the end, I was able to stay in school but I was sent to the psychologist because the principal thought I needed to 'cure' my abnormality.

—Gay man, 22 years old

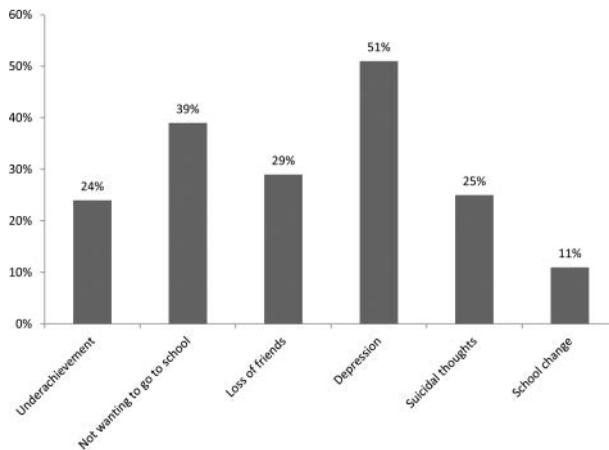


Figure 3. Self-reported consequences of homophobic bullying.

Downloaded by [174.51.9.7] at 16:44 29 May 2016

Effects of homophobic bullying

Figure 3 shows the reported consequences of bullying. Participants were specifically asked about the consequences of the bullying they experienced. More than half (51%) of the participants reported experiencing depression as a result of bullying, and more than one third (39%) reported that they wanted to avoid school altogether. The most alarming result is that 1 in 4 survey participants had suicidal thoughts as a result of these experiences, which is higher than recent estimates for the general population of youth in the country (Borges et al., 2010).

Discussion

Homophobic bullying may target not only LGBT people but also individuals who are gender nonconforming (e.g., effeminate boys or masculine girls). This may, in part, be due to the strict gender stereotypes that still exist in many societies in Latin America, including Mexico. Given that this data was mostly retrospective reporting from young adults about their experiences in school, not all of these LGBT adults may have been open about or even aware of their sexual orientation or gender identity while they were in school. Thus, homophobic bullying based on gender norms may be especially germane to this group, given that sexual orientation may not have necessarily been identified during childhood or adolescence (Castañeda, 2010, p. 59). Although the survey did not compare LGBT students' experiences with bullying to those of heterosexual students, the results also confirm a high rate of homophobic bullying in Mexico that has been met by a largely ineffective response by educators and parents.

To eradicate homophobic bullying, it is necessary to create schools and classrooms that are free from bullying of all kinds. However, this is still far from being achieved because of the lack of willingness from authorities in many education spaces.

Consequences of homophobic bullying may occur in the short, medium, or long term. Different studies have shown that apart from provoking depression and suicidal thoughts among the people who experience it, there is a possibility that homophobic bullying may contribute to the development of other problems, including anxiety, personality disorders, and chronic depression, in adulthood (Birkett, Espeleage, & Koenig, 2009, p. 1).

Children and adolescents spend half of each weekday at school. Therefore, it is crucial that school staff, including principals, teachers, and administrative staff, show support to victims of bullying (UNESCO, 2012) and show that homophobia and violence in general is unacceptable in a democratic and progressive society. For the past two decades in Mexico, education priorities have been focused on the working conditions of teachers. Therefore not enough attention is being paid to educational content, especially approaches to critical issues including human rights, diversity, and respect.

Limitations

As Table 1 shows, the sample comprised primarily gay and bisexual men and those living in Mexico City. In addition, the majority of participants finished university, while the average level of education in Mexico is the completion of junior school. It is possible that most of the organizations and sites through which we advertised the study reach more gay and bisexual men, more highly educated youth, and youth living in Mexico City and other large metropolitan areas. Future studies should be designed to maximize gender parity and representation across regions and levels of education.

Conclusions

The human rights of LGBT people have been recognized at the international and national level by various documents, including the National Constitution and the Federal Law to Prevent and Eliminate Discrimination in Mexico (*Ley Federal para Prevenir y Eliminar la Discriminación*, 2003). Nevertheless, discrimination against gays, lesbians, bisexuals and transgender people continues to be a problem in different sectors, including the education sector. Parents, teachers and classmates of LGBT people still need to understand that having a different sexual orientation or gender identity does not mean the person is sick or confused.

Capacity-building for teachers on this subject is crucial; training on sexuality education, gender, and sexual diversity is the strategy that most participants support as one of the solutions for homophobic bullying. If teachers are more sensitive and aware of the problems that violence and homophobia in general can cause, it is more likely that they will work towards eliminating violence and stigma toward LGBT students (Jones, 2013, p. 75). Media campaigns are also an important strategy to fight against homophobia in general, but they are particularly important for children and youth because of the effect they have at younger ages (Dankmeijer, 2012, p. 13).

Stereotypes related to gender play a very important role in homophobic bullying. As survey participants reported, students who do not conform to traditional gender norms face harassment both from their peers and from adult authority figures who believe that these differences are abnormal, unhealthy, or wrong. Thus eradicating bullying does not only depend on largely on eliminating machismo at school but also at home, in the workplace, and in public spaces.

In Mexico, there are new laws that aim to eliminate bullying at schools (“*Ley para la promoción de la convivencia libre de violencia*” 2012) but, as long as there is not a real fight against homophobia in all aspects of society, these laws are likely to be useless for preventing or addressing homophobic bullying. The National Council to Prevent and Eliminate Discrimination (CONAPRED by its acronym in Spanish) and the National Human Rights Commission have implemented campaigns about LGBT rights, but these have been limited because of lack of funding and also a lack of political will. At the

same time, civil society organizations have led the fight against homophobia with almost no budget and therefore, the reach of their actions has been also very limited (Brito, 2010).

This issue is not about punishing one single aggressor, but about changing the harmful attitudes and actions of an entire society, in particular those of children, youth, and their parents and teachers.

Note

1. For purposes of this article, the term *homophobic bullying* will be inclusive of transphobic, lesbophobic, and biphobic bullying.

Notes on contributors

Ricardo Baruch-Domínguez is a PhD student at the National Institute of Public Health in Mexico (INSP).

Cesar Infante-Xibille is a researcher at the Center for Research on Health Systems, also of the National Institute of Public Health.

Claudio E. Saloma-Zuñiga is a researcher at the Universidad de Ciencias Empresariales y Sociales (UCES) in Buenos Aires, Argentina.

References

- Bekaert, S. (2010). Tackling homophobic attitudes and bullying in youth settings. *Journal of Paediatric Nursing*, 22, 27–29.
- Berná, D., Cascone, M., & Platero, R. (2009). Un estado de la cuestión sobre los estudios de la LGBTfobia y educación en el estado español [A state on the question of studies about LGBTphobia and education in Spain]. *Scientific Journal of Humanistic Studies*, 5, 2–11.
- Birkett, M., Espelage, D., & Koenig, B. (2009). LGB and questioning students in schools: The moderating effects of homophobic bullying and school climate. *Journal of Youth and Adolescence*, 38, 989–1000.
- Borges, G., Benjet, C., Medina-Mora, M. E., Orozco, R., Familiar, I., Nock, M. K., & Wang, P. S. (2010). Service use among Mexico City adolescents with suicidality. *Journal of Affective Disorders*, 120, 32–39.
- Brito, A. (2010). Por el derecho a todos los derechos [For the right to all human rights]. In *México se escribe con J* (pp. 240–248). Mexico: Temas de Hoy.
- Castañeda, M. (2010). *La experiencia homosexual [The homosexual experience] Mexico*: Paidós.
- Clarke, V., Kitzinger, C., & Potter, J. (2004). Lesbian and gay parents' talk about homophobic bullying. *British Journal of Social Psychology*, 3, 31–552.
- Dankmeijer, P. (2012). *Full development of the human personality and respect for human rights. A guide to monitor the right to education and strategy development for sexual diversity. Version 0.3*. Amsterdam, The Netherlands: Global Alliance for LGBT Education.
- De Castro, F., Villalobos, A., Rojas, R., Allen, B., & Salas, J. (2015). *Determinantes psicosociales y emocionales asociados a resultados y prácticas de riesgo entre adolescentes escolarizados en México [Psychosocial and emotional determinants associated with risk results and practices among adolescents at schools in Mexico]*. Presented at the Public Health Research Conference. Mexico: CONGISP-INSP.

- Jones, T. (2014). *Policy and gay, lesbian, bisexual, transgender and intersex students*. Australia: Springer.
- National Survey on Discrimination. (2010). Overall Results. Mexico: National Council to Prevent Discrimination (CONAPRED).
- Ramos-Jiménez, A., Wall-Medrano, A., & Esparza del Villar, O. (2013). Design and validation of a self-administered test to assess bullying in high-school Mexicans. *BMC Public Health*, *13*, (334), 13–23.
- Rivers, I., & Noret, N. (2008). Well-being among same-sex and opposite-sex attracted youth at school. *School Psychology Review*, *2*, 174–187.
- UNESCO. (2012). *Education sector responses to homophobic bullying*. Paris, France: Author. Retrieved from <http://unesdoc.unesco.org/images/0021/002164/216493e.pdf>.



Ninth Circuit Grants Protection Against Torture for Mexican Transgender Woman

September 3, 2015

PASADENA, CA — A federal appeals court has granted Convention Against Torture protection to Edin (Carey) Avendano-Hernandez, a transgender woman who fled persecution in Mexico, scolding the administrative immigration court judge who originally denied the case as “ironically exhibiting some of the same misconceptions about the transgender community that Avendano-Hernandez faced in her home country.”

The court simultaneously issued unpublished rulings granting relief to two other transgender Mexican women who faced similar hurdles when they sought protection before a California immigration judge.

Heartland Alliance’s National Immigrant Justice Center (NIJC) participated in oral arguments in Ms. Avendano-Hernandez’s case before the U.S. Court of Appeals for the Ninth Circuit in March 2015 and submitted *amicus* briefs on behalf of Ms. Avendano-Hernandez and one of the other women.

“This decision is overwhelmingly positive and sets a precedent that we hope eliminates some of the unnecessary hurdles transgender people face when they flee to the United States to escape persecution,” said Keren Zwick, managing attorney for NIJC’s LGBT Immigrant Rights Initiative, who argued as *amicus* on behalf of Ms. Avendano-Hernandez. “The ruling is particularly timely as the government moves forward with plans to increase and consolidate its detention of transgender women at the Adelanto Detention Center in California, which will limit access to the kind of legal counsel that proved critical in ensuring Ms. Avendano-Hernandez was able to navigate the complex legal system and overcome the discrimination she faced in the immigration court system.”

Ms. Avendano-Hernandez survived horrific sexual violence in Mexico perpetrated by a wide range of assailants including family, the police, military, and gang members. The Ninth Circuit found that both the immigration judge who denied Ms. Avendano-Hernandez’s request for protection and the Board of Immigration Appeals wrongly “conflated transgender identity and sexual orientation” and “erred in assuming that recent anti-discrimination laws in Mexico have made life safer for transgender individuals while ignoring significant record evidence of violence targeting them.”

Ms. Avendano-Hernandez is represented by the Public Law Center and Manatt, Phelps & Phillips, LLP. NIJC filed its *amicus* brief in the case in collaboration with five other non-profit organizations and attorneys at Gibson Dunn & Crutcher LLP.



Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report

**Submitted for consideration at the 111th Session of the
Human Rights Committee**

July 2014, Geneva

Prepared by:

Letra S, Sida, Cultura y Vida Cotidiana, A.C.

Center for International Human Rights
of Northwestern University School of Law

Heartland Alliance for Human Needs & Human Rights,
Global Initiative for Sexuality and Human Rights

June 2014

Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in Mexico: A Shadow Report

I. Introduction

This shadow report is submitted to the Human Rights Committee (“Committee”) by Letra S, Sida, Cultura y Vida Cotidiana, A.C. (“Letra S”),¹ the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights,² in anticipation of the Committee’s adoption at its 111th Session of the List of Issues for the periodic review of Mexico’s compliance with the International Covenant on Civil and Political Rights (“Covenant”).³

Mexico is to be applauded for having taken certain positive steps in recent years to amend its constitution and enact federal legislation prohibiting discrimination on the basis of sexual orientation. Mexico City (Federal District), in particular, has taken a leadership role in enacting laws and adopting measures to combat discrimination and hate crimes on the basis of sexual orientation and gender identity. Additionally, Mexico’s National Supreme Court of Justice merits recognition for rulings it has issued in certain cases challenging discrimination on the basis of sexual orientation.

But despite these commendable measures, homophobia and transphobia remain prevalent in Mexico, and discrimination and hate crimes on the basis of sexual orientation and gender identity remain all too common. Mexico’s response has, in certain important respects, fallen short of its obligation to respect and ensure all Covenant rights to all individuals, including LGBTI individuals.

This report, therefore, is intended to direct the Committee’s attention to serious and ongoing violations of the Covenant rights of LGBTI individuals in Mexico, and to ask that these violations be addressed in the List of Issues adopted for Mexico’s upcoming periodic review. In particular, this report will address the following violations of Covenant rights:

¹ Letra S, Sida, Cultura y Vida Cotidiana, A.C. (“Letra S”) is a Mexican non-profit organization dedicated to the creation of a society with greater tolerance and respect for the diverse expressions of sexuality. Letra S works to promote human rights for sexual minorities and to raise awareness about HIV/AIDS and sexual health.

² This report was authored by Brittany Bowman (JD/LLM in International Human Rights 2016, Northwestern University School of Law), Ning Ding (LLM in International Human Rights 2014, Northwestern University School of Law) and Professor Bridget Arimond of the Center for International Human Rights of Northwestern University School of Law. The report was prepared in collaboration with Letra S and was guided by Stefano Fabeni, Managing Director of GIHSR and Marcelo Ferreyra, Latin America and Caribbean Coordinator of GISHR.

³ International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171 (“Covenant”).

1. Failure to prevent and to appropriately investigate and prosecute killings of LGBTI individuals because of their sexuality, including killings of LGBTI human rights defenders (violation of Articles 2 and 6). Letra S has compiled a register of more than 250 homicides of LGBTI individuals in the years 2010-2013, including homicides of LGBTI human rights defenders. The full extent of hate crimes, including murder, against LGBTI individuals is unknown, because police and prosecutorial officials frequently do not categorize these crimes as hate crimes. Often, homicides based on the victims' sexuality are mischaracterized as "crimes of passion." As a consequence of their failure to treat these crimes as hate crimes, the authorities frequently fail to properly investigate, prosecute, and punish these homicides.

Issue: What steps will Mexico take (a) to prevent killings of LGBTI individuals because of their sexuality or their political activism as human rights defenders, (b) to develop appropriate protocols for the investigation and prosecution of such crimes, and (c) to maintain records of all such killings and the results of the ensuing investigations and prosecutions?

2. Failure to protect school children from homophobic bullying (violation of Articles 2, 7, 9, 17, 24 and 26). Students in Mexican schools continue to experience homophobic bullying, including insults, taunts, and even assaults on the basis of sexual orientation and gender identity. As will be discussed more fully below, the results of a 2012 national survey reveal that 67% of survey respondents reported having been victims of homophobic bullying in schools, particularly at the primary (grades 1-6) and middle school (grades 7-9) levels. Incidents of such bullying have been reported as recently as 2014.

Issue: What steps will Mexico take to protect students from being bullied due to their sexual orientation or gender identity? In particular, what steps will Mexico take to ensure that all school administrators and teachers (a) create a climate of respect for sexual minorities, (b) firmly prohibit any form of bullying, and (c) take prompt and effective measures, in the event of bullying, to hold perpetrators accountable and provide appropriate compensation to victims?

3. Prohibition of same-sex marriage (violation of Articles 2, 23, 24 and 26). Mexico City (D.F.) is the only jurisdiction within Mexico that has amended its laws to allow same-sex couples to marry on the same basis as opposite-sex couples. Additionally, while the Federal Civil Code of Mexico does not explicitly define marriage as a union between a man and a woman, the pertinent marriage articles use the words "husband and wife" and "man and woman" to describe spouses.

Issue: What steps will Mexico take to ensure that same-sex couples are allowed to marry on the same basis as opposite-sex couples throughout Mexico? Will Mexico amend its Federal Civil Code to recognize marriage of same-sex couples?

4. Discrimination in social security benefits for same-sex married couples (violation of Articles 2 and 26). Although the Mexican Social Security Institute (IMSS) issued a press release on 17 February 2014 stating that it would extend social security benefits to same-sex married couples, in practice, same-sex married couples continue to experience difficulties in

registering their spouses for social security benefits. The same difficulties are encountered with respect to spousal benefits under programs administered by the Institute for Social Security and Services for State Workers (ISSSTE). The problems appear to stem from lack of appropriate training for IMSS and ISSSTE employees. An additional problem is that the IMSS law, as written, continues to describe eligibility for benefits using language applicable only to opposite-sex couples (i.e., “the wife of the insured man” or the “husband of the insured woman”), thus appearing to exclude benefits for same-sex couples.

Issue: What steps will Mexico take to revise the relevant laws and written policies, and to train and supervise all IMSS and ISSSTE staff, in order to ensure that same-sex married couples are allowed to register for social security spousal benefits on the same basis as opposite-sex married couples?

5. Failure to allow transgender individuals to conform their identity documents to their gender identity (violation of Articles 2 and 26). Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. The inability to do so outside Mexico City exposes transgender individuals to a heightened risk of discrimination and hate crimes.

Issue: What steps will Mexico take to amend its federal and state laws to ensure that, throughout the entire country, transgender individuals are able to conform their identity documents to their gender identity?

II. Positive Developments

In 2011, Mexico amended its Constitution to prohibit discrimination on the basis of “sexual preference.”⁴ Several years earlier, in 2003, Mexico passed the Federal Law to Prevent and Eliminate Discrimination. This law, which remains in force, prohibits public and private sector discrimination based on various characteristics including “sexual preference,” and it explicitly characterizes homophobia as a form of discrimination.⁵ The law established a National Council for the Prevention of Discrimination (CONAPRED) as a department within the Mexican Secretariat of the Interior, and assigned CONAPRED various responsibilities related to combatting discrimination. On March 21, 2014, Mexican President Enrique Peña Nieto signed a

⁴ Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, Article 1, Diario Oficial de la Federación [DO], 10 February 2014, *available at* <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. The Mexican Constitution and federal anti-discrimination law both use the terminology “sexual preference,” which was the terminology selected by Mexican LGBTI activists. This terminology is understood to have the same meaning as “sexual orientation,” which is more commonly used internationally.

⁵ Ley Federal Para Prevenir y Eliminar la Discriminación [Anti-discrimination Law], *as amended*, Articles 1, 2 and 4, Diario Oficial de la Federación [DO], 3 March 2014 (Mex.), *available at* <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>.

decree designating May 17th of every year as the “National Day for the Fight against Homophobia.”⁶

Within Mexico,⁷ Mexico City (Federal District) has taken the lead in enacting laws and taking measures to protect the rights of the LGBTI population. Mexico City has enacted general antidiscrimination legislation which goes beyond the federal law by prohibiting public and private sector discrimination on the basis of gender identity, as well as on the basis of sexual orientation.⁸ This law created an agency, the Council for the Prevention and Elimination of Discrimination in Mexico City (COPRED), which has the authority to take and resolve complaints of public and private sector discrimination that occur within the Federal District.⁹ The Criminal Code of the Federal District includes a hate crimes provision, under which crimes committed on the basis of the victim’s sexual orientation or gender identity are considered hate crimes.¹⁰ In 2004, Mexico City amended the Civil Code of the Federal District to allow transgender people to change the sex and name recorded on their birth certificates to conform to their gender identity.¹¹ In 2010, Mexico City again amended its Civil Code to allow same-sex marriage and adoption of children by same-sex couples.¹² In 2011, the government of the Federal District opened the Community Center on Sexual Diversity which has provided health and legal services to the LGBTI community.¹³ In 2012, the Federal District Attorney General issued a directive that provides instructions on effectively processing cases of crimes committed on the basis of the victim’s sexual orientation and gender identity.¹⁴

⁶ Decreto por el que se declara 17 de mayo, Día Nacional de la Lucha contra la Homofobia. Diario Oficial de la Federación [DO], 21 March 2014, *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=5337843&fecha=21/03/2014.

⁷ Mexico is a federal republic made up of thirty-one states and the Federal District (Mexico City).

⁸ Ley Para Prevenir y Eliminar La Discriminación del Distrito Federal, [Federal District Anti-Discrimination Law], *as amended*, Articles 1 and 5, Gaceta Oficial del Distrito Federal, 24 February 2011 (Mex.), *available at* <http://cgsservicios.df.gob.mx/prontuario/vigente/4119.pdf>.

⁹ *Id.* at Articles 33-37.

¹⁰ Código Penal Para el Distrito Federal [Federal District Criminal Code], *as amended*, Article 206, Gaceta Oficial Del Distrito Federal. 24 February 2014, *available at* <http://www.aldf.gob.mx/archivo-994197bf103f72d714726e94ce527125.pdf>.

¹¹ Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Article 135, Gaceta Oficial Del Distrito Federal, 5 April 2014, *available at* <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>; International Gay and Lesbian Human Rights Commission, *Mexico: Mexico City Amends Civil Code to Include Transgender Rights* (15 June 2004), *available at*, <http://iglhrc.org/content/mexico-mexico-city-amends-civil-code-include-transgender-rights>.

¹² Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Articles 146, 391, Gaceta Oficial Del Distrito Federal, 5 April 2014, *available at* <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>; NBC News, *Mexico City’s gay marriage law goes into effect* (4 March 2010), http://www.nbcnews.com/id/35714490/ns/world_news-americas/t/mexico-citys-gay-marriage-law-takes-effect/.

¹³ Press Release, Comisión de Derechos Humanos del Distrito Federal [Federal District Commission on Human Rights], La Ciudad de México Cuenta con el Primer Centro Comunitario de Atención a la Diversidad Sexual, (22 April 2011), *available at* <http://www.cd hdf.org.mx/index.php/boletines/1262-boletin-1372011>; Gerardo Suárez López, *Cumple un año Centro Comunitario de Atención a la Diversidad Sexual*, NotieSe (12 April 2012), *available at* http://www.notiese.org/notiese.php?ctn_id=5620.

¹⁴ Acuerdo A/007/2012 del Procurador General de Justicia del Distrito Federal Mediante el Cual se Emite el Protocolo de Actuación Para la Atención a las Personas de la Comunidad LGBTTI [Federal District Attorney

III. Violations of the Covenant

Notwithstanding the positive developments noted above, homophobic and transphobic attitudes remain prevalent in Mexico. Indeed, the pervasiveness of homophobia has been recognized by Mexico's own federal anti-discrimination agency, CONAPRED. According to CONAPRED, homophobia is deeply rooted in Mexican society and is prevalent in every area of life.¹⁵ These deeply rooted attitudes create an environment that leads to widespread and serious violations of the Covenant rights of LGBTI individuals.

A. Failure to prevent and to appropriately investigate and prosecute killings of LGBTI individuals because of their sexuality, including killings of LGBTI human rights defenders (violation of Articles 2 and 6).

An alarmingly high number of LGBTI individuals have been murdered in Mexico in recent years. Based on a review of news media and internet sites, Letra S has compiled a register identifying 288 LGBTI individuals murdered in Mexico from 2010 through 2013.¹⁶ Undoubtedly, this register underestimates the true number killed during this time period.

Transgender women are at particular risk of murder. According to a 2012 report by the NGO Centro de Apoyo a las Identidades Trans A.C., 126 transgender women were murdered in Mexico from 2010 through 2012.¹⁷

Prominent LGBTI human rights defenders have been among the people murdered. For example:

* Quetzalcoatl Leija Herrera, an LGBTI rights activist, was found beaten to death on May 3, 2011, near the central plaza in Chilpancingo.¹⁸

* Cristian Ivan Sanchez Venancio, another LGBTI human rights defender, was found stabbed to death in his home in Mexico City on July 23, 2011. He was a member of the Revolutionary Democratic Party's Coordinating Group for Sexual Diversity, and was an

General Directive Establishing Protocol for LGBTTI Community Affairs], Diario Oficial de La Federación [DO], 1 June 2012, available at <http://cgsservicios.df.gob.mx/prontuario/vigente/4811.pdf>.

¹⁵ Consejo Nacional para Prevenir la Discriminación (CONAPRED) [National Council for the Prevention of Discrimination], *El Combate a la Homofobia: Entre Avances y Desafíos* [Fighting Homophobia: From Advances to Challenges], at 2 (2012), available at

http://www.conapred.org.mx/index.php?contenido=documento&id=105&id_opcion=&op=215 [hereinafter CONAPRED, Fighting Homophobia].

¹⁶ *Crímenes de odio por homofobia 1995-2013*, Letra S (15 May 2014), available at <http://www.letraese.org.mx/2014/05/crimenes-de-odio-por-homofobia/>.

¹⁷ Centro de Apoyo a las Identidades Trans A.C., *Informe Crimenes de Mujeres Trans en México, Invisibilidad = Impunidad* (2012) at 4 (unpaginated), available at

http://api.ning.com/files/Kmd9nT1FlrI6KSQric9UFNzXuQCUFQucpkUeqnT6J*D1Qhsg470*yiY3hcbriWcRV5MEsNvHkhwsVq7zmASMI61T8N5BrJsO/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf.

¹⁸ U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: Mexico, Section 6 (p. 30 in pdf version), available at <http://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm?dliid=186528#wrapper>.

organizer of Mexico City's annual Pride Parade.¹⁹

* Agnes Torres, a transgender woman and LGBTI rights activist, was found murdered in Puebla on March 10, 2012. A 28-year-old psychologist and educator, she was an ardent defender of LGBTI rights who had lobbied for legislative reform. When her body was found, she was stripped to her underwear, with her throat slashed and with burns marks across her body.²⁰

In some cases, the homophobic motivation for a murder is apparent. One such case is that of Roberto Zamudio Garcia, a 32-year-old gay man who was shot to death in January 2013 outside a Mexico City bar frequented by members of the gay community. When Mr. Zamudio stepped outside with a friend, two strangers drove by shouting homophobic slurs. When Mr. Zamudio's friend objected to the slurs, the two assailants got out of their car and one of them shot Mr. Zamudio to death.²¹

While in some cases it is more difficult to say with certainty that a particular murder was motivated by the victim's sexual orientation or gender identity, given the high number of murders of LGBTI individuals and the acknowledged prevalence of homophobia and transphobia in Mexico, every murder of a gay, lesbian, bisexual, transgender or intersex person should be investigated and prosecuted by the authorities as a potential hate crime.

At present, this is generally not done. Instead, **all too often, murders of LGBTI individuals are dismissed – without proper evidence – as crimes of passion rather than hate crimes.**²² **And, although on occasion these murders have led to prosecutions, more often the crimes are never solved and no one is held accountable.**²³

B. Homophobia, Transphobia and Discrimination (Violations of Articles 2 and 26)

A nationwide survey conducted by CONAPRED in late 2010 revealed that 50% of lesbians, gays, and bisexuals consider discrimination to be the main problem that they face, followed by lack of acceptance, insults and mockery.²⁴ Seventy percent of lesbians and gays believe that Mexico does not respect sexual diversity rights.²⁵ Forty three percent of gays believe that the police are intolerant.²⁶ A 2006 survey revealed HIV-related prejudice among medical staff in

¹⁹ *Id.*

²⁰ Press Release, Inter-American Commission on Human Rights, IACHR Condemns Murder of Human Rights Defender in Mexico (20 March 2012), *available at* https://www.oas.org/en/iachr/media_center/PReleases/2012/032.asp; Agnes Hernandez, *Mexican Transgender Activist, Brutally Murdered*, Huffington Post (15 March 2012), *available at* http://www.huffingtonpost.com/2012/03/15/agnes-hernandez-hate-crime-mexican-transgender-activist-brutally-murdered_n_1345867.html.

²¹ Raúl Macías, *Lo Vio Morir!*, La Prensa (26 January 2013), *available at* <http://www.oem.com.mx/laprensa/notas/n2858035.htm>.

²² Information provided to Letra S.

²³ *Id.*

²⁴ CONAPRED, *Fighting Homophobia*, *supra* note 15, at 1.

²⁵ *Id.*

²⁶ *Id.* at 7.

Mexico. Twenty three percent of the medical staff surveyed believe that homosexuality is the cause of HIV/AIDS in Mexico, and 66% believe that the test for detecting HIV should be obligatory for men who have sex with men.²⁷

Given the pervasiveness of homophobia and transphobia, it is not surprising that CONAPRED receives many complaints of discrimination against sexual minorities. For example, CONAPRED's 2012 report on discrimination against sexual minorities indicates that from January 1, 2011, through April 30, 2012, CONAPRED received a total of 273 complaints of discrimination on the basis of sexual orientation and gender identity.²⁸ Among these complaints, 237 were filed against private individuals or entities and 36 were filed against state actors.²⁹ The most frequently reported discriminatory acts in the private sector were: (1) homophobic opinions circulated in the media,³⁰ (2) employment discrimination (in hiring, promotion and retention) and workplace harassment (including verbal and physical aggression),³¹ and (3) denial of access to commercial establishments such as bars, restaurants, hotels, coffee shops, and malls.³² Within the public sector, most complaints involved unequal treatment in healthcare, education, and employment.³³ Individuals complained of (1) denial of medical attention because of manifesting or making their sexual orientation known, (2) refusal of social security enrollment to same-sex couples,³⁴ (3) mockery and homophobic comments from medical staff at government-run health centers, (4) physical and verbal mistreatment in public educational institutions, (5) dismissals from the workplace for being gay, and (6) verbal aggressions and harassment for being lesbian.

Neither CONAPRED's report nor its website indicates how many of the 273 cases have been resolved. It is difficult, therefore, to assess how effective this agency has been in investigating complaints and remedying discrimination against sexual minorities. In June of 2012, the Sexual Diversity Circuit (CIDISEX) filed a complaint against the federal government with the National Human Rights Commission (CNDH) in order to bring to light the government's lack of public policies designed to prevent, combat, and eradicate homophobia and CONAPRED's failure to develop various initiatives to protect vulnerable groups such as sexual minorities.³⁵ CIDISEX called for the creation of a Sexual Diversity Office with a significant budget in order to replicate the legal protections and rights that members of the LGBTI community enjoy in the Federal

²⁷ *Id.* at 11.

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ Including newspapers, radio, and the internet. *Id.* at 8.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 8-9.

³⁴ On February 17, 2014, the Mexican Social Security Institute (Instituto Mexicano de Seguro) issued a press release stating that it would extend benefits to same-sex couples in accordance with the Supreme Court of Justice's (SCJN) January 29, 2014 decision. Press Release, Instituto Mexicano de Seguro Social, Comunicado De Prensa No. 009 [Press Release No. 009] (17 February 2014), available at http://www.imss.gob.mx/sites/all/statics/i2f_news/009_PDF_1.pdf. However, as discussed below at pages 12-13, in practice, same-sex couples continue to have difficulties enrolling as spouses.

³⁵ Fernando Camacho Servín, *Presentan queja contra el gobierno por no actuar para erradicar la homophobia*, La Jornada (5 October 2012), available at <http://www.jornada.unam.mx/2012/10/05/politica/021n2pol>.

District.³⁶ The newspaper La Jornada reported that on August 21, 2012, CONAPRED rejected this demand.³⁷

In June 2013, the president of CONAPRED, Ricardo Bucio Mujica, described the Federal Law to Prevent and Eliminate Discrimination in Mexico, as “insufficient” because some states have not reformed their laws to correspond to this law.³⁸ And on its website, CONAPRED notes that “[t]he right to non-discrimination is not guaranteed on equal terms throughout the national territory.”³⁹ It goes on to state that because the federal antidiscrimination law is not a general law, those who live in states which lack such legislation at the state level are unprotected.⁴⁰

C. Failure to protect school children from homophobic bullying (violation of Articles 2, 7, 9, 17, 24 and 26).

School children throughout Mexico experience bullying, including insults, taunts, beatings, and other discriminatory behavior, based on their perceived or actual sexual orientation or gender identity. The perpetrators usually are the victims’ peers, but in some cases the bullies are teachers or other school staff.

A 2012 survey on homophobic bullying in Mexico⁴¹ revealed that 67% of the survey respondents reported having been victims of homophobic bullying.⁴² Seventy four percent of gay respondents reported having been bullied, as did 50% of lesbian respondents and 66% of transgender respondents.⁴³ Younger students were most at risk. Fifty six percent of respondents indicated that they had experienced the most bullying in middle school (grades 7-9), and 28% indicated that they had experienced the most bullying in primary school (grades 1-6).⁴⁴

³⁶ *Id.* Even in Mexico City, problems persist. The General Coordinator of Strategic Partnerships of the Federal District Human Rights Commission of Mexico (CDHDF) stated in 2012 that “despite legislative advancements for sexual minorities in the Federal District, ‘discriminatory conduct’ and violence against sexual minorities still exist.” Immigration and Refugee Board of Canada. Research Directorate. *Mexico: Situation of sexual minorities in Mexico City, Guadalajara (Jalisco) and Puerto Vallarta (Jalisco) [MEX104173.E]* at 1.1 (17 September 2012), available at http://www.ecoi.net/local_link/228199/336205_en.html.

³⁷ *Id.*

³⁸ Marisol Flores, *Insuficiente la ley federal contra la discriminación: Conapred*, NotieSe (11 June 2013), available at http://www.notiese.org/notiese.php?ctn_id=6675.

³⁹ Consejo Nacional para Prevenir la Discriminación (CONAPRED) [National Committee for the Prevention of Discrimination], *Modelo de Ley Para Prevenir y Eliminar La Discriminación en los Estados [Model Legislation for the Prevention and Elimination of Discrimination in States]*, available at http://www.conapred.org.mx/index.php?contenido=pagina&id=504&id_opcion=650&op=650.

⁴⁰ *Id.*

⁴¹ Comisión Nacional de Derechos Humanos (CNDH) [National Commission on Human Rights], *Encuesta Nacional sobre Bullying Homofóbico* [National Survey on Homophobic Bullying], 15 May 2012, available at [http://www.enehache.com/EncuestaBullying/Bullying%20homofobico-1\(14-May-12\).pdf](http://www.enehache.com/EncuestaBullying/Bullying%20homofobico-1(14-May-12).pdf). A total of 1273 respondents were surveyed, including respondents from Mexico City (D.F.) and 14 of Mexico’s 31 states.

⁴² *Id.* at 6 (unpaginated). This included 63% of respondents who attended private schools and 68% of respondents who attended public schools. *Id.* at 8 (unpaginated).

⁴³ *Id.* at 7 (unpaginated).

⁴⁴ *Id.* at 11 (unpaginated). The remaining respondents reported experiencing the most bullying in high school (grades 10-12) (13%) or university (3%). *Id.*

While the most commonly reported form of bullying was insults and taunts (experienced by 92% of victims of bullying), approximately one third (32%) of victims reported having been beaten.⁴⁵ Asked about the response of teachers and school authorities, only 3% reported that the bullies had been punished.⁴⁶ Forty eight percent said that teachers and school authorities did nothing because the conduct seemed normal to them, and 11% said they did nothing because they were themselves involved in the bullying.⁴⁷

This bullying has had profound effects on the victims. Fifty one percent reported suffering from depression and 25% had thought about suicide.⁴⁸

The survey highlighted the experience of a number of individual respondents:

* A young lesbian girl from Guerrero anonymously reported that the boys at her school refused to play with her, telling her she should accept that she is not a boy, stop being so weird and strange, and go play with the girls.⁴⁹

* A gay male from the Federal District anonymously reported that one day his classmates partially stripped him of his clothes, beat him, and put him in the girl's bathroom. They then put his clothes in the urinals. The teachers said that he had only fallen in the restroom.⁵⁰

* A young gay male from Sonora anonymously reported that in middle school, he won a cellphone in a school raffle. The school announced his name one Monday during the pledge of allegiance ceremonies. In order to get the cellphone, he had to walk in front of the entire student body. When he went to receive the phone, the entire middle school began to yell: "Oooooooh!" The young man explained that in Sonora, such yelling is like yelling "Queer." He said that he was humiliated in front of the entire school and that he walked as fast as possible so that everyone would stop yelling.⁵¹

* A young gay male from Chiapas anonymously reported that in high school, his teacher would put the girls in one row and the boys in another. His teacher would then place him between the two rows. The entire class would laugh at him, including the teacher.⁵²

Unfortunately, the kinds of bullying reported in the 2012 survey continue into the present. For example, on April 13, 2014, a mother from Guerrero accused the principal of her son's school of

⁴⁵ *Id.* at 15 (unpaginated).

⁴⁶ *Id.* at 17 (unpaginated).

⁴⁷ *Id.*

⁴⁸ *Id.* at 21 (unpaginated).

⁴⁹ *Id.* at 10 (unpaginated).

⁵⁰ *Id.* at 14 (unpaginated).

⁵¹ *Id.* at 16 (unpaginated).

⁵² *Id.* at 18 (unpaginated).

discriminating against her son because he is gay.⁵³ The mother told the media that her son's principal, Sara Suárez Gómez, verbally harassed her 14-year-old son in front of his classmates. According to the mother, three months before she went to the media about the problem, the principal began to tell her that her son is homosexual because of the way he acts, the way he walks, and the way he talks, and because he hangs out with other boys like him. The principal said that if the child was born male, then he must be a man, and she asked the mother to take her son to a specialist so that he can stop being this way. The mother reported that her son's attitude has changed and he no longer wants to go to school because of the way the principal treats him in front of his classmates. The mother demands that her child be treated the same as the other students and she is seeking help from the authorities on this matter.⁵⁴

Another example of bullying occurred on March 13, 2014, in Durango, when a male middle school student became the victim of an extreme physical form of homophobic bullying.⁵⁵ Seven of his classmates took a razor or knife and carved the Spanish word for "girl" in his left hand. Minutes after the attack, the injured child walked into the school office seeking medical attention. The school's medical service applied antiseptic, gave him a painkiller, and turned him over to the social work department, which then reported the case to the Ministry of Education. The school authorities searched for the seven suspected aggressors, but the victim was unable to identify his attackers. The school's principal told La Jornada that the victim has suffered school bullying ever since he was in primary school and that the majority of his past harassers attend the same middle school as the victim. Because of the victim's history with bullying, the school had assigned him a student tutor who accompanies him in class every day. However, when the attack occurred, the young boy had separated from the student tutor to use the restroom. The Durango State Commission on Human Rights initiated an investigation and the Ministry of Education is waiting for the investigation results.⁵⁶

D. Prohibition of same-sex marriage (violation of Articles 2, 23, 24 and 26).

Although Mexico City (D.F.) amended the Civil Code of the Federal District to allow same-sex marriage in 2010,⁵⁷ none of the 31 Mexican states has taken this step. Additionally, although the Federal Civil Code of Mexico does not explicitly define marriage as a union between a man and a woman, the pertinent marriage articles use the words "husband and wife" and "man and woman" to describe spouses.⁵⁸

⁵³ Anodis, *Directora hostiga a alumno porque segun es homosexual en Guerrero* (13 April 2014), available at http://webcache.googleusercontent.com/search?q=cache:gA_nPKmaD0YJ:anodis.com/nota/24976.asp+&cd=1&hl=en&ct=clnk&gl=us.

⁵⁴ *Id.*

⁵⁵ Saul Maldonado, *Con una navaja le escriben "niña" en un mano en secundaria de Durango*, La Jornada (21 March 2014), available at <http://www.jornada.unam.mx/2014/03/21/estados/029n2est>.

⁵⁶ *Id.*

⁵⁷ Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Articles 146, 391, Gaceta Oficial Del Distrito Federal, 5 April 2014 (Mex.), available at <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>.

⁵⁸ Código Civil Federal [CC] [Federal Civil Code], *as amended*, Articles 98(1), 172, 173, 177, Diario Oficial de la Federacion [DO], 24 December 2013 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/2.pdf>.

While Mexico's National Supreme Court of Justice (SCJN) has issued a number of important rulings on marriage equality, it has not yet issued a ruling binding throughout Mexico requiring states to allow same-sex couples to marry on the same basis as opposite-sex couples. In August 2010, the SCJN ruled that all 31 states of Mexico must recognize same-sex marriages registered in Mexico City.⁵⁹ That ruling clarified, however, that state governments were not obligated to enact same-sex marriage laws of their own.⁶⁰

Two years later, in December 2012, the SCJN went further and ruled that a law in the state of Oaxaca that banned same-sex marriages was unconstitutional.⁶¹ While this ruling benefitted the three same-sex couples who had brought the suit, it did not make marriage legally available to other same-sex couples in Oaxaca.⁶² Thereafter, authorities in Oaxaca continued to deny same-sex couples in Oaxaca the right to marry. This has forced the affected couples to seek injunctions in order to enjoy their rights, and thus has subjected them to discriminatory treatment in comparison to opposite-sex couples. On April 24, 2014, the SCJN granted an injunction to 39 gay and lesbian citizens of Oaxaca who, despite the SCJN's earlier ruling, had not been allowed to exercise their right to marry a person of the same sex.⁶³ Like the 2012 ruling, this ruling only applied to the particular individuals who had brought the legal action.⁶⁴

In March 2014, two women became the first same-sex couple to get married in the city of Leon, Guanajuato, where the state law does not allow same-sex marriage.⁶⁵ The couple had filed a lawsuit when they were denied a marriage license in September of 2013. The federal court granted the women an injunction, based on the Mexican Constitution's prohibition of discrimination on the basis of sexual orientation, which forced the state to allow them to marry.

⁵⁹ Matrimonio Entre Personas Del Mismo Sexo En El Distrito Federal. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XXXIV, Agosto de 2011, Tesis P./J 12/2011, Pagina 875 (Mex.)*, available at <http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=161270&Clase=DetalleTesisBL>; David Agren, *Mexican States Ordered to Honor Gay Marriages*, *New York Times* (10 August 2014), available at http://www.nytimes.com/2010/08/11/world/americas/11mexico.html?_r=3&.

⁶⁰ Matrimonio Entre Personas Del Mismo Sexo En El Distrito Federal. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XXXIV, Agosto de 2011, Tesis P./J 12/2011, Pagina 875 (Mex.)*, available at <http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=161270&Clase=DetalleTesisBL>.

⁶¹ Matrimonio Entre Personas Del Mismo Sexo. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Decima Época, libro XIX tomo I, Abril de 2013, Tesis 1ª. CIII/2013, Pagina 964*, available at

<http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=2003311&Clase=DetalleTesisBL>; Huffington Post, *Mexico's Supreme Court Declares Anti-Gay Marriage Law Unconstitutional* (5 December 2012), available at http://www.huffingtonpost.com/2012/12/06/mexico-gay-marriage-law-unconstitutional-_n_2249701.html.

⁶² CNN México, *La Suprema Corte ampara a tres parejas gay en Oaxaca que quieren casarse* (5 December 2012), available at, <http://mexico.cnn.com/nacional/2012/12/05/la-suprema-corte-ampara-a-tres-parejas-gay-en-oaxaca-que-quieren-casarse>

⁶³ Alfredo Mendez, *Amparó la SCJN a 39 oaxaqueños a los que se negó boda con persona del mismo sexo*, *La Jornada* (24 April 2014), available at <http://www.jornada.unam.mx/2014/04/24/sociedad/041n2soc>.

⁶⁴ *Id.*

⁶⁵ Sofia Negrete and Mauricio Contreras, *Celebran en León primera boda gay*, *Milenio* (19 March 2014), available at http://www.milenio.com/region/Primer-matrimonio-homosexual-Guanajuato-Leon_0_264574114.html.

Even after winning the women had won this injunction, their right to marry was denigrated.⁶⁶ The judge who performed the nuptials – who was the same judge who had refused to marry the women in 2013 – told the local media that he was marrying them only because he had been forced by the federal judiciary to do so, and he emphasized that same-sex marriage is still against the law in Guanajuato.⁶⁷ The Governor of Guanajuato, Miguel Marez, concurred, noting that his state still prohibits homosexual unions.⁶⁸

In April 2014, in Yucatan, the federal judiciary ruled in favor of a same-sex couple who had challenged the authorities' refusal to allow them to marry.⁶⁹ However, the Civil Registry of Marriage of Yucatán still did not marry them, but instead gave the couple a receipt entitled “compliance with judgment.” The couple contended that the Registry's issuance of the receipt amounted to an illicit simulation of legal process, since their marriage was not recorded in the marriage register. Unfortunately, the court that had issued the ruling determined that the Civil Registry of Marriage had complied with the ruling.⁷⁰

In sum, although Mexico City respects the right of same-sex couples to marry on the same basis as opposite-sex couples, and although there have been a few court rulings allowing some same-sex couples in other parts of Mexico to marry, Mexico as a whole continues to discriminate with respect to marriage.

E. Discrimination in social security benefits for same-sex married couples (violation of Articles 2 and 26).

In a positive development, Mexico's National Supreme Court of Justice ruled on 29 January 2014 that same-sex spouses of those who receive benefits under the country's social security system must receive the same benefits as their heterosexual counterparts.⁷¹ The following month, on 17 February 2014, the Mexican Social Security Institute (IMSS) issued a press release stating that it would extend social security benefits to same-sex married couples.⁷²

⁶⁶ Sofia Vazquez-Mellado, *Federal judge imposes first same-sex 'marriage' in one of Mexico's most conservative states*, LifeSiteNews (21 March 2014), available at <http://www.lifesitenews.com/news/federal-judge-imposes-first-same-sex-marriage-in-one-of-mexicos-most-conser>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ La Jornada, *Registro Civil de Yucatan burla sentencia judicial* (24 April 2014), available at <http://www.jornada.unam.mx/2014/04/24/estados/032n4est>.

⁷⁰ *Id.*

⁷¹ Amparo en Revision 485/2013. Expediente de la Suprema Corte de Justicia [SCJN][Supreme Court], Enero de 2014, available at https://www.scjn.gob.mx/SegundaSala/2da_listas_asuntosresueltos/LR%2029-01-14SUPR.pdf; Michael Lavers, *Mexican Supreme Court rules on gay partner benefits*, The Washington Blade (31 January 2014), available at <http://www.washingtonblade.com/2014/01/31/mexican-supreme-court-rules-gay-partner-benefits/>.

⁷² Belen Zapata, *El Seguro Social dará beneficios a los matrimonios del mismo sexo* CNN Mexico (17 February 2014), available at <http://mexico.cnn.com/nacional/2014/02/17/el-seguro-social-dara-beneficios-a-los-matrimonios-del-mismo-sexo>.

In practice, however, same-sex married couples continue to experience difficulties in registering their spouses with the IMSS for social security benefits.⁷³ The same difficulties are encountered with respect to spousal benefits under programs administered by the Institute for Social Security and Services for State Workers (ISSSTE).⁷⁴ The problems appear to stem from lack of appropriate training for IMSS and ISSSTE employees. An additional problem is that the IMSS law, as written, continues to describe eligibility for benefits using language applicable only to opposite-sex couples (i.e., “the wife of the insured man” or the “husband of the insured woman”), thus appearing to exclude benefits for same-sex couples.⁷⁵

Human rights defender Lol Kin Casteñeda reports that she has advised almost 20 couples whose social security rights have been denied. In her view, there are many such cases in Mexico.⁷⁶

F. Failure to allow transgender individuals to conform their identity documents to their gender identity (violation of Articles 2 and 26).

Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. Transgender individuals elsewhere in Mexico must live without this formal recognition of their gender identity.

Without legal recognition of transgender and transexual identity, trans individuals (other than those from Mexico City) are forced to identify themselves using credentials or ID cards that contain a name, gender, and photograph that do not correspond to their name, physical appearance or actual identity. This leads to discrimination by health care providers, public security officials, and potential employers.⁷⁷ In the employment sector, hiring discrimination against transgender women forces many into paid sex work, thereby exposing them to a heightened risk of violence and murder.⁷⁸

⁷³ Carlos Portillo, *IMSS e ISSSTE continúan discriminando a parejas homosexuales*, *Revolución Tres Punto Cero* (24 February 2014), available at <http://revoluciontrespuntocero.com/imss-e-issste-continuan-discriminando-a-parejas-homosexuales/>.

⁷⁴ *Id.*

⁷⁵ Ley de Seguro Social [LSS] [Social Security Law] *as amended*, Articles 84, Sections III and IV, and Article 130, *Diario Oficial de la Federación [DO]*, 2 April 2014 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/92.pdf>.

⁷⁶ *Id.*

⁷⁷ Centro de Apoyo a las Identidades Trans A.C., *Informe Crímenes de Mujeres Trans en México, Invisibilidad = Impunidad* (2012) at 4, available at http://api.ning.com/files/Kmd9nT1FlrI6KSQric9UFNzXuQCUFQucpkUeqnT6J*D1Qhsg47O*yiY3hcbriWcRV5MEsNvHkhwsq7zmASMI61T8N5BrJsO/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf.

⁷⁸ *Id.*

IV. Proposed Issues to be Included in List of Issues for Mexico

1. What steps will Mexico take (a) to prevent killings of LGBTI individuals because of their sexuality or their political activism as human rights defenders, (b) to develop appropriate protocols for the investigation and prosecution of such crimes, and (c) to maintain records of all such killings and the results of the ensuing investigations and prosecutions?
2. What steps will Mexico take to protect students from being bullied due to their sexual orientation or gender identity? In particular, what steps will Mexico take to ensure that all school administrators and teachers (a) create a climate of respect for sexual minorities, (b) firmly prohibit any form of bullying, and (c) take prompt and effective measures, in the event of bullying, to hold perpetrators accountable and provide appropriate compensation to victims?
3. What steps will Mexico take to ensure that same-sex couples are allowed to marry on the same basis as opposite-sex couples throughout Mexico? Will Mexico amend its Federal Civil Code to recognize marriage of same-sex couples?
4. What steps will Mexico take to revise the relevant laws and written policies, and to train and supervise all IMSS and ISSSTE staff, in order to ensure that same-sex married couples are allowed to register for social security spousal benefits on the same basis as opposite-sex married couples?
5. What steps will Mexico take to amend its federal and state laws to ensure that, throughout the entire country, transgender individuals are able to conform their identity documents to their gender identity?

Blind Alleys

PART III

***A Tri-Country Comparative Analysis:
Mexico, South Africa, and Uganda***

February 2013

The Unseen Struggles
of Lesbian, Gay, Bisexual,
Transgender and Intersex
Urban Refugees in Mexico,
Uganda and South Africa



Acknowledgements

This report was funded in part by a grant from the **United States Department of State**. The opinions, findings, and conclusions herein are those of the authors and do not necessarily reflect those of the United States Department of State.

The field research underlying this report was designed and conducted collaboratively by **ORAM** and several organizations in Uganda, South Africa, and Mexico. We thank the **Refugee Law Project (RLP)** at the School of Law of Makerere University in Uganda, which collaborated with ORAM on all aspects of the research and writing in Uganda. We convey special thanks to the refugee support group **Les Anges**, which provided us with essential insights as well as access to its members. We are proud to partner with RLP on the Uganda findings (see Part II of this publication). In Mexico, we thank refugee NGO **Sin Fronteras IAP**, which gave us advice and essential access to its clients. In South Africa, we express our gratitude to **Gender Dynamix, Holy Trinity Catholic Church, Lawyers for Human Rights**, and **PASSOP**.

This report is the result of the dedication of many individuals who are committed to research excellence and refugee protection. This project was conceived and directed by **Neil Grungras** and was brought to completion by **Cara Hughes** and **Kevin Lo**. Writing, editing, and project management were provided by **Charles Cohen, Steven Heller, Eunice Lee, Max Niedzwiecki, Charmaine Hedding, Ian Renner**, and **Beth Schecter**.

We thank **Siobhan McGuirk, Sanjula Weerasinghe, Elba Coria, Dusty Araujo, Oscar Aguil Berra**, and **Rachel Levitan** for their work coordinating and conducting the field research. We are particularly grateful to **Magdalena Aguilar Pulido, Anahid Bazarjani, Sarah Bluestone, Maia Bouatouch-Legrand, Ivan Contreras, Alan Delamora, Michael Gale, Nicholas Hersh, Elodie Joubert, Lucie Leblond, Minjae Lee, Marta Mateos, Darren Miller, Josselin Moreau, John Odle, Oraneet Orevi, Jenna Pierce, Odessa Powers, Aly Quiroz-Perez, Peter Stark, Alex Sheldon, Marjolaine Vignola**, and **Anna von Herrmann**. These dedicated interns and volunteers pored over thousands of pages of interview transcripts and translations over the course of months, assuring that every word and every comment by interviewees were meticulously taken into account in this report.

Cover art is by **Marconi Calindas**, an accomplished Filipino artist based in San Francisco. His paintings use vibrant colors and lines to express social and environmental concerns. The cover art, "To Carry You," emphasizes the support that LGBTI refugees desperately need on the complex path to safety. More information about the artist is available at www.marconicalindas.com.

These pages would be empty but for the refugees who bravely recounted their sagas seeking protection, as well as the dedicated NGO, UNHCR, and government staff who so earnestly shared their experiences and understandings of the refugees we all seek to protect. Were it not for the candor and commitment of all who participated in the study, the most salient recommendations of this report would have remained unstated.

SIGRID RAUSING TRUST



Blind Alleys

The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa

PART III

A Tri-Country Comparative Analysis: Mexico, South Africa, and Uganda

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	1
II. INTRODUCTION	2
A. Focus Countries: South Africa, Mexico, and Uganda	3
i. South Africa	3
ii. Mexico	4
iii. Uganda	4
B. Methodology	5
C. Summary of Principal Recommendations	6
III. BACKGROUND: SGN REFUGEES	7
IV. KEY FINDINGS	9
A. Abuses by State Authorities are Commonplace	10
B. Assaults by Local Populations and Other Refugees are Ubiquitous	11
C. Isolation Severely Limits SGN Refugees' Ability to Survive	12
D. Access to Health Care is Severely Hampered by Discrimination	12
E. Access to Information and Social Networks is Essential to SGN Refugee Survival	13
V. KEY RECOMMENDATIONS	14
A. Conduct Trainings	14
i. Internal Trainings	15
ii. External & Inter-Agency Trainings	15
B. Create and Inform SGN Information Networks	15
C. Partner with Local Non-profit Organizations	15
D. Create Comprehensive Advocacy and Service Programs	16
i. Legal Advocacy	16
ii. Sexual and Gender-Based Violence and Persecution Unit	17
iii. SGN Refugee Support Group	17
E. Assure Refugee Recognition and Improve Resettlement	17
i. UNHCR	17
ii. Resettlement Country Governments	18
VI. CONCLUSION	18

Glossary of Terms

SEXUAL ORIENTATION AND GENDER IDENTITY

Bisexual refers to an individual who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with people regardless of their gender or sex.¹

Gender Expression refers to the outward expression of an individual's gender, typically (though not limited to) through appearance, speech, behavior, mannerisms, and movement.

Gender Identity is each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.²

Gay refers to a self-identifying man who has the capacity for profound emotional, affectional and/or sexual attraction to and/or intimate sexual relations primarily with other men.³

Homophobia refers to a hatred or fear of homosexuals – that is, lesbians and gay men – sometimes leading to acts of violence and expressions of hostility.⁴

Intersex refers to a person who is born with reproductive or sexual anatomy and/or chromosome patterns that do not fit typical definitions of male or female.⁵

Lesbian refers to a self-identifying woman who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations primarily with other women.⁶

LGBTI is the acronym for “lesbian, gay, bisexual, transgender, and/or intersex.”

Sexual Orientation refers to a person's capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender, or more than one gender.⁷

Sexually and Gender Non-conforming (SGN) is an umbrella term used to refer to individuals whose sexual practices, attractions, and/or gender expression are different from the societal expectations based on their assigned sex at birth.⁸

Transgender is “[a]n umbrella term for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.”⁹

A **transgender woman** is a person who was assigned male at birth but identifies as a woman.¹⁰

A **transgender man** is a person who was assigned female at birth but identifies as a man.¹¹

Transphobia refers to negative attitudes and feelings toward transgender people. Transgender people feel that their gender identity (self-identification) does not correspond to one's assigned sex (identification by others as male or female based on genetic sex).¹²

REFUGEES AND ASYLUM

An **asylum seeker** is someone who has applied for or is in the process of seeking asylum from the government of the country of asylum, but who has not yet been granted that status.

Information Systems refer to the combination of people, processes, data, and technology. A website with job postings is an example of an information system.

Persecution, for the purposes of this report, refers to serious harm or threats of harm perpetrated on account of race, religion, nationality, political opinion, or membership of a particular social group. There is no universally accepted definition of “persecution.” Threats to life or freedom and/or other serious human rights abuses always amount to persecution; however, lesser harms or threats may cumulatively constitute persecution. Adjudicators should generally apply a totality-of-the-circumstances test to assess persecution.¹³

A **refugee** is a person “who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”¹⁴

Refugee Status Determination (RSD) is the process through which state officials in the country of asylum or UNHCR determine if an asylum seeker is a refugee based on “eligibility criteria under international or regional refugee instruments, national legislation or UNHCR's mandate.”¹⁵

Social Network refers to a group of individuals who share a commonality. The common element of the social networks discussed in this report is the bond between refugees based on their common SGN status.

ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
HIV	Human Immunodeficiency Virus
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
NGO	Nongovernmental Organization
ORAM	Organization for Refugee, Asylum & Migration
PRM	U.S. Department of State's Bureau of Population, Refugees and Migration
RSD	Refugee Status Determination
SGN	Sexual and Gender Nonconforming
SGBV/P	Sexual and Gender Based Violence or Persecution
UNHCR	United Nations High Commissioner for Refugees

1 See *Media Reference Guide – Transgender Glossary of Terms*, GAY & LESBIAN ALLIANCE AGAINST DEFAMATION (GLAAD), [hereinafter *GLAAD Guide*] <http://www.glaad.org/reference/lgb> (last visited Nov. 5, 2012).

2 INT'L COMM'N OF JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY 6 n.2 (2007), available at http://yogyakartaprinciples.org/principles_en.pdf (last visited Nov. 5, 2012).

3 *GLAAD Guide*, *supra* note 1.

4 *Homophobia*, ANTI-DEFAMATION LEAGUE, <http://www.adl.org/hatepatrol/homophobia.asp>

5 *FAQ*, ADVOCATES FOR INFORMED CHOICE, <http://aiclegal.org/faq> (last visited June 6, 2012)

6 *GLAAD Guide*, *supra* note 1.

7 INT'L COMM'N OF JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY 6 n.1 (2007), available at http://yogyakartaprinciples.org/principles_en.pdf.

8 See *Trans Basics: Glossary of Terms*, GENDER IDENTITY PROJECT OF THE LESBIAN, GAY, BISEXUAL, & TRANSGENDER COMMUNITY CENTER, <http://www.gaycenter.org/gip/transbasics/glossary> (last visited Nov. 5, 2012).

9 NAT'L CTR. FOR TRANSGENDER EQUAL., TRANSGENDER TERMINOLOGY 1 (2009), available at http://transequality.org/Resources/NCTE_Trans-Terminology.pdf.

10 *Id.* at 1.

11 *Id.*

12 *GLAAD Guide*, *supra* note 1.

13 UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, ¶ 51, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992).

14 Convention Relating to the Status of Refugees art. 1 § 2, July 28, 1951, 189 U.N.T.S. 150.

15 UNHCR, Self-Study Module on Refugee Status Determination 2 (Sept. 1, 2005), <http://www.unhcr.org/refworld/pdfid/43141f5d4.pdf>.

I. Executive Summary

Sexually and gender non-conforming (SGN) individuals are among the most vulnerable forced migrants in the world today. Persecuted by their families, communities, and governments in dozens of countries worldwide, they escape across international borders, often to find themselves shunned, abused, and persecuted yet again. While complete or accurate data on the numbers and demographic distribution of SGN refugees will likely never be available, it appears that most flee to urban centers. There, they often find environments no more tolerant than the ones they fled. They seek relative safety through isolation and anonymity.

Blind Alleys is a hallmark multi-country investigation of the protection of SGN urban refugees. In the disparate urban environments of Mexico, Uganda, and South Africa, ORAM's research found clear patterns of dangerous protection gaps. Our findings detail how SGN refugees are doubly marginalized: first because they are refugees, and again based on their sexual orientation and/or gender identity. This extreme marginalization renders these refugees particularly vulnerable to abuses by state and private actors alike. In all three of the countries examined, the refugees face discrimination and/or violence by state authorities, albeit with varying levels of severity. This mistreatment includes arbitrary arrests, beatings, sexual violence, extortion, and harassment. The same refugees also report suffering discrimination and abuse from locals and other refugees. Our findings bear out that for SGN refugees, crippling isolation is related to barriers accessing health care, employment, and other vital services.

This Part III of *Blind Alleys* provides an overview of our findings, along with a broad summary of our recommendations to stakeholders including governments, NGOs, and the United Nations High Commissioner for Refugees (UNHCR).

Part II of this publication sets out in three chapters our detailed findings on Mexico, South Africa, and Uganda. Of the three, **Mexico provides the most survivable environment for SGN forced migrants. Yet despite the positive legal environment and the relative improvement of Mexico in relation to countries of origin, SGN refugees there report abuse by criminal gangs (particularly along migratory routes), discrimination by locals and other migrants, and extortion by the authorities.** A similar dichotomy exists in South Africa between one of the most progressive constitutions in the world and the harsh reality these refugees must face on the ground. SGN refugees there confront widespread xenophobia and homophobia, corrective rape¹⁶, and other violence by both official and non-state actors. In addition, these individuals face discrimination in housing, health care, and the asylum process. In Uganda, our findings indicated extreme levels of harassment, discrimination, arbitrary arrest, extortion, physical/verbal abuse, and rape at the hands of locals, other refugees, and Ugandan police. For a detailed look at each of these countries' conditions for SGN refugees, Part II of the report is available online at www.oraminternational.org.



This publication introduces the term “sexually and gender nonconforming” (“SGN”) to refer to refugees of variant sexual orientations and gender identities. “SGN” is offered as an alternative to the prevalent Western agglomeration “LGBTI” (Lesbian, Gay, Bisexual, Transgender, and Intersex). While the LGBTI rubric has been adopted in many communities worldwide, most members of sexual and gender minorities are either unaware of the terminology or actively avoid such self-identification. “SGN” is an attempt to encompass all sexual and gender minority refugees, including those who do not conform to Western constructs.

¹⁶ Corrective rape refers to sexual violence specifically targeting SGN individuals for the ostensible purpose of turning them straight or punishing them for stepping outside accepted sexual and gender norms. See J.A. Nel & M. Judge, *Exploring Homophobic Victimization in Gauteng, South Africa: Issues, Impacts and Responses*, 21 ACTA CRIMINOLOGICA, no. 3, 2008 at 19, 24 n.2 (“Corrective rape seeks to justify the rape of those people who are perceived to not conform—or to disrupt—expected gender roles, behaviour and/or presentation.”); Emma Mittelstaedt, Comment, *Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations*, 9 CHI. J. INT'L L. 353, 354 n.8 (2008) (“Corrective rape” is the term used to describe the practice of raping African women and girls thought to be lesbians with the claimed purpose of turning them into ‘real African women’—the underlying belief being that homosexuality is a ‘disease’ imported by the white colonial empire.”).

Blind Alleys is available
in its entirety at
www.oraminternational.org

Part I contains our detailed guidance and recommendations for NGOs, governments, UNHCR and program funders. Part I sets out several approaches and strategies applicable to a variety of legal, economic, and social environments. Our recommendations include:

- Training agencies, protection officers, RSD staff, and NGOs which provide refugee assistance (e.g., information on SOGI claims and sensitive interviewing techniques);
- Ensuring SGN inclusion at each stage of refugee processing (e.g., adopting intake and RSD forms which allow full articulation of claims based on sexual orientation, gender identity, and gender expression);
- Securing recognition of SGN refugees by domestic protection authorities;
- Providing UNHCR mandate protection where domestic protection is unavailable;
- Expediting consideration of refugee claims of vulnerable SGN individuals;
- Creating information networks to improve SGN refugees' access to information systems;
- Fast-tracking resettlement of particularly vulnerable SGN refugees;
- Increasing the numbers of SGN refugees accepted for resettlement;
- Forming partnerships with organizations focused on sexual and gender minorities; and
- Initiating comprehensive advocacy and service efforts that connect organizations working in legal aid, sex and gender based violence, human rights issues, and refugee support.

II. Introduction



This report documents and analyzes protection gaps experienced by sexually and gender non-conforming (SGN)¹⁷ refugees in three focus countries: South Africa, Mexico, and Uganda. Through analysis of these disparate environments, our findings provide a broad overview of SGN refugees' experiences and reveal challenges and needs that cut across various countries and contexts. These results are based on 147 interviews conducted with SGN refugees and a broad collection of stakeholders, including representatives of local NGOs and service providers, refugee-serving NGOs, human rights and government asylum authorities, LGBTI organizations and community members, police, educational, and health authorities, international refugee NGOs, and the United Nations High Commissioner for Refugees (UNHCR).

SGN individuals are among the world's most vulnerable refugees. Most have fled persecution in their home countries on their own, without the support of their families or communities. Many have endured abuse, violence, rape, and torture. As a result, their physical and psychological health is often compromised. In countries of transit, the combined effects of these forced migrants' SGN identity and foreign status often yield a double marginalization

¹⁷ The acronym "LGBTI" is used increasingly in the refugee field to refer collectively to individuals of variant sexual orientations or gender identities. See, e.g., U.N. High Comm'r for Refugees, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/12/01 (Oct. 23, 2012), available at <http://www.unhcr.org/refworld/docid/50348afc2.html>. The "LGBTI" agglomeration is based on modern Western constructs which are unknown or are avoided in many areas of the world. "LGBTI" further presumes that members of its constituent groups identify within the fixed categories of "lesbian," "gay," "bisexual," "transgender," and "intersex." In actuality, SGN persons worldwide are largely unfamiliar with or decline to adopt these identities. When refugee adjudicators and others require conformance to these narrow categories in order to qualify applicants as "members of a particular social group," those who do not conform may be excluded from protection. See Laurie Berg & Jenni Millbank, Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants, 22 J. REFUGEE STUD. 195 (2009).

including social exclusion, severe discrimination, and violence at the hands of the local community, authorities, and fellow refugees. Urban centers offer SGN refugees anonymity, some level of tolerance, local LGBTI communities, and opportunities for economic survival. At the same time, cities are often characterized by violent personal crime, high living costs, extreme income disparities, and intricate social and physical environments that can be difficult to navigate. Our research focused on SGN refugees in urban areas of Mexico, South Africa, and Uganda. Based on this work and on ORAM's knowledge in other areas of the world, we are able to draw and extrapolate key conclusions regarding the state of SGN urban refugees worldwide.

SGN individuals are just now beginning to enter the consciousness of agencies and organizations charged with refugee protection. There is a pressing need for information on the protection gaps facing these refugees in countries of transit, as well as appropriate mechanisms to narrow those gaps. This comparative report seeks to guide the United Nations High Commissioner for Refugees (UNHCR), governments, funders, and non-governmental organizations (NGOs) in their protection of SGN refugees in urban settings. The report systematically details sparsely-available information about these individuals and makes practical recommendations for their protection.

A. FOCUS COUNTRIES: SOUTH AFRICA, MEXICO, AND UGANDA

Our research was undertaken with the assumption that although the survival environment in each country studied is unique, SGN refugees worldwide share many common experiences. South Africa, Mexico, and Uganda were chosen because of their widely variant legal, social, and [Supp. Page #156](#)

economic environments for refugees in general and for SGN people in particular. Through analysis of the findings, we provide a broad overview of SGN refugees' experiences and we reveal challenges and needs which cut across a broad spectrum of countries and contexts.

i. South Africa

South Africa boasts one of the world's most progressive legal environments for both refugees and SGN individuals. The South African Constitution was the first in the world to enshrine equal rights for SGN citizens.¹⁸ South Africa is also the only country on the continent with an openly SGN community and infrastructure.¹⁹ The country has enacted exemplary laws governing refugee status determination and has extended to asylum seekers and refugees most of the rights accorded to citizens. This includes the right to work.²⁰ Compared with other states in the region, South Africa enjoys a modern and advanced economy that offers many migrants a chance to survive. For these reasons, SGN individuals fleeing persecution often see South Africa as a viable destination.²¹

In contrast, the lived realities of SGN refugees in South Africa can be exceedingly harsh. The South African asylum system is severely overburdened, resulting in inefficiencies and barriers which prevent individuals from accessing the legal rights and services to which they are entitled.²² Discrimination against

While the situation for SGN refugees in South Africa is complex, it is characterized largely by a stark disparity between official legal rights and their practical enjoyment.

18 UK HOME OFFICE BORDER AGENCY COUNTRY OF ORIGIN INFORMATION SERVICE, SOUTH AFRICA COI REPORT §19.03 (2010); Jacklyn Cock, *Engendering Gay and Lesbian Rights: The Equality Clause in the South African Constitution*, 26 *Women's Stud. Int'l F.* 35, 35 (2002).

19 HUMAN RIGHTS WATCH & INT'L GAY AND LESBIAN HUMAN RIGHTS COMM'N, MORE THAN A NAME: STATE SPONSORED HOMOPHOBIA AND ITS CONSEQUENCES IN SOUTHERN AFRICA 179 (2003) [hereinafter MORE THAN A NAME].

20 U.N. HIGH COMM'R FOR REFUGEES, UNHCR STATISTICAL YEARBOOK 40 (2009).

21 MORE THAN A NAME, *supra* note 2, at 179 ("South Africa is the only country on the continent to have openly gay and lesbian bars, newspapers and magazines, NGOs and community centers. It even has, in Cape Town, a tourist industry catering to gay visitors. Many gay and lesbian people from surrounding countries told us they hoped, someday, to emigrate to South Africa.")

22 Jeff Crisp & Esthe Kiragu, *Refugee Protection and International Migration: A Review of UNHCR's Role in Malawi, Mozambique and South Africa*, UN HIGH COMM'R FOR REFUGEES (Aug. 2010), <http://www.unhcr.org/4c629c4d9.html>.



Photo by Andreas Nilsson
<http://www.flickr.com/photos/andreasnilsson1976/287955203/>

Most refugees do not perceive Mexico as a country of final destination. An overwhelming majority of SGN forced migrants in Mexico are in transit to other countries, notably the United States or Canada.

foreigners and xenophobia are pervasive challenges to refugees' struggle to integrate and survive.²³ Furthermore, progressive legislation has not diminished violence, oppression, marginalization, and discrimination that SGN individuals face on the ground.²⁴ While the situation for SGN refugees in South Africa is complex, it is characterized largely by a stark disparity between official legal rights and their practical enjoyment.

ii. Mexico

Most refugees do not perceive Mexico as a country of final destination. An overwhelming majority of SGN forced migrants in Mexico are in transit to other countries, notably the United States or Canada.²⁵ These refugees, particularly those coming from Central America, travel along dangerous migratory routes. On these routes, SGN individuals are doubly marginalized and are often abused by criminal gangs and by other migrants.²⁶

The legal environment for SGN individu-

als in Mexico features several positive developments. Same-sex marriage has been legal in Mexico since a 2010 Mexican Supreme Court decision, and a 2011 amendment to the Mexican Constitution protects against discrimination on the basis of "sexual preferences."²⁷ Mexico City, the country's capital, is particularly progressive and protective in both legal and social spheres.²⁸ However, societal discrimination based on sexual orientation and gender identity is prevalent in other areas of the country, and violent hate crimes are common.²⁹

iii. Uganda

Uganda is located in the Great Lakes region of East Africa, an area which has been plagued by conflict for decades. The country enjoys a less developed economy than Mexico or South Africa. According to UNHCR statistics, refugees in Uganda are largely from neighboring countries including Burundi, the Democratic Republic of Congo, Eritrea, Ethiopia, Rwanda, Somalia, Sudan, and South Sudan.³⁰ Refugees in Uganda's urban areas continue to face many substantive and procedural barriers to obtaining refugee status and successfully integrating into the local society. Serious problems, including "lack of standard official procedures and misunderstandings relating to international obligations[,] can lead to delays, unwarranted rejection of refugee status and general confusion among asylum seekers."³¹

Unlike their counterparts in South Afri-

23 FORCED MIGRATION STUDIES PROGRAMME, UNIVERSITY OF THE WITWATERSRAND, NATIONAL SURVEY OF THE REFUGEE RECEPTION AND STATUS DETERMINATION SYSTEM IN SOUTH AFRICA 22 (Feb. 2009).

24 Press Release, Univ. of the W. Cape Cmty. Law Ctr., Call on South African Government to redeem itself at UN by protecting the rights of LGBT People (Dec. 17, 2010), available at http://www.peopletoparlament.org.za/focus-areas/human_rights_democracy/press-releases/LGBT/view.

25 UNHCR Hails Mexico as New Refugee Law Comes into Force, UN High Comm'r for Refugees (Jan. 28, 2011), available at <http://www.unhcr.org/refworld/docid/4d465de62.html>.

26 See interview by ORAM with MX - S12 (stating that "when one has several [disadvantageous] traits, discrimination increases").

27 US DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2010 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES IN MEXICO (2011), available at <http://www.state.gov/g/drl-rls/hrrpt/2010/wha/154512.htm> [HUMAN RIGHTS PRACTICES IN MEXICO 2010]; ENADIS 2010: NATIONAL SURVEY ON DISCRIMINATION IN MEXICO (2011), available at <http://www.conapred.org.mx/redes/userfiles/files/ENADIS-2010-Eng-OverallResults-NoAccess.pdf>.

28 US DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR 2006 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES IN MEXICO (2007), available at <http://www.state.gov/g/drl-rls/hrrpt/2006/78898.htm>.

29 HUMAN RIGHTS PRACTICES IN MEXICO 2010, supra note 26; Laura Maciel, Hate Crimes Against Homosexuals, in *The Darkness...*, CNN Mexico (May 17, 2011), available at http://www.asylumlaw.org/docs/sexualminorities/MexicoCNO_51711.pdf (translation by Dusty Aranjó on file with author).

30 UNHCR, 2012 COUNTRY OPERATIONS PROFILE UGANDA (2012) available at <http://www.unhcr.org/pages/49e483c06.html>.

31 REFUGEE LAW PROJECT, LEGAL AND PSYCHOSOCIAL DEPARTMENT, http://www.refugeelawproject.org/legal_a/d.php (visited August 6, 2012).

ca and Mexico, SGN refugees in Uganda are systematically deprived of legal protection specifically because of their non-conforming sexual orientation or gender identity. The Ugandan Penal Code criminalizes consensual same-sex sexual activity between adults.³² In this restrictive legal environment, SGN individuals are denied access to police protection and are incarcerated without trial or conviction. They are often harassed, arrested arbitrarily, and tortured.³³

A devastating new threat to SGN refugees was added to these realities in the Ugandan so-called Anti-Homosexuality Bill (AHB), first proposed in 2009 and reintroduced in 2012. The AHB includes a number of draconian new measures punishing same-sex conduct and criminalizing persons or organizations providing support to LGBTI individuals. Known versions of the bill would create an environment where any support for LGBTI issues or individuals could be penalized as “promotion of homosexuality.”³⁴ The AHB not only criminalizes homosexuality; it would require medical workers and other service providers to disclose their knowledge of a person’s homosexuality or face criminal charges.³⁵ If the AHB is passed as promulgated, providing assistance to LGBTI refugees could be legally targeted and punished.

The social environment for SGN refugees

None of the recommendations in this report should be understood to advocate for NGO activities that violate the laws of any country. NGOs working in hostile environments are urged to be mindful of potential state or non-state hostility or targeted legal action against those undertaking SGN-identified protection activities. NGOs are advised to confer with trusted legal counsel during program planning stages and to develop activities and materials accordingly.

in Uganda is similarly difficult. SGN persons there suffer pervasive discrimination in education and employment. They are often expelled from their homes, schools, and jobs merely for being SGN.³⁶ Non-state actors commit abuses with impunity, knowing that law enforcement authorities often will not protect SGN people or prosecute aggressors.³⁷

Although it is a destination country for refugees from other East African states, Uganda produces its own refugees in high numbers. For SGN refugees who face one of the world’s most restrictive legal and social environments, meaningful international protection in Uganda is often unattainable.

B. METHODOLOGY

This report is based on voluminous field research in three focus countries: South Africa, Mexico, and Uganda. Approximately fifty SGN refugees and stakeholders, including representatives of refugee-serving NGOs, LGBTI organizations, UNHCR, and government agencies, were interviewed in each of the countries studied. A total of 147 interviews were conducted in a variety of languages, including English, French, Luganda, Spanish, and Swahili, according to pre-formulated topics and questions. All relevant interviews

Uganda’s Anti-Homosexuality Bill includes a number of draconian new measures punishing same-sex conduct and criminalizing persons or organizations providing support to LGBTI individuals.

32 Sections 145 through 148 of the Penal Code Act of 1950 (“Penal Code”), commonly referred to as the “sodomy” laws, are Uganda’s primary effective provisions criminalizing same-sex acts, including consensual acts. Section 145 prohibits “unnatural offences” (defined as “carnal knowledge of another person against the order of nature”) and imposes a penalty of life in prison. Any “attempt to commit” an unnatural offence (Section 146), or any “act of gross indecency” or “attempt to procure” such an act, whether conducted in public or in private (Section 148), entails a punishment of seven years in prison. Section 147 imposes a penalty of fourteen years in prison for anyone who “unlawfully and indecently assaults a boy” less than eighteen years old, which effectively includes consensual same-sex acts between teenage boys. Penal Code Act of 1950, as amended, §§145-48, LAWS OF UGANDA Cap. 120 (Rev. ed. 2000), as amended, Penal Code (Amendment) Act of 2007.

33 AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT – UGANDA (2011), available at <http://www.amnesty.org/en/region/uganda/report-2011>. *Gay Man From Uganda Seeks Fear-Based Relief from Deportation*, CAIR COALITION (April 16, 2012), available at <http://www.caircoalition.org/2012/04/16/gay-man-from-uganda-seeks-fear-based-relief-from-deportation/>.

34 Anti-Homosexuality Bill, 2009, Parl. Bill [18] cl. 13(1)(e) (Ug.).

35 Anti-Homosexuality Bill, 2009, Parl. Bill [18] cl. 14 (Ug.).

36 INT’L GAY & LESBIAN HUMAN RIGHTS COMM’N, SHADOW REPORT ON THE VIOLATION OF THE HUMAN RIGHTS OF LESBIAN, BISEXUAL, TRANSGENDER (LBT), AND KUCHU PEOPLE IN UGANDA (Oct. 2010), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf>.

37 GLOBAL FORUM FOR MSM & HIV, EFFECTS OF A TWO YEAR SUSTAINED ANTI-GAY CAMPAIGN ON HEALTH SEEKING BEHAVIOUR OF THE SEXUAL MINORITIES IN UGANDA (2010), available at <http://www.msngf.org/files/msngf/SubSaharanAfrica/EffectsUganda.pdf>.

were transcribed and, where necessary, translated into English. This resulted in over 2,000 pages of transcripts, which were coded and categorized into areas of protection gaps and issues. This data was in turn aggregated into three separate “findings” papers on Uganda, Mexico, and South Africa.³⁸ Stakeholders

were also interviewed for recommendations on proposed manners of narrowing the protection gaps identified. These findings and recommendations were then analyzed and summarized into this comparative report and into Part I of this trilogy: *Guidance for NGOs, Governments, UNHCR, and Program Funders*.

³⁸ Interviews cited in this report are coded in the following way: Country abbreviation – Interviewee identity abbreviation & Number interview with that particular identity within that country. For example: MX - G1 means the interview is from Mexico and it is the first interview with a gay refugee. The following country abbreviations are used in this report: South Africa = SA; Uganda = UG; and Mexico = MX. The following identity abbreviations are used in this report: G = gay; L = lesbian; TW = trans woman; TM = trans man; and S = stakeholder.

C. SUMMARY OF PRINCIPAL RECOMMENDATIONS

Our findings reveal deep and dangerous protection gaps for SGN urban refugees in all three countries. We provide a blueprint for multi-faceted solutions directed towards ameliorating those gaps in these countries and worldwide.

Based on our findings and analysis — and above all based on the direct feedback of SGN refugees and the advocates working to assist them — we make the following recommendations to NGOs, governments, and other stakeholders in several key areas:

Build knowledge and capacity through ongoing, context-specific trainings.

These trainings will encourage staff to engage openly with issues of sexual orientation and gender identity while avoiding stereotypes and uninformed assumptions. More accepting environments for SGN refugees will emerge as a result.

Form and inform SGN information networks.

Since SGN refugees are often isolated and unable to access the information and services they need to survive, it is important to foster robust information networks. Built on existing social systems and technologies, these networks can allow refugees to support one another during their displacement and enable NGOs to effectively connect them with needed resources.

Partner with local organizations that focus on, and/or are rooted in, the LGBTI community.

These partnerships are essential to building effective referral pathways and identifying SGN refugees who are hiding in the shadows. NGOs can provide insights about SGN refugees and promote ways of filling their basic needs within host communities.

Develop comprehensive advocacy and service efforts focused on SGN refugees.

These should include legal aid, programs to prevent and ameliorate the effects of sexual and gender-based violence, partnerships among groups that represent a broad array of human rights issues, and refugee support groups.

Improve RSD and resettlement of vulnerable SGN refugees.

UNHCR is urged to expedite consideration of SGN claims and to fast-track resettlement referral of recognized SGN refugees. In countries where domestic systems do not protect SGN people adequately, the refugee agency is urged to wield its mandate RSD authority. UNHCR should likewise implement and utilize forms and data systems which are SGN-inclusive. Resettlement country governments should accept direct referrals of SGN refugees where international protection is unavailable or inaccessible. Governments are also advised to resettle and place SGN/LGBTI refugees in locations with established LGBTI communities, and to increase the number of SGN refugees accepted for resettlement.

III. Background: SGN Refugees

The number of SGN people who seek and receive protection through the international refugee system is unknown. UNHCR does not maintain formal statistics regarding these refugees and asylum seekers.³⁹ Moreover, at the time of publication, of the 100 nations with functioning asylum systems,⁴⁰ statistics on LGBTI cases considered or granted are available only for Belgium, Norway, and the United Kingdom.⁴¹ While the number of countries reporting is too small and their cultures too proximate (all are in Western Europe) to allow accurate extrapolation to other areas of the world, the available statistics indicate that between four and six percent of asylum seekers and refugees may be fleeing their countries because of their sexual orientation or gender identity. It is likely that the vast majority of LGBTI refugees and asylum seekers conceal their identities and their motivations for flight from adjudicators and service providers alike.

Thus, already among the world's most pervasively and violently persecuted people, SGN individuals confront immense barriers to international refugee protection. While over 175 million live under conditions of peril or violence worldwide, ORAM estimates that fewer than 2,500 attain international protection in a given year based on their SGN identity.⁴²

Those whose sexual orientation or gender identity is perceived as digressing from cultural norms often face systematic violence including rape, physical attack, torture, and murder.⁴³ They are subjected to arbitrary detention, denial of rights to assembly, expression, and information, and discrimination in employment, health, and education.⁴⁴ In many areas of the world, SGN individuals are routinely denied access to police protection and even suffer violence at the hands of law enforcement authorities.⁴⁵ More than seventy-six countries criminalize same-sex relations for men, women, or both.⁴⁶ At the time of publication, seven countries — Mauritania, Sudan, Iran, Saudi Arabia, Yemen, and some parts of Nigeria and Somalia — prescribe the death penalty for consensual same-sex relations. Others punish seemingly nonconforming sexual orientations or gender identities.⁴⁷ Many countries also apply morality laws or ostensibly neutral legislation to restrict LGBTI individuals' rights to free speech, assembly, privacy, and personal dignity.⁴⁸ These environments pose severe, and most often insurmountable, barriers to refugees' "coming out," or self-identifying as sexual and gender minorities. This is true in their home countries as well as in countries of asylum.



While over 175 million live under conditions of peril or violence worldwide, ORAM estimates that fewer than 2,500 attain international protection in a given year based on their SGN identity.

39 See HUMAN RIGHTS FIRST, PERSISTENT NEEDS AND GAPS: THE PROTECTION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) REFUGEES (2010), available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Persistent-Needs_LGBTI_Refugees_FINAL.pdf (citing the need to fill gaps in policy and practice concerning LGBTI refugees).

40 See UN HIGH COMM'R FOR REFUGEES, 2010 UNHCR STATISTICAL YEARBOOK 41 (10th ed. 2011), available at <http://www.unhcr.org/4ef9cc9c9.html>.

41 See U.K. HOME OFFICE NAT'L ARCHIVES, CONTROL OF IMMIGRATION: QUARTERLY STATISTICAL SUMMARY 3 (2d ed. 2008), available at <http://webarchive.nationalarchives.gov.uk/20110218142807/rds.homeoffice.gov.uk/rds/pdfs09/immq408.pdf> (noting that of the 25,670 asylum applications submitted in the United Kingdom in 2008, an estimated 1,200 to 1,800 were based on sexual orientation or gender identity); see also REFUGEE SUPPORT, OVER NOT OUT: THE HOUSING AND HOMELESSNESS ISSUES SPECIFIC TO LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM SEEKERS 8 (2009), available at http://www.refugeesupport.org.uk/documents/MST_LGBTexec_screen_0509.pdf (noting that in Belgium the proportion in 2010 was 522 LGBT applicants out of 13,170 total asylum applicants); Letter from Official, Norwegian Directorate of Immigration, Asylum Department (Feb. 3, 2012) (noting that UDI cautions that its statistics are based on manual reporting and that the actual number of refugees seeking protection on account of sexual orientation or gender identity based persecution may be higher) (on file with author).

42 See *infra* Figure 1.

43 UN High Comm'r for Refugees, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity: Rep. of the U.N. High Commissioner for Human Rights*, Human Rights Council, ¶1, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011) available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf [hereinafter *Discriminatory Laws and Practices*].

44 *Id.* ¶¶ 47–65.

45 *Id.* ¶¶ 35–36, 42.

46 LUCAS PAOLI ITABORAHY, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, STATE-SPONSORED HOMOPHOBIA 4 (2012).

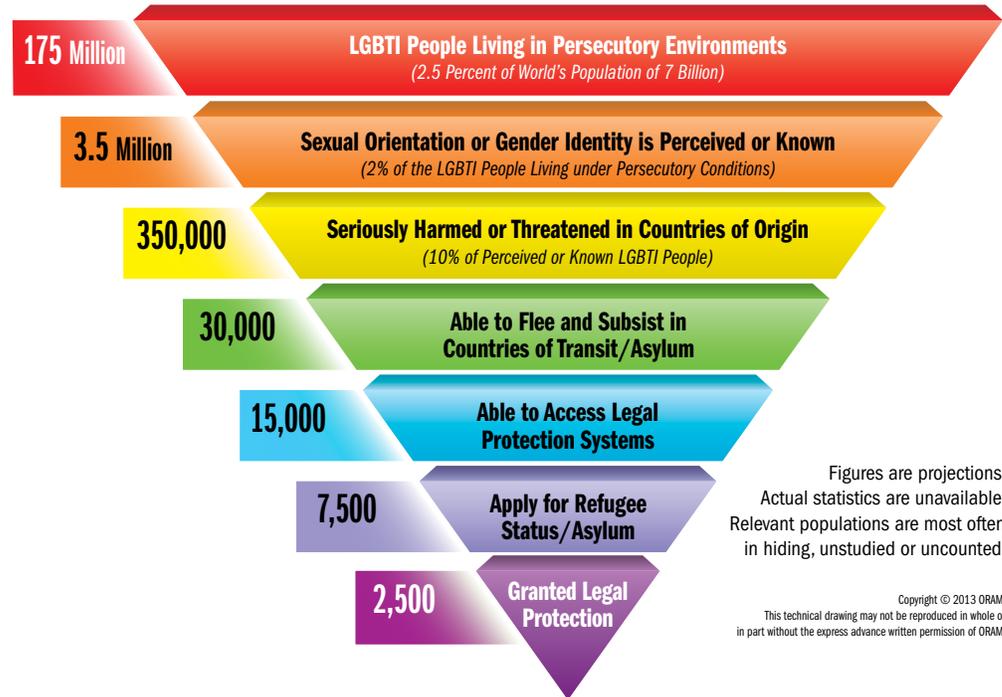
47 *Id.*

48 See, e.g., HUMAN RIGHTS WATCH, WE ARE A BURIED GENERATION: DISCRIMINATION AND VIOLENCE AGAINST SEXUAL MINORITIES IN IRAN 22 (2010), available at http://www.hrw.org/sites/default/files/reports/iran1210webcover_1.pdf (explaining that LGBT individuals in Iran are routinely subject to charges "related to offenses against public morals or chastity instead of sexual crimes"). See generally *Discriminatory Laws and Practices*, *supra* note 42, at 15.

FIGURE 1

Flow of Lesbian, Gay, Bisexual, Transgender, and Intersex People Through the International Protection System

(Estimated figure per year)



The scant statistics available indicate that most of the SGN individuals who seek protection based explicitly on their sexual orientation or gender identity do so in LGBTI-“tolerant” countries including the United Kingdom, Belgium, the Netherlands, the United States, Canada, and Australia. These nations boast LGBTI communities that enjoy recognized legal rights, as well as economies that permit socially marginalized populations to survive. In contrast, many of the countries to which SGN individuals flee are adjacent to and share cultural characteristics with the refugees’ home countries, including hostility towards SGN people.⁴⁹ In addition, other migrants, with whom SGN refugees must often

interact, carry their home-country attitudes to their countries of passage. As a result, while environments for LGBTI people are less hostile in some countries of asylum than in others, serious survival challenges are ubiquitous.

Refugees who are identified as SGN report they are profoundly marginalized on that account and are excluded from meaningful protection. These individuals commonly undergo consistent, often violent harassment by local communities and refugee populations.⁵⁰ Most are denied adequate police protection or are targeted for harassment, extortion, or violence by the authorities.⁵¹ These same refugees are also marginalized as foreigners. They therefore have difficulty securing adequate housing, health care, and employment.⁵²

The inverted triangle (Figure 1) shows how few of the SGN individuals who face

49 See, e.g., *Straight but Narrow*, Economist (Feb. 4, 2012), <http://www.economist.com/node/21546002> (“[O]f the seven countries that impose the death penalty for homosexuality, all are Muslim.”). See generally, Phillip Tahmindjis, *Sexuality and International Human Rights Law*, 48 J. HOMOSEXUALITY 9, 21–22 (2008) (“[W]hile the application of human rights generally to GLBT communities is uneven, there is no question that the GLBT rights movement is developing, although the principal advances to date have been in western countries.... [I]n some regions, antipathy to GLBT rights can be so strong that nice questions of legal definition and process do not have an opportunity to arise.”).

50 ORAM, UNSAFE HAVEN: THE SECURITY CHALLENGES FACING LESBIAN, GAY, BISEXUAL & TRANSGENDER ASYLUM SEEKERS & REFUGEES IN TURKEY 3-5 (June 2011).

51 *Discriminatory Laws and Practices*, supra note 42, ¶¶ 35–36.

52 *Id.* ¶¶ 54–57.

persecution worldwide actually access the international refugee protection system. In this diagram, of 175 million persons in peril in their home countries worldwide, only 17,500 manage to escape. Of these, only 7,500 seek legal protection. Of those, only 5,000 are actually able to apply for refugee status or asylum. In the end, only a tiny handful of the world's imperiled SGN people — estimated by ORAM at fewer than 2,500 per year worldwide — are granted legal protection based on

their sexual orientation or gender identity.⁵³ These estimates do not include the vast majority of persons who are believed to conceal their identities from adjudicators or who obtain refugee protection on grounds unrelated to their sexual orientation or gender identity.

⁵³ Based on available figures for particular countries, one can extrapolate that between 4 and 6 percent of the asylees in key countries of destination could be lodging claims based on their LGBTI status. See REFUGEE SUPPORT, OVER NOT OUT: THE HOUSING AND HOMELESSNESS ISSUES SPECIFIC TO LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM SEEKERS 8 (2009), available at http://www.refugeesupport.org.uk/documents/MST_LGBTExec-_screen_0509.pdf (stating that of 25,670 asylum applications submitted in the United Kingdom in 2008, an estimated 1,200 to 1,800 were based on sexual orientation or gender identity); see also OFFICE OF THE COMM'R GENERAL FOR REFUGEES AND STATELESS PERSONS, 2010 ANNUAL REPORT 11-12 (2011), available at http://www.cgira.be/en/binaries/2010%20Annual-%20EN_tcm266-151869.pdf (stating that in Belgium in 2010, 522 out of a total of 13,170 applications were based on sexual orientation or gender identity).

IV. Key Findings

Our research aims to shed light on the most significant protection gaps confronting urban SGN refugees. In our interviews with refugees and other stakeholders in Mexico, Uganda, and South Africa, we discovered that SGN refugees in all three countries face similar challenges in their attempt to survive and to navigate the displacement cycle. These challenges include:

- Pervasive abuse by state authorities and government officials;
- Exclusion and harassment by local populations and other refugees;
- Isolation and discrimination preventing access to services, employment, and integration;
- Insufficient and unavailable health care, especially for unique needs of SGN people; and
- Inadequate access to information systems and social networks.

In Section V, we provide key recommendations on how to address these patterns of discrimination and persecution, as well as specific recommendations for UNHCR and governments of resettlement countries.

Supp. Page #162





“When the police know where they live, they will harass them constantly. When they are blackmailed by police, they have to give in for survival.”

A. ABUSES BY STATE AUTHORITIES ARE COMMONPLACE

SGN refugees in Mexico, Uganda, and South Africa all report discrimination and/or violence by state authorities, albeit at varying levels of severity. The most widespread and serious abuses were reported in Uganda. All interviewees known as SGN reported having been arrested or abused by Ugandan police, often multiple times. Police also target SGN refugees for extortion. One stakeholder observed, “When the police know where they live, they will harass them constantly. When they are blackmailed by police, they have to give in for survival.”⁵⁴ Many interviewees report physical and sexual violence in police detention, including rape by officers and prison guards.⁵⁵ Refugees in Uganda who successfully conceal their SGN identity tend to report less violence, harassment, and extortion by the state authorities.⁵⁶ The regular abuse results in pervasive feelings of helplessness and heightened physical insecurity. One interviewee expressed the opinion that criminalization of same-sex relations is at the root of the problem: “Police mistreat us, beat us, take our money, rape us.... We don’t have

security because it’s illegal. If it was legal we would have security.”⁵⁷

In Mexico, refugees generally reported positive interactions with the authorities, although a few had experienced verbal abuse and discrimination by police and other officials. Rather than characterizing this treatment as abuse, interviewees commonly perceived official harassment as an inevitable fact of life. Some refugees in Mexico reported being subjected to violence, threats, or sexual exploitation. For instance, a transgender interviewee stated that some police officers had attempted to coerce her into sex in exchange for “a pack of cigarettes or whatever [she] asks for.”⁵⁸ The vast majority of interviewees described extortion by police, again “normalizing” these occurrences as unavoidable. One interviewee explained why he could not report that a guard had stolen money from him in detention: “[I]f I denounce[d] him, he would’ve lost his job, he would’ve killed me.... Here in Mexico it’s like this.... That is the law in Mexico.”⁵⁹

While SGN refugees in South Africa reported little physical violence by the authorities, many had experienced arbitrary arrest, harassment, extortion, and discrimination. Most interviewees believed this mistreatment was due to their nationality. A few stakeholders reported that government officials in South Africa discriminate on account of sexual orientation or gender identity.⁶⁰ Many SGN refugees also reported extortion by police, security guards, and other government officials. Some interviewees said they had been forced to pay bribes in order to gain access to Refugee Reception Offices.⁶¹

⁵⁴ Interview with UG – S5.

⁵⁵ Interview with UG – G5; UG – TW3.

⁵⁶ Interview with UG – L3.

⁵⁷ Interview with UG – L8.

⁵⁸ Interview by ORAM with MX – TW2.

⁵⁹ Interview by ORAM with MX – G1.

⁶⁰ Interview by ORAM with SA – 47.

⁶¹ Interview by ORAM with SA – 12/SA – 29.

B. ASSAULTS BY LOCAL POPULATIONS AND OTHER REFUGEES ARE UBIQUITOUS

By definition, refugees and asylum seekers are outside their countries of origin. As new arrivals in an unfamiliar place, they face a myriad of new challenges. Refugees are confronted with the daunting tasks of securing employment and shelter, accessing vital services, and procuring basic necessities. SGN refugees usually face these challenges in utter isolation from their families, from whom many are in fact escaping. SGN migrants must simultaneously navigate new languages, cultures, and social environments. In many countries, racism and xenophobia pose additional barriers to successful integration, and local communities subject incoming refugees to violent hate crimes and discrimination.⁶²

While refugee communities usually provide critically-needed support, SGN individuals are most often excluded from these social networks.⁶³ SGN refugees are doubly marginalized; they are discriminated against by local communities hostile to both refugees and SGN individuals, while they are victimized by other refugees.⁶⁴ These realities are common to Uganda, South Africa, and Mexico alike.

SGN refugees' common experiences of abuse include verbal harassment, ostracism, discrimination and physical violence. In Uganda, refugees report widespread violence by locals and other refugees. Common forms of physical violence include rape, beatings, stoning, and robbery. Eight of the eleven male SGN refugees we interviewed in Uganda had been raped. All lesbian interviewees had ex-

perienced some form of sexual violence. Only a small percentage of SGN refugees feel they can practically or safely live with their partner in Uganda. Most emphasized that they had to hide their SGN identity from neighbors and landlords. Many interviewees reported positive experiences with faith-based communities only if they concealed their SGN identities.

In South Africa, SGN refugees reported severe double marginalization on account of being foreigners and because of their sexual orientation or gender identity. More than half of the interviewees reported having been injured, threatened, or robbed in line outside a Refugee Reception Office. "Corrective rape" is a concern for all lesbian and transgender refugees.⁶⁵ As one advocate summarized: "[Y]ou have the migrant community, and you have the queers, and where do they fit in? The gay community doesn't want them, the South African community doesn't want them. You have hate crimes, corrective rape, you've got xenophobia ...and there's not really a legitimate space for them to exist."⁶⁶ Seven of eleven refugees reported having at least one LGBT friend in South Africa, and noted that they received support from an LGBT individual, organization, or community. Only one of eleven reported positive relations with non-LGBT persons in South Africa. Most attributed this to being SGN or foreign.

In Mexico, the refugees interviewed reported abuse not only by criminal gangs, but also by other migrants. Most serious abuses

"You have the migrant community, and you have the queers, and where do they fit in? The gay community doesn't want them, the South African community doesn't want them. You have hate crimes, corrective rape, you've got xenophobia...and there's not really a legitimate space for them to exist."

62 UN Refugee Agency Outlines Strategy to Fight Xenophobia and Racism, UN NEWS CENTRE (Dec. 23, 2009), <http://www.un.org/apps/news/story.asp?NewsID=33330&Cr=racism&Cr1#.UJ1QmchXh8>.

63 ORAM, RAINBOW BRIDGES: A COMMUNITY GUIDE TO REBUILDING THE LIVES OF LGBTI REFUGEES AND ASYLEES 1 (2012).

64 HUMAN RIGHTS FIRST, PERSISTENT NEEDS AND GAPS: THE PROTECTION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) REFUGEES 6 (2010).

65 Corrective rape refers to sexual violence specifically targeting SGN individuals for the ostensible purpose of turning them heterosexual or punishing them for stepping outside accepted sexual and gender norms. See J.A. Nel & M. Judge, *Exploring Homophobic Victimization in Gauteng, South Africa: Issues, Impacts and Responses*, 21 ACTA CRIMINOLOGICA, no. 3, 2008 at 19, 24 n.2 ("Corrective rape seeks to justify the rape of those people who are perceived to not conform—or to disrupt—expected gender roles, behaviour and/or presentation."); Emma Mittelstaedt, Comment, *Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations*, 9 CHI. J. INT'L L. 353, 354 n.8 (2008) ("Corrective rape" is the term used to describe the practice of raping African women and girls thought to be lesbians with the claimed purpose of turning them into 'real African women'—the underlying belief being that homosexuality is a 'disease' imported by the white colonial empire.).

66 Interview by ORAM with SA – 3; SA – 36.

Pervasive discrimination compounds the marginalization and isolation already plaguing SGN refugees. Particularly in Uganda, interviewees reported isolating themselves to avoid problems with employers, landlords, and others.

by non-state actors reportedly occurred along migratory routes. **Consistent with the reports of refugees, stakeholders said transgender women are particularly vulnerable.** While many SGN refugees reported that Mexico was an improvement over their country of origin, many nevertheless said they were isolated and lacked community support.

C. ISOLATION SEVERELY LIMITS SGN REFUGEES' ABILITY TO SURVIVE

Due to discrimination, harassment, violence, and isolation, SGN refugees in all three countries reported extreme difficulties subsisting and accessing services. In Uganda, SGN refugees who managed to obtain jobs reported being sexually abused by their employers and discriminated against by their fellow employees. Many fear seeking work. Legitimate employment opportunities are rare and several refugees report having resorted to sex work.

In South Africa, xenophobia and homophobia are major obstacles for all refugees in the employment context. SGN refugees report experiencing both in the hiring process and in the workplace. Several of the SGN refugees we interviewed there reported performing survival sex work.

In Mexico, job discrimination remains an obstacle for SGN refugees, and can be either a barrier to initial hiring or a reason for dismissal. SGN refugees experience a real and perceived lack of employment opportunities. Significantly, most of the refugees interviewed in Mexico had obtained at least part-time work.

Pervasive discrimination compounds the marginalization and isolation already plaguing SGN refugees. Particularly in Uganda, interviewees reported isolating themselves to avoid problems with employers, landlords,

and others.⁶⁷ The same phenomenon is present in Mexico, where several interviewees reported sequestering themselves to avoid harm.

D. ACCESS TO HEALTH CARE IS SEVERELY HAMPERED BY DISCRIMINATION

Each country and context poses unique challenges for SGN refugees needing medical care. In some countries, treatment for certain health conditions is universally or practically unavailable. Where laws criminalize nonconforming sexual orientations or gender identities, seeking medical treatment can result in other harm.⁶⁸ Our findings reveal several barriers common to SGN refugees across widely varying environments.

The exceptional vulnerability of SGN refugees results in part from their need for specialized health services. In the case of transgender persons, this includes hormone therapy. SGN refugees also need tailored HIV/AIDS treatment and counseling for rape and other psychological trauma. To be effective, all must occur in safe environments. All SGN refugees we interviewed reported having limited access to these health services. In Uganda, the high percentage of SGN refugees involved in survival sex makes HIV/AIDS prevention and care a particularly significant health issue. The high incidence of pregnancy from rape creates a particular need for safe abortion options. Since medical abortion is illegal in Uganda, refugees often risk their lives with unqualified doctors or by self-induced abortion. Even in the face of urgent health needs, most SGN refugees reported that they avoid hospitals for fear of discrimination and mistreatment in Uganda. For example, one refugee report-

⁶⁷ See Interview with UG – G5; UG – G9.

⁶⁸ See e.g. HUMAN RIGHTS WATCH, HATED TO DEATH: HOMOPHOBIA, VIOLENCE AND JAMAICA'S HIV/AIDS EPIDEMIC 4 (2004).

ed treating himself for a genital condition to avoid invasive questioning at the hospital.⁶⁹

In South Africa, SGN refugees reported discrimination and xenophobia in the health sector. One interviewee reported that a health care professional had told her to return to her country.⁷⁰ Consistent with other SGN refugees' stories, another interviewee recounted that a hospital had refused to treat her without proof of refugee status, although asylum seekers in South Africa are in fact legally entitled to medical care.⁷¹ Transgender and gender-variant individuals appear to encounter more difficulties accessing health services than most other refugees. While many SGN refugees' mental health needs remain unmet, several of our interviewees in South Africa said they had received counseling and health services from NGOs.⁷²

The Mexican government offers several health services gratis and without regard to immigration status. This is particularly true in preventative care, post-rape treatment, prenatal care, and HIV/AIDS treatment. Nonetheless, significant gaps in health care appear to affect the refugee population, as some providers are unaware of these rights.⁷³ Improved access to psychological care would benefit SGN refugees, who are particularly isolated. Among these, transgender interviewees, who appear to have access to and awareness of hormone therapy in Mexico, lack adequate psychological care. Interviewees in Mexico reported discriminatory attitudes among health care providers, with lesbians reporting more intolerance and misinformation than gay men.⁷⁴

E. ACCESS TO INFORMATION AND SOCIAL NETWORKS IS ESSENTIAL TO SGN REFUGEE SURVIVAL

To navigate unfamiliar legal and social systems, refugees everywhere require access to accurate information. This is particularly true for urban refugees, who must survive in complex and intricate social and physical environments. Information is crucially needed on migration routes, legal status, refugee status determination procedures, employment, medical care, physical safety, and housing. SGN refugees require additional information specific to their sexual orientation or gender identity.

For most refugees, fellow migrants are an invaluable source of essential information and support. Social and information networks offer critically needed tools and are readily accessible. However, for SGN refugees, the very act of seeking out information can bring new perils. As a result, most isolate themselves. For these refugees, online communities and information accessible through computers and mobile technology can be particularly valuable. Our research in all three countries corroborated that while information and social networks are of paramount importance, fear of discrimination and abuse posed barriers to their accessing these systems for SGN individuals. We also found that legal and social restrictions directly hamper SGN refugees' access to information.

In Uganda as elsewhere, SGN refugees are isolated from Ugandans and other refugees alike. SGN refugees commonly rely on one another for emotional support and survival information in a hostile environment. Because of the need to stay hidden, along with high costs of computer access and low computer literacy, word of mouth is the preferred method of information sharing among

For most refugees, fellow migrants are an invaluable source of essential information and support. Social and information networks offer critically needed tools and are readily accessible. However, for SGN refugees, the very act of seeking out information can bring new perils.

69 Interview with UG – G6.

70 Interview by ORAM with SA – L1.

71 Interview by ORAM with TW – 2.

72 Interview by ORAM with SA – G1; SA – S5; SA – S22; SA – S24.

73 Interview by ORAM with MX – S16.

74 Interview with ORAM with MX – L3.

SGN refugees in Uganda. However, because concealment of one's SGN identity is essential to one's safety, it can be difficult for SGN refugees to find one another in the absence of alternative community structures.

In South Africa, access to computers and mobile telephones is more common, and many SGN refugees rely on online social networks and technology to find emotional support, employment, and housing. Nevertheless, widespread societal homophobia and fear of abuse forces SGN refugees to refrain from seeking or sharing information online;

especially when using computers in public areas.⁷⁵

In Mexico, SGN refugees rely on information systems at three distinct phases of their displacement: before entering the country, during the refugee status determination process, and while trying to integrate into local society. These information systems are comprised primarily of other SGN refugees' word-of-mouth. SGN refugees in Mexico are also beginning to use digital tools including the Internet.

⁷⁵ Interview by ORAM with SA – S17.

v. Key Recommendations



Based on our research in Uganda, South Africa, and Mexico and informed by our experience with SGN refugees in other countries worldwide, ORAM identified five key recommendation areas relevant to diverse legal, economic, and social environments. These encompass:

- Training agencies and NGOs engaged in refugee protection;
- Creating information networks to improve SGN refugee access to information systems;
- Forming partnerships with organizations rooted in and/or focused specifically on the LGBTI community;
- Initiating comprehensive advocacy and service efforts that unite legal aid, concern for sexual and gender-based violence, partnerships with diverse human rights groups, and refugee support groups; and
- Improving RSD and resettlement processing for SGN refugees by UNHCR and resettlement countries.

Detailed guidance on implementing our recommendations in each of these areas is contained in *Part I: Guidance for NGOs, Governments, UNHCR, and Program Funders*.

A. CONDUCT TRAININGS

In all three countries, the advocates we interviewed believe overwhelmingly that increased education, awareness, and trainings for adjudicators, NGO service providers, and others charged with refugee protection will help narrow protection gaps for SGN refugees. They suggested conducting trainings with groups including broad-based service organizations, local police and government agencies, and the community at large. Based on these discussions, we recommend that refugee-serving NGOs conduct both internal and external trainings that cultivate knowledge about SGN refugees, dispel stereotypes, and introduce best practices, procedures, and tools.

i. *Internal Trainings*

NGOs should develop and implement sensitization trainings to increase awareness of SGN refugees and their needs and to foster positive attitudes. Where possible, NGOs are encouraged to employ openly identified SGN individuals in these trainings. Research reveals that contact and personal engagement with someone who is openly SGN-identified is far more effective at lowering barriers and breaking down stereotypes and prejudices than being told that one's beliefs are wrong.⁷⁶ Sensitization trainings are necessary for staff at all levels; particularly for those who interact directly with refugees. These trainings should be offered on a regular basis to refresh learning and account for staff turnover.

We also recommend training on:

- Implementation of procedures, such as codes of conduct, prohibiting discrimination on the basis of sexual orientation and gender identity;
- Best practices in the field; and
- Tools such as guides for appropriate interviews.

The combination of these efforts will help create non-threatening, affirming environments for SGN refugees.

ii. *External & Inter-Agency Trainings*

Organizations that have learned how to work effectively with SGN refugees are encouraged to share their knowledge and tools with others through community outreach and external trainings. These trainings can be carried out within particular countries of first asylum or across borders. It is likely that service providers in certain areas will become adept at working with SGN refugees more easily than others. Efforts to spread the knowledge gained in one country or part of the world can be encouraged and facilitated by refugee agencies and organizations including UNHCR, the

United States Department of State, and international NGOs.

B. CREATE AND INFORM SGN INFORMATION NETWORKS

To alleviate SGN refugees' isolation and inability to access the services and information they need to survive, NGOs can foster robust information networks. These systems allow refugees to support one another and enable NGOs to effectively connect their clients with resources. NGOs can use existing technologies and social networks, including online forums and websites, to disseminate information about relevant laws and procedures and local LGBTI-friendly organizations and service providers. Technology can also be leveraged to connect SGN persons with one another and to yield information on survival and emotional support, even when physically separated. As the cost of accessing these technologies through mobile technology decreases, it will be easier for the refugees to rely on them for their needs. Meanwhile, NGO service providers are encouraged to maximize free access to computers for refugees at their premises.

C. PARTNER WITH LOCAL NON-PROFIT ORGANIZATIONS

We strongly urge refugee service providers to develop relationships with local LGBTI organizations, welcoming faith-based community groups, and other SGN-friendly service providers. These partnerships open referral pathways, which are essential to SGN refugees who are isolated from the general refugee population. Collaboration also builds across-the-board capacity among NGOs and opens new sources of support within host countries. NGOs are likewise encouraged to join and support coalitions of organizations serving LGBTI individuals and refugees, where available. This is particularly important in countries or communities where LGBTI people are severely ostracized, criminalized, or otherwise persecuted.

Bridging the Information Gap

The ORAM Information Center for South Africa

To build upon the widespread use of existing technological resources among SGN refugees, ORAM launched the ORAM Information Center for South Africa (ORAMIC), a first-of-its-kind online resource designed to increase access to information among SGN refugees and other relevant stakeholders. The website, at www.oramsouthafrica.org, is comprised of three main components: informational sections, a resource directory, and an online discussion forum.

Each informational section offers practical guidance to SGN refugees navigating the refugee status determination process in South Africa. This includes up-to-date information on how to seek asylum, the rights of refugees and asylum seekers, and dangers and challenges faced by SGN refugees in South African society. The resource directory provides descriptions and contact information for South African NGOs and service providers working across a number of fields, including education, employment, housing, health care, and legal services, with a focus on SGN-friendly organizations. Through the ORAM South Africa online forum, users can communicate and share information with other SGN refugees, ensuring an anonymous space in which refugees can safely obtain critical information and emotional support.

These resources enable refugees to build information-sharing networks despite isolation and physical separation and allow NGOs to effectively connect refugees with the resources available to assist them.

⁷⁶ E.g., L. Marvin Overby & Jay Barth, *Contact, Community Context, and Public Attitudes Toward Gay Men and Lesbians*, 34 POLITY 434 (2002); see also ORAM, *OPENING DOORS: A GLOBAL SURVEY OF NGO ATTITUDES TOWARDS LGBTI REFUGEES AND ASYLUM SEEKERS 16* (2012), available at <http://oraminternational.org/en/publications>.

Despite best efforts to provide support for SGN refugees, no single organization can provide complete protection. NGO coalitions are key to capacity-building and strengthening of services, especially where the target client population overlaps with a variety of communities. Other organizations, particularly those that are LGBTI-focused, can help meet the needs of SGN clients. They may have access to the local LGBTI network and have the ability to advise on finding health services, non-discriminatory employment, and LGBTI-safe neighborhoods. Alliances can thus bring great improvement to the lives of NGO clients.

Collaboration with welcoming faith-based organizations brings immense potential to lessen the suffering of SGN refugees. Faith-based organizations are uniquely positioned to provide support to refugees because they are committed to helping others. Their fellowship often transcends racial, cultural, economic, sexual orientation, gender identity, and other boundaries. In recent years, a number of congregations, and even entire denominations, have become more vocal in their support for LGBTI rights.⁷⁷ This is true in South Africa, Mexico, and even in Uganda.⁷⁸

We recognize that NGOs operating in countries that criminalize same-sex relationships and/or gender non-conformity face very serious challenges. At the same time, the need for protective and inclusive measures is often most urgent in these countries. Precisely in these contexts, partnerships and coalitions between NGOs can facilitate efforts which require collective strength. NGOs operating in hostile climates should seek support and assistance from ORAM, UNHCR, and other leading NGOs and IGOs that can effectively reach and understand LGBTI refugees.

⁷⁷ *Religion, Faith, and Values*, GAY AND LESBIAN ALLIANCE AGAINST DEFAMATION, <http://www.glaad.org/programs/faith> (last visited Nov. 6, 2012).

⁷⁸ *Christian Church Directory*, GAYCHURCH.ORG, http://www.gaychurch.org/Find_a_Church/find_a_church.htm (last visited Nov. 27, 2012).

D. CREATE COMPREHENSIVE ADVOCACY AND SERVICE PROGRAMS

The concerns of SGN refugees cannot be addressed through any single approach. Borrowing largely from the work of partners in Uganda,⁷⁹ we recommend that SGN refugees be served through comprehensive approaches that to the greatest extent possible transcend differences in organizational mission. Effective approaches emphasize social networks and support systems that SGN refugees will need to access existing services in urban areas. Key elements of any comprehensive approach include legal aid, programs to prevent and ameliorate the effects of sexual and gender-based violence, partnerships with diverse human rights groups, and fostering refugee support groups.

i. Legal Advocacy

An effective and comprehensive service program often includes legal support for SGN refugees, either in-house or in collaboration with legal advocacy partners. Where feasible, legal services should encompass assistance in refugee status determination and preparation for articulating one's identity at the all-important refugee interview. Related legal services include deportation defense, securing bail, and averting imprisonment. Legal aid is particularly helpful where criminal codes, anti-vagrancy laws, and other provisions are used to target SGN persons. In jurisdictions that accord basic rights to SGN individuals, effective legal advocacy often focuses on securing those rights through law enforcement. For example, legal representatives can follow up on police reports and request protection from private individuals.

⁷⁹ They are Refugee Law Project, its separate Gender & Sexuality Team, and their associate LGBTI-refugee support group, Les Anges.

ii. *Sexual and Gender-Based Violence and Persecution Unit*

We recommend that NGOs also create internal units dedicated to the needs of victims of sexual and gender-based violence and persecution (SGBV/P). The aim of these units is to provide comprehensive health care and support to these refugees, as well as to perform outreach and advocacy related to SGBV/P, HIV/AIDS, sexual minorities, sexual reproductive health rights, and gender. The SGBV/P unit may be designated to serve as the preferred direct contact for client intake, referral, and counseling.

iii. *SGN Refugee Support Group*

NGOs can work directly with SGN refugees to create support groups specifically for SGN refugee communities. These groups are an antidote to isolation and a catalyst to forming community among refugees. These safe spaces are vital shelters from the discrimination and violence of daily life for SGN persons. Support groups should be designed to:

- Maximize emotional support;
- Advise on surviving in the country of transit;
- Provide referrals to SGN-friendly service providers; and
- Stage group activities and educational events.

E. ASSURE REFUGEE RECOGNITION AND IMPROVE RESETTLEMENT

UNHCR and resettlement country governments can do much to assist SGN refugees to reach safety as quickly as possible and to improve the support networks available to these refugees throughout their displacement cycle.

[Supp. Page #170](#)

The recommendations below are intended to build on the work that has already been done to protect this marginalized and vulnerable population.

i. *UNHCR*

In its role as the official intergovernmental refugee agency, UNHCR has already made great strides toward increasing its understanding and protection of SGN refugees. To augment its essential work, UNHCR is advised to:

- Utilize mandate RSD authority to recognize SGN refugees who will not be protected by domestic asylum systems or policies;
- Track vulnerable SGN cases filed with domestic asylum authorities in countries where adequate protection is of concern;
- Implement information forms and data systems which fully encompass claims and protection grounds specific to SGN people;
- Expedite consideration of the claims of particularly vulnerable SGN refugees;
- Fast-track resettlement referral of vulnerable SGN refugees;
- Ensure that the vulnerabilities of SGN refugees are clearly and timely conveyed to resettlement country governments;
- Develop and distribute training materials regarding claims based on sexual orientation and gender identity;
- Sensitize and train all UNHCR headquarters and field staff on sensitive and effective protection of SGN asylum seekers and refugees;
- Train RSD staff in the identification of potential SGN claims and in methods to elicit relevant testimony in a safe and welcoming manner;
- Train field staff continually on use of the October 2011 UNHCR Guidelines on International Protection No. 9: Claims

to Refugee Status based on Sexual Orientation and/or Gender Identity;

- Train interpreters on the best practices for working with SGN applicants, including issues of confidentiality, impartiality, and respect. Ensure that interpreters are aware of and employ appropriate terminology for use with SGN applicants;
- Collaborate with relevant organizations to create safe zones where asylum seekers and refugees can feel secure in sharing their SGN identity; and
- Encourage all states to recognize SGN people as “members of a particular social group” for refugee protection purposes.

ii. *Resettlement Country Governments*

Key resettlement countries, most notably the United States, Canada, and Australia, are urged to augment their commitments as safe havens for SGN refugees. Resettlement country governments are advised to provide their

staff with continual SGN refugee sensitization, adjudication, and protection training. We urge resettlement country governments to further build on their lifesaving protection efforts on behalf of SGN refugees as follows:

- Collaborate with local grassroots organizations to create infrastructures supporting SGN refugees and asylum seekers;
- Increase acceptance of direct referral of SGN refugees where international protection is unavailable or inaccessible;
- Fast-track resettlement SGN refugees who are in danger of imminent targeting or harm;
- Place and resettle SGN refugees to locations with established LGBTI communities;
- Allow same-sex couples to resettle concurrently and to the same location; and
- Increase the number of SGN refugees accepted for resettlement.

VI. *Conclusion*



ORAM’s extensive field research in South Africa, Uganda, and Mexico revealed that SGN refugees are subjected to marginalization far more acute and more dangerous than most other refugees. Protection gaps facing SGN refugees include violence by state authorities, local communities, and other refugees, and seemingly insurmountable barriers to health care, employment and vital services. Many of these challenges are exacerbated by crippling isolation. Based on this research and on ORAM’s extensive experience with SGN refugees in other locations, we have developed recommendations intended to guide refugee service providers and other stakeholders in how best to address the needs of SGN refugees struggling to survive in urban environments. These key findings and recommendations are summarized here in Part III, and are presented in further detail in Parts I and II of this publication.

While our initial investigation uncovered several key issues, further research and information on protection gaps affecting SGN urban refugees is essential. More importantly, there is a pressing need for direct intervention by refugee-serving NGOs, UNHCR, and government agencies in countries of first asylum. ORAM urges these groups and other stakeholders involved in refugee protection to implement the recommendations in this report through practical projects aimed at narrowing the protection gaps for SGN refugees worldwide.

ABOUT ORAM

ORAM — Organization for Refuge, Asylum & Migration is the leading agency advocating for lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees worldwide. Based in San Francisco in the United States, ORAM is the only international NGO that focuses exclusively on refugees and asylum seekers fleeing sexual orientation and gender identity-based violence.

ORAM works to carry out its worldwide mission on multiple fronts, from direct client assistance and global advocacy to logistical support and training. Among ORAM's many groundbreaking undertakings are its comprehensive and innovative trainings and its work in the assisted resettlement of LGBTI refugees. Through these strategic activities, ORAM is expanding the international humanitarian agenda to include LGBTI persons and to secure LGBTI refugees' safety. Concurrently, ORAM advocates within a broad range of communities to include these refugees within their scope of protection.

Informed by its intensive legal fieldwork, ORAM conducts international and domestic advocacy to protect LGBTI individuals fleeing persecution worldwide through collaboration with a wide array of NGO partners. ORAM continuously provides educators, community leaders, and decision-makers with much-needed information about LGBTI refugees.

ORAM's publications meld legal expertise with research-based insights in the social sciences and thorough knowledge of current events. These are informed by ORAM's comprehensive community-based understanding of LGBTI issues. Together these three pillars yield an unsurpassed capacity to bring about real change.

As a steward and educator on LGBTI refugee issues, ORAM develops and provides targeted, culturally-competent trainings for refugee protection professionals, adjudicators, and other stakeholders worldwide. This report is intended to inform such trainings.



www.oraminternational.org



January 20th, 2012

Transgender woman tortured, killed near Monterrey, Mexico

- by **Paul Canning – LGBT Asylum News**
- WORLD

Mexican media reported 17 January on the brutal killing of an apparently transsexual person in Apodaca, near Monterrey in Northern Mexico.

The body of a man wearing women's clothes was found by police after local residents heard gun shots and explosions.

According to the police report, the body was found lying face down and was about 25 years old. It showed signs of torture, of being shot as the victim was beaten, the hands were semi-amputated and there was a written message that said "For Rat" ("Por Rata").

The body has reportedly not yet been identified but had a major identifying mark, a tattoo with the name "Pamela".

The Trans Murder Monitoring project recorded 23 reports of murders of trans people in Mexico in 2011. Last August, in Mexico City, the first national march against anti-gay hate crime took place. That claimed that 700 LGBT people had been murdered in 2011.

Last year it was reported that LGBT Mexicans fleeing for US sanctuary are increasingly finding their asylum requests turned down.

LGBT Asylum News urges action today for LGBT asylum seekers and asks activists to encourage friends and contacts to visit website for details or to check on any updates to this story.

The night is another country



Impunity and violence against transgender women human rights defenders in Latin America

2012



This is a REDLACTRANS report, supported by the Alliance and What's Preventing Prevention.

REDLACTRANS
Regional Secretariat

Callao 339 6° Piso C1022AAD,
Buenos Aires, Argentina
Tel/Fax: +54 11 5032 6335
secretariaregional@redlactrans.org.ar
www.redlactrans.org.ar

International HIV/AIDS Alliance
International secretariat

Preece House, 91-101 Davigdor Road, Hove, BN3 1RE
United Kingdom
Tel: +44 (0) 1273 718900
Fax: +44 (0) 1273 718901
mail@aidsalliance.org
www.aidsalliance.org

ISBN 978-987-28937-1-2

Cover image ©Enrique Restoy and Monica Leonardo

Foreword

In July 2009, the Delhi High Court passed an order decriminalizing private consensual sex between adults. This was a momentous victory for human rights activists in India, who had been fighting for almost a decade against an antiquated piece of legislation which law enforcement officers used primarily to target men who have sex with men (MSM) and transgender people. As the lawyer who initiated and appeared on behalf of the Petitioners, Naz Foundation, I believe that criminalization of perceived 'unnatural' sexual behavior is an affront to human dignity, privacy and equality and violates the right to health. Criminalization dissuades individuals from seeking health services, thus derailing HIV prevention efforts and affecting the right to health. The violence and oppression recounted by the chilling testimonies of transgender women defenders in the REDLACTRANS and the Alliance's powerful report serves as a reminder of similar, if not harder, struggles faced by transgender women rights defenders in Latin America.

The report highlights how transphobia has permeated different structures of society, family and institutions, robbing transgenders of their human dignity. It is a valiant effort to document the appalling number of murders and extra-judicial killings of transgender women human rights defenders in Latin America, whose deaths remain uninvestigated by government agencies. The systemic failure of the rule of law and the growing culture of impunity that results from it indirectly legitimize horrific acts of abuse and violence against transgender women. Failure to protect women against violence or to prosecute perpetrators is also a violation of the State's obligation to protect the right to health of women as interpreted by General Comment No. 14 under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The report also details the

vulnerabilities of transgender women generally, as well as the specific vulnerabilities of transgender women activists who engage in sex work whose visibility and desire to defend their own human rights in the absence of State protection of their rights puts them at greater risk of violence. Key findings in the report reveal a shocking trend of systemic and hateful targeting of a vulnerable population on the basis of their very identity.

In my capacity as the UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, I have written a report that examines the impact of criminalization of same-sex conduct, sexual orientation and gender identity on the enjoyment of the right to health (A/HRC/14/20). In that report I highlighted that the right to health approach requires States to repeal laws that discriminate on grounds of sexual orientation and gender identity. The present report mentions a list of discriminatory laws in the Latin America region, which do not specifically refer to gender identity but are still wide enough to include gender identity within their ambit. The report also calls for the repeal of such laws that could be 'interpreted as criminalizing sex work.'

Pertinently, the present report makes a holistic and comprehensive set of recommendations for stakeholders at the international, regional and national levels. These include calls for arrests and trials of those responsible for murders, hate crimes and other human rights violations; providing legal recognition of gender identity; and extending comprehensive health services to the transgender community. These recommendations are very useful to policy-makers, specialized government agencies, human rights and developmental organisations, and civil society organisations in Latin America and across the world working on these issues.

I congratulate REDLACTRANS, the International HIV/AIDS Alliance and all those who have partnered with them to make this important, well-researched contribution that highlights the egregious violations of the human rights of transgender women human rights defenders in Latin America. I hope that States and other actors adopt the practical and sector-focused list of recommendations in policy and practice. It is indeed a commendable feat and I hope that, like the victory we achieved after a decade of battle for the rights of sexual minorities in the Indian context, the report will spur States in Latin America to respect, protect and fulfill their obligations towards their transgender community, especially their transgender women human rights defenders.

I hope that this report will be widely read and more people will be inspired work on these issues so that the dignity of transgender people is restored.

A handwritten signature in black ink on a light gray background. The signature is stylized, starting with a large loop on the left, followed by a vertical stroke, and ending with a horizontal stroke that curves upwards on the right.

Anand Grover

United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Contents

Presentation	8
Executive summary	9
Introduction	11
I. “For me, life is a bonus”: Human rights violations committed against transgender activists and other transgender women	13
1. Extrajudicial killings and attempted extrajudicial killings	14
2. Torture and cruel, inhuman or degrading treatment	15
3. Arbitrary detentions	16
4. Threats and extortion	17
5. Violations of the right to the enjoyment of the highest attainable standard of health	18
II. “The system’s down”: Impunity compounded by transphobia	19
1. A culture of silence	19
2. The lack of a differentiated approach	21
3. The ineffectiveness of the justice system	22
4. Discriminatory laws and the lack of legislation on gender identity and sexual orientation	23
5. Transphobia as a factor that facilitates impunity	24
III. “A right that is not defended is a right that is lost”: The vulnerability of transgender human rights defenders in Latin America	25
1. The extreme vulnerability of transgender women	25
2. Vulnerability due to the combination of activism and sex work.	27
3. The exclusion of transgender women from the women’s rights agenda	30
IV. “We are not asking for different opportunities, just equal ones”: Progress and challenges in the protection and promotion of the rights of transgender women	31
“All with us, nothing without us”: Conclusions and recommendations	33

Presentation

The decision to produce this report was born from the need to expose the numerous cases of violence and murders unjustly suffered by transgender women in Latin America. In recent years, perhaps as a result of the growing transgender movement in the region, REDLACTRANS and the Alliance have witnessed first-hand the painful testimonies of human rights violations committed against transgender people, which have taken place in a climate of unacceptable impunity.

Although this report focuses on physical violence, transgender women experience violence on many levels as a result of social exclusion and discrimination. With the exception of Argentina, the gender identity of transgender people is not recognised by law, and they are condemned to an existence that does not coincide with their gender identity. This situation is made worse by the social rejection they face on many levels, ranging from the home and in schools, to the workplace and health services. In proof of this, transgender women are the population with the highest prevalence of HIV/AIDS in Latin America, averaging at 35%.

The partnership between the Alliance and REDLACTRANS dates back to 2007, and is focused on advocating for transgender rights, as well as the organisational and institutional development of the network and its focal points in 17 countries in the region. Over the past few years, the member organisations of REDLACTRANS have contributed to unquestionable historical achievements as a result of their political growth despite a context of flagrant discrimination. For example, the Gender Identity Law that was recently passed in Argentina grants anybody the right to change their name on their official documents to one that reflects their gender identity, without having to undergo bureaucratic legal or clinical procedures.

Given the absence of forensic and legal data, caused by the inexistence of transgender women in official records, this report presents scarce quantitative evidence. However, we believe that the wealth of the testimonies of the transgender women illustrates the problem in a more human and holistic way.

We hope that the evidence collected in this report as well as its recommendations incite Latin American States to take immediate action to rectify this situation, and that they contribute to creating a political and legal environment that favours the true inclusion of transgender women in society. Only by putting the rhetoric into practice will we reduce the vulnerability of transgender women, not only to HIV but to any situation in which they are marginalised, targets of violence, or that prevents the full enjoyment of their human rights.

First and foremost we want to thank all the transgender women who, with honesty and bravery, shared their testimonies to produce this report. Thanks also to Monica Leonardo, the lead researcher, as well as the members of REDLACTRANS and their team who gave feedback to the draft versions of the report and enriched the recommendations. We would also like to thank Javier Vasquez, Human rights adviser at the Pan American Health Organisation PAHO/WHO, who provided technical support on the report, as well as colleagues from the Alliance Secretariat who participated in the process.

Human rights will not be a reality until *a//* human beings can realise them

Executive summary

This report has been compiled by the *Red Latinoamericana y del Caribe de Personas Trans* (REDLACTRANS), Latin American and Caribbean Transgender Network*, and the International HIV/AIDS Alliance (the Alliance) and analyzes the violence to which transgender women human rights defenders† are subjected in Latin American countries and the impunity enjoyed by the perpetrators of such violence. By describing individual cases, the document details the main human rights violations suffered by transgender women defenders and shows the direct responsibility that States have when it comes to respecting, protecting and promoting those rights. The final section contains recommendations drawn up jointly with representatives of transgender women human rights defenders from Honduras and Guatemala.

The report presents three findings. Firstly, the testimonies and events it describes reveal the systematic nature and scope of the human rights violations committed against transgender human rights defenders and other transgender women by State actors. These rights violations, which include extrajudicial executions, torture, cruel, inhuman and degrading treatment and arbitrary detentions, extend beyond both the heading of hate crime, the label under which such cases are usually categorized, and the context of widespread violence that exists in many countries of Latin America. Around 80 per cent of the transgender activists interviewed reported having been subjected to violence or threats to their physical integrity allegedly emanating from State actors.

As its second finding, the report shows that the penetration of transphobia, namely fear or hatred of transgender people, across State structures at every level, is facilitating a similarly systematic climate of impunity with regard to human rights violations committed against transgender activists and other transgender women. The report presents evidence of such impunity which manifests itself in a culture of silence that impedes the filing of complaints, a failure to adopt a differentiated approach when dealing with such cases, ineffectiveness in the justice system, the existence of discriminatory legislation and the absence of legislation on gender identity. Although it was difficult to find official data on cases of murdered transgender people processed through the justice system, civil society organizations have provided compelling data: according to Colombian activists, 60 transgender women were murdered between 2005 and 2012 without a single person having been brought to justice. In the same period 35 transgender people were murdered in Guatemala, with only one person brought to justice. In Honduras, in the cases of 61 killings of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals reported between 2008 and 2011, only ten people were brought to trial, none for the death of transgender women, despite the fact that the latter accounted for two thirds of the cases. The analysis provided in this report shows that the impunity surrounding the violation of the rights of transgender activists and other transgender women is not solely due to the general impunity that exists in several Latin American countries but is largely motivated by transphobia.

* A transgender person is someone whose anatomy does not match their gender identity. This report addresses the issues relating to transgender women who have been born with masculine physiology but are, to all intents and purposes, women.

† In this report, a transgender woman human rights defender is understood to be any transgender woman who promotes and defends her own human rights and/or those of other transgender women. Similarly, the terms “transgender activist”, “transgender human rights defender”, “transgender human rights leader” and “transgender defender” are used.

The report's third main finding is that transgender human rights defenders in Latin America are at extreme risk of being subjected to human rights violations, a risk that is exponentially increased in the context of sex work. Ninety-five per cent of the transgender human rights defenders interviewed combine their activism with sex work. In about 90 per cent of the cases covered in this report, the violence reported is related to sex work. This happens when the police take direct action against defenders because of their activism, making use of the sex work context to take reprisals against them. The case of the *Colectivo Unidad Color Rosa* de Honduras speaks volumes: of the seven members who set up the group in 2001, six have been murdered.

The report highlights other aspects of the vulnerability of transgender defenders that they share with other transgender women, such as facing discrimination from their families and the communities or ethnic groups to which they belong, and the violence used by *maras*⁵ and organized crime.

These findings show that the national, regional and universal measures and mechanisms established to protect human rights are failing in the case of transgender women..

The report concludes that, in the context of the generalized stigmatization, discrimination and violence these groups face, it is virtually impossible to provide an effective HIV response focused on the most-at-risk populations. In Latin America, the violence and intimidation to which transgender women are subjected and the impunity with which such crimes are committed, undermine efforts to ensure that HIV prevention, treatment, care and support services reach transgender women which, paradoxically, is the population with the highest HIV prevalence.

The report recommends that State authorities in Latin America, the Organization of American States, the United Nations, its member States and specialised agencies and civil society organizations join together to combat the impunity, violence and discrimination suffered by transgender activists. It calls for all cases of human rights violations, hate

crimes and discrimination allegedly committed against transgender women to be investigated, prosecuted and punished. It also urges the international community to specifically monitor the human rights of transgender women in Latin America and, within the framework of their respective mandates, to publicly express their concerns and recommendations. Lastly, it recommends that civil society organizations work with transgender women's organizations to monitor and make this issue public, by sharing their advocacy experiences, devising institutional strategies and encouraging the establishment of partnerships to defend and promote the human rights of transgender women.

This qualitative research was carried out by the Guatemalan lawyer, Monica Leonardo Segura, who was accompanied by Enrique Restoy for the collection of testimonies in Honduras. It was supported by the guidance of Marcela Romero and Aldo Fernandez from REDLACTRANS, Ana Maria Béjar, Enrique Restoy and Thomas Dunmore from the Alliance secretariat as well as Javier Vasquez from the Pan-American Health Organisation.

⁵ Street gangs active in Central America that are engaged in criminal activities

Introduction

It's as if the night is another country; because during the day, the police have a bit more respect for us because of the complaints we have filed, which has given us a higher profile as far as complaints are concerned, [even] at international level. But it's different at night, you're exposed when you are out doing sex work in the street, it's as if you don't exist, anything can happen. If we didn't have to go out on the street at night, if we had education and job opportunities, it would be another story. (Transgender activist in San Pedro Sula, Honduras, July 2012)

The countries of Latin America have ratified most of the main international and regional human rights treaties¹ and have committed themselves to respecting, protecting and fulfilling fundamental rights by refraining from committing abuses, taking effective steps to prevent them and establishing reparation mechanisms in the event that violations take place.²

Although none of the conventions explicitly address the rights of LGBTI people, treaty-monitoring bodies have interpreted several of such instruments to include the provision of safeguards against discrimination on grounds of sexual orientation and gender identity.³

At regional level, the most significant pronouncements have been the resolutions passed by the General Assembly of the Organization of American States condemning acts of violence against people because of their sexual orientation or gender identity and requesting States parties to take action to combat discrimination and protect human rights defenders, both male and female, who are working to bring to light the discrimination and

human rights violations people are suffering because of their sexual orientation or gender identity.⁴

By signing up to these international standards, the States of Latin America show that they are genuinely interested in promoting the human rights of LGBTI people. However, the perpetration of human rights violations on grounds of sexual orientation and gender identity is common practice and entrenched in the region, to the point of being systematic, while discrimination on the same grounds is institutionalized.

Within this context, the situation of transgender women⁵ who are human rights defenders⁶ is particularly precarious owing both to their visibility,⁷ which openly challenges established gender norms,⁸ and to the work they do to promote and defend human rights. There has been clear recent evidence of violence being targeted at transgender women in different Latin American countries and of the failure of States to take action to prevent, combat and eradicate it.⁹

This report therefore reflects the issues that transgender human rights defenders in the region are denouncing and supports their appeal for the countries of the region to enforce the rule of law and comply with the international human rights commitments they have undertaken. As a transgender activist in Honduras said, transgender women are crucially vulnerable at night, "which is like another country" in which the rights of these women "don't exist".

Methodology

The research methodology of this report is qualitative and it draws from both primary and secondary sources. This was favoured over a quantitative approach, not only because statistics on the transgender population are non-existent in official records, but also because it was considered to be the best way to capture the wealth of the population's real-life testimonies. Key informants included transgender women human rights defenders, transgender women in general, various state authorities, representatives from international institutions and civil society. Information was collected from a range of sources, including approximately 60 reports and documents on the situation of transgender women in Latin America as well as 55 in-depth interviews to transgender women human rights defenders carried out during visits to San Pedro Sula, El Progreso and Tegucigalpa (Honduras) and Guatemala City (Guatemala) and from telephone calls to Cali (Colombia), Santiago (Chile), Buenos Aires (Argentina), Montevideo (Uruguay), Curitiba (Brazil) and Guadalajara (Mexico).

In July and August 2012, 22 interviews were also conducted with political officials and members of the police, prosecution services and judiciary from Honduras and Guatemala, together with eight interviews with specialists and officials from the Inter-American human rights protection system and the United Nations system. The analysis focused on comparing the data collected from these sources with the States' compliance with the international human rights framework, and identifying the gaps that exist. The recommendations that came from the leading investigator's analysis were validated and enriched by representatives of REDLACTRANS from Honduras and Guatemala during a workshop that took place in the region.

The names of the transgender activists interviewed have been withheld for security reasons.

I. "For me, life is a bonus": Human rights violations committed against transgender activists and other transgender women

About six months ago, I got in a car with a man who I know is a policeman. He hired me to provide my sexual services, but afterwards he didn't want to pay and he wouldn't let me get out of the car. He shouted at me, "Today you really are going to die, hueco¹⁰". I told him to kill me, because I knew that sooner or later I'd end up dead, because for me, life is a bonus. (Transgender activist in Guatemala City, Guatemala, July 2012)

Despite the frequency of the discriminatory treatment and serious human rights violations to which transgender women are subjected in the Latin American region, their lack of recognition as a specific group and of personal identification documents that reflect their gender identity keep these women invisible.¹¹ It is therefore hard to make an accurate determination of the scale of the crimes committed against transgender human rights defenders and other transgender women, given the lack of specific data available on that population.¹²

It is therefore also difficult to make statistical comparisons about specific aspects of the issue. However, even though the figures do not always accurately reflect what transgender women's organizations have reported, it is worth pointing out that, according to the 2011 Trans Murder Monitoring Project, between 1 January 2008 and 31 December 2011, 80 per cent of the murders of transgender people reported throughout the world came from Latin America, with a total of 826 cases distributed as follows:

Table 1. Murders of transgender people between 2008 and 2011 in Latin America

Country	Murders 2008-2011	Country	Murders 2008-2011	Country	Murders 2008-2011
Argentina	28	Mexico	93	Costa Rica	3
Bolivia	8	Nicaragua	2	Ecuador	10
Brazil	426	Panama	2	El Salvador	8
Chile	4	Paraguay	3	Guatemala	35
Colombia	67	Peru	11	Honduras	42
Venezuela	65	Uruguay	3	TOTAL	826

Firstly, abuses, attacks and killings committed against the transgender community should be seen as part of the generalized violence observed in the region. Five of the 14 countries in the world with the highest number of violent deaths per 100,000 inhabitants are in Latin America: Colombia with 27, Guatemala with 43, Honduras with 48, El Salvador with 60, and Venezuela with 45.¹³ In addition to the complex legacy of violence bequeathed to many of them, Latin American countries also suffer from a chronic history of human rights abuses perpetrated by law enforcement officers.

However, the violence committed against transgender human rights defenders and other transgender women is clearly too systematic, and its prevalence too widespread, to be explained solely in the context of the general violence. It is evident that the gender identity of the victims and their activism work are the main motives for the crimes in question.

The treasurer of the Colectivo Unidad Color Rosa died after being shot seven times in January 2011. She was in a shop with a friend when two lads known to them came asking for her sexual services and took her away. Her friend never saw them again. According to her, the lads belonged to the Policía Nacional Preventiva, National Preventive Police, but she has not been brave enough to testify. She was summoned by the Fiscalía, Prosecutor's Office, but she refused to

talk. The complaint has been shelved for lack of evidence. (Transgender activist in San Pedro Sula, Honduras, July 2012)

A colleague was the victim of a violent attack by police. She was beaten up when some policemen assaulted her while she was doing sex work and threatened her that if she said anything, she would end up lying [dead] in wasteground at dawn. She filed a complaint and ratified it. Some time later, she was found lying [dead] in wasteground. (Transgender activist in Guatemala City, Guatemala, July 2012)

In Guatemala, 29 per cent of transgender women identified the police as being their main agent of

discrimination,¹⁴ and reported it to the authorities.¹⁵ In Colombia, 78.7 per cent of transgender people said they had been victims of the police, and 51.1 per cent the victims of private security agents.¹⁶ In Lima, Peru, 46 per cent of the assaults reported were at the hands of the Serenazgo, night patrols, another 31 per cent were by the Policía Nacional, National Police, and a further 7 per cent were the result of joint action by the two groups.¹⁷

The human rights violations reported by transgender women in Latin America include extrajudicial executions, torture and other cruel, inhuman and degrading treating, arbitrary detention, threats and extortion.

1. Extrajudicial killings and attempted extrajudicial killings

The right to life and not to be arbitrarily deprived of life is a universal right that is protected in several international instruments,¹⁸ and its exercise is crucial for the realisation of all human rights. If this right is not respected, the others lack meaning.¹⁹

Nevertheless, in various Latin American cities, the murder of transgender activists and other transgender women is widespread and committed, on occasion, by police officers or individuals acting with the acquiescence of the State.

Unlike most crimes committed against other members of the LGBTI community, virtually all killings of transgender activists and other transgender women have been carried out in the course of sex work, using a firearm.²⁰ Testimonies from witnesses and colleagues suggest that police officers were directly involved in a good number of such killings, and that the motives ranged from killing someone for reporting an officer, to the result of arguments with the police over sexual favours or money. This was illustrated by cases from Uruguay and Honduras:

In Uruguay, six girls have been murdered within a very short time during 2012. The first was shot three times and had her throat cut and was found in the Teja area of Montevideo. Then there is the

case of a girl who died after being shot five times near Roosevelt Park. Another one turned up dead two blocks from there. A fourth girl was found dead in the department of Cerro Largo, after being thrown into a well full of water and with signs of having been sexually assaulted. Another girl was shot in the back as she was opening the door of her home in the neighbourhood of Tres Ombúes, in Montevideo. (Transgender human rights defender in Montevideo, Uruguay, July 2012)

The first victim of the political crisis [in Honduras]²¹ on the night of 29 June 2009 was a human rights defender from the Colectivo Unidad Color Rosa who was carrying out sex work after the curfew had fallen on that day. She was shot in the eye and showed signs of having been strangled. A service weapon is believed to have been used. (A transgender human rights leader in San Pedro Sula, Honduras, July 2012)

A transgender activist from San Pedro Sula, Honduras, reported that she has gone back to doing sex work, combining it with her human rights work, and that it is putting her at greater risk than ever of being subjected to violence by police officers who have allegedly tried to kill her on several occasions (see Chapter III on the vulnerability of transgender women who are human rights defenders):

I am a certified public accountant. For over seven years, I worked on HIV prevention programmes as a health technician both for the State and international organizations. I have been a human rights activist for over 20 years. In the 1990s I witnessed the murder of a colleague by police officers. Their lawyers threatened to kill me if I identified them. I testified against them. I had to get out of sex work for a while, for security reasons.

Following the 2009 political crisis I was left jobless and had to go back to doing sex work on the streets. One night in October 2011 I was coming out of a bar when a car without plates stopped next to me. Four individuals got out and shot me four times in the head and body without saying a word. One of the bullets is still lodged in

my neck. No one asked me any questions in the hospital and there was no police investigation. It wasn't the only time. I had already been shot three times while out doing sex work. Altogether I have been shot nine times. There are witnesses but they are also afraid to make a statement. I myself have witnessed many other police attacks but I'm also afraid to report them. This is what the police call "social cleansing". According to them, it's because there are lots of complaints against transgender women doing sex work. I think I'm on the list. (Specialist in Public Health and transgender human rights defender in San Pedro Sula, Honduras, July 2012)

2. Torture and cruel, inhuman or degrading treatment

All human rights treaties, both international and regional, absolutely prohibit torture and cruel, inhuman or degrading treatment or punishment.²² That prohibition is also reiterated in several international standards.²³

International law has recognized that LGBTI people occupy a vulnerable position in society which, in turn, increases their risk of being subjected to torture.²⁴

In contravention of that, transgender human rights defenders and other transgender women in Latin America are subjected to police brutality and cruel, inhuman and degrading treatment, which take place in both police stations and patrol cars as well as on the street. Ninety-five per cent of the transgender defenders interviewed reported having suffered that kind of treatment.

When I get into a car with a client, the police come up to the car and drag me out. They extort money from the client, saying to him, "Aren't you ashamed to be with a man?", they take his money. They often take me to the station and lock me up with other men. If I don't want to get out [of the car] or I get annoyed with them, the police hit me. At the beginning of 2012, three policemen forced me into a patrol car telling me they were going to take me to the station, but

they took me to an isolated place and kicked me and punched me in the stomach for over 15 minutes. They left me lying there and threatened to kill me if I talked. (Transgender activist in El Progreso, Honduras, July 2012)

In July 2011 I was walking along and some police officers asked me for my ID card, I told them I didn't have one because the authorities wouldn't give me one on account of my female appearance. They put me in the patrol car, took all my money and shared it out among themselves in front of me. I then tried to leave but after a few metres one of the policemen pointed his pistol at me and the others started hitting me in the face and body. A bank guard took down the number of the patrol car and, equipped with that, I went to file a complaint at the first police station. They told me I had to submit it to the Fiscalía de Derechos Humanos, Human Rights Prosecutor's Office, and come face to face with them. That same evening some men in a red car tried to take me away by force. I was so scared that I didn't file the complaint. (Transgender human rights defender in San Pedro Sula, Honduras, July 2012)

Taunts and insults from police about violence against transgender women often also amount to degrading treatment.

In September 2011 a client attacked me, he was drunk and aggressive. While I was in his car, he stabbed me in the arms, neck and leg. I struggled with him and managed to run out into the street. Nobody helped me even though I was covered in blood. Someone called the police. The police didn't ask me to make a statement, they laughed at me, they asked me for sexual services even though I told them I was injured and needed help. They told me I had got what I deserved for being out on the street. (Transgender human rights defender in El Progreso, Honduras, July 2012)

I alone know the suffering that can be caused by being held together with 300 men and spending whole days being raped and beaten, but I cannot describe it. (Transgender activist in Guatemala City, Guatemala, July 2012)

Transgender activists and other transgender women also face humiliation when they are taken to prisons and other detention centres intended for men where they suffer disproportionately from sexual violence inflicted on them by other inmates and security officials, as well as the resulting psychological trauma.

I alone know the suffering that can be caused by being held together with 300 men and spending whole days being raped and beaten, but I cannot describe it. (Transgender activist in Guatemala City, Guatemala, July 2012)

3. Arbitrary detentions

International law recognizes and protects the right to liberty and the right not to be arbitrarily deprived of it.²⁵ Similarly, international standards identify and condemn the existence of legal provisions that can result in loss of liberty on grounds of sexual orientation or gender identity, including indirectly. In some cases, **detention or charges may appear to be based on reasons other than identity or status as such, though those reasons may simply be a pretext for taking action against a person's sexual orientation or gender identity.**²⁶

This is the case of the ambiguous morality codes and public decency laws which tend to be used for making arbitrary arrests on grounds of sexual orientation or gender identity or expression. As far as transgender women in Latin America are concerned, regulations outlawing sex work, in some cases, and the absence of explicit regulation of the free exercise of sex work, in others,²⁷ are examples of laws that serve as a pretext for arbitrarily arresting these women.

For example, during the field research of this report, the authorities were asked about the regulation of sex work in Honduras, the *Superintendente de Justicia, Seguridad y Transporte*, Superintendent of Justice, Security and Transport, for the municipality of San Pedro Sula said that "[t]he law prohibits prostitution". When asked which body of law

contained that prohibition, he replied that it was "[i]n all the laws, in the Constitution, in the *Ley de Policía y Convivencia Ciudadana* [Police and Social Coexistence Law], in the Criminal Code, in the *Ley de Municipalidad* [Municipality Law], in all the laws, because it goes against morality and decency".²⁸

Although this view of the legality of sex work in Honduras is incorrect, Honduran legislation does nevertheless contain some elements that hinder transgender women from fully exercising their rights. Similarly, the power and discretion the police have under the provisions of the Police and Social Coexistence Law enables police abuse and the arbitrary detention of transgender defenders to take place. Even though sex work as such is not illegal in Honduras, this law contains vague terminology that the police can use to arrest people they believe to be breaching morality, a category in which transgender women are usually placed.

In most cases in which women doing sex work are arrested, the police say that it's for practicing prostitution. When the women say that prostitution is legal and ask to be shown the law that says it is prohibited, the police say, "Go and study it for yourself!". It's not us who are ignorant. (Transgender activist in San Pedro Sula, Honduras, July 2012)

Likewise, the *Ley contra la Violencia Sexual, Explotación y Trata de Personas*, Law against Sexual Violence, Exploitation and Trafficking in Persons in Guatemala,, does not adequately and explicitly differentiate between sex work that is carried out willingly and people trafficking. This results in the police authorities criminalizing sex work and the consequent negative effect this has on transgender women, who are left at risk of abuse, unlawful detention and extortion.²⁹

In Guatemala and Honduras, around 60 per cent of the transgender human rights defenders interviewed reported having been subjected to arbitrary detention at some point. In Chile, in June 2012, several incidents of transgender women being arrested while carrying out sex work were reported. A transgender leader from Chile said:

On 13 June, at about 11 o'clock at night, the special forces from Santiago [de Chile] Police Station arrested me by force, in a violent and aggressive way, taking my bag from me and without informing me of why I was being arrested. They took me to the police station where they told me they were detaining me temporarily for a check (control de detención), even though when I was arrested I had my ID

card and health card with me. They kept me there for over five hours. (Transgender human rights defender in Santiago, Chile, July 2012)

In the context of the action for protection that this human rights defender filed, the *Cuerpo de Carabineros de Chile*, Chilean police, submitted a report stating that this procedure had consisted of carrying out a check on a group of individuals, some of whom, though presenting their male ID card, were “dressed as and displayed the characteristics of women”.³⁰

Arbitrary detentions are not only targeted at sex workers. The prejudice that equates transgender women with sex work means that some have been arrested while going about their daily activities and were not carrying out sex work at the time of arrest.

In particular, this takes place in a context in which transgender women are denied access to public places, as stated by the Honduran police authorities themselves when describing their relationship with this group: “[t]he relationship with transvestite men is the result of complaints from citizens, because they go about the streets [...], [and] their presence has a negative effect on businesses”.³¹

4. Threats and extortion

Transgender women who are human rights defenders and have reported violations of such rights by police officers are subjected to constant threats and extortion by the police themselves and are forced to withdraw their complaints or terrorized into not filing one at all.

In many cases, the fact that these complaints have to be filed at the very police stations in which the alleged perpetrators work, can dissuade those who wish to lodge a complaint from doing so.

In 2010, my housemate was beaten by the police, I went with her to file a complaint at the police station. When we entered, the very policemen who had beaten her were coming out of the building and said, “You, what are you doing here reporting us? Do you want us to kill

you over there tonight?” (Transgender activist who accompanied her friend to file a complaint in San Pedro Sula, Honduras, July 2012)

Arbitrary detentions are habitually used as an excuse to subject sex workers to extortion, asking them for money or sexual favours in exchange for their freedom.³²

In Panama, police have reportedly forced themselves on transgender women as their pimps: the police who arrest them do not take them to the competent authorities but take their money in exchange for letting them go. Those who refuse to hand over the money are subjected to humiliation and abuse.³³ Something similar happens in Curitiba, Brazil.³⁴ In Guatemala, on the other hand, reports indicate that it is the clients who are subjected to extortion, leaving the women without money or work.

The police don't subject us to extortion so much now but attack the client and extort money from him. That is a form of economic violence because it affects us directly. They take away our only source of income. What else are we going to do if we have no schooling, work or health care opportunities? The same is happening with the plans for renovating the historical city centre.

The Municipality wants to stop sex work in the centre, which would leave us without work. I am concerned about these things as an activist. I would like to rescue all the women but I am not God or even the State. (Project officer and transgender human rights defender in Guatemala City, Guatemala, July 2012)

5. Violations of the right to the enjoyment of the highest attainable standard of health

The right to enjoy the highest attainable standard of health, which is explicitly protected in international human rights treaties,³⁵ means that a certain level of physical and mental health is needed in order to be able to exercise all human rights and fundamental freedoms and thus participate in the civil, social, political, cultural and economic life of States. It also means that the exercise of human rights and fundamental freedoms is essential to the enjoyment of genuine physical and mental wellbeing.³⁶

Public health policies, plans and legislation can therefore be instruments that effectively protect basic human rights and fundamental freedoms or, on the contrary, they can be instruments that hinder the exercise of basic rights connected with physical and mental wellbeing.

It is therefore incongruous that, despite the prevalence of HIV among transgender women and the mandates and resolutions of specialist health care agencies such as PAHO, public health care institutions are not usually accessible to such women and do not cater for their needs. According to a Venezuelan activist, nine out of ten transgender people do not go to medical centres because of the stigma they face.³⁷ The staff are not trained to deal with sexual/gender diversity and so LGBTI people in general³⁸ are often abused or ill-treated by health care providers or even forcibly subjected to therapies to "cure" or "treat" their gender identity or sexual orientation.³⁹

Perversely, the discrimination that results in sex work being the predominant form of livelihood for transgender women also fuels social stigma by establishing a link in which transgender women are mainly associated with sex work and HIV/AIDS.⁴⁰ This point is illustrated by a case described by an activist from San Pedro Sula⁴¹ about a transgender woman who was the victim of a rape and the local health service refused her access to emergency antiretroviral drugs, claiming that she was responsible for exposing herself to the HIV virus because she was engaged in sex work.

The forensic doctors didn't want to do an autopsy after she died because they suspected she might have HIV. We had difficulty in getting her out of the morgue because of that. (Transgender activist in San Pedro Sula, Honduras, July 2012)

In addition, when HIV statistics are being compiled, transgender women are usually categorized as men who have sex with men (MSM), which not only denies their gender identity but also the specific needs and characteristics of that population. For example, in several of the progress reports submitted to UNGASS,⁴² including those from Guatemala,⁴³ Nicaragua⁴⁴ and Honduras,⁴⁵ transgender women were not mentioned.

II. “The system’s down”:

Impunity compounded by transphobia

A man threatened to kill me after I had sexual relations with him. He pursued me for days. He tried to run me over with his car and after leaving me for dead he fled. I went to the Colectivo [Colectivo Unidad Color Rosa⁴⁶] and they helped me file a complaint with the Fiscalía de Derechos Humanos, Human Rights Prosecutor’s Office, but there they said “the system’s down” [the computers aren’t working] and that I had to go to the [police] station, but I’m afraid to go there because that person is known there. Then they told me to make a complaint to the DNIC [Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate], but there too they told me “come back tomorrow, the system’s down”, I had to go home. The man came back but the neighbours saw him off. (Transgender human rights defender in San Pedro Sula, Honduras, July 2012)

Under the regional and international treaties ratified by Latin American States, the authorities have an obligation to prevent violations of human

rights committed against transgender women and stop impunity by ensuring that such crimes are investigated, and that the perpetrators are prosecuted and punished.

Nevertheless, crimes against transgender human rights defenders and other transgender women in Latin America are ignored by the authorities. Such impunity in the case of abuses against transgender women confirms and legitimizes,⁴⁷ albeit indirectly, the violence that this population suffers.

Given the lack of reliable and disaggregated statistical data by gender identity, it is difficult to state categorically how much access to justice transgender women in Latin America have.⁴⁸ However, it is striking that, despite the absence of official figures, justice officials say that the incidence of crimes against transgender women is low.⁴⁹ This view may be indicative of a tendency to overlook and underestimate crimes against transgender women.

1. A culture of silence

One factor impeding progress with regard to the criminal investigation and prosecution of cases is the fact that the violence that transgender women experience on a daily basis inhibits them from filing complaints about abuses, thereby creating a culture of silence.⁵⁰ Even the authorities have recognized this, saying that “hardly any of them file complaints, only when it’s something really serious, and then they don’t come back”.⁵¹

There are several reasons for this. One is the history of inaction on the part of the police, prosecutors and judges. In Guatemala, even though in about 34 per cent of crimes against transgender women it was possible to identify the aggressor, no action was taken.⁵² In Honduras, out of 61 cases of the murder of LGBTI people reported between 2008 and 2011, only ten have been brought to trial, though none for the killing of transgender women even though they accounted for over two thirds of the cases.⁵³

A transgender activist in the Colombian city of Cali reported that “there were 60 killings of transgender women between 2005 and 2012 but not a single person has been tried. The investigations are open but there are no serious proceedings and no continuity. They are left open just so that they can say that something is being done but in reality no proper action is being taken”.⁵⁴

A colleague and I were working at the same corner. A little over a year ago, we were stood there and a man arrived on a bicycle. I paid no notice to the conversation until they started shouting and he shot her dead. When I heard the shot, I took my shoes off and started running. The guy shot at me but I was already half a block away running and he didn't get me. Since then, I'm afraid and I don't feel safe standing at my corner, because that man got a good look at me, he knows who I am. With the support of the organization, I filed a complaint. A patrol car came to interview me about what happened but I never heard anything more about the investigation. (Transgender activist in Guatemala City, Guatemala, July 2012)

Similarly, the fact that most cases are not investigated leaves transgender human rights defenders and other transgender women feeling powerless.

In December 2009, a colleague and I reached the corner where we used to work. Another colleague was there. About 15 minutes after we got there, a small white van with four individuals on board arrived. They wanted us to provide them with our services but because there were four of them, we were afraid to go with them and we told them to try elsewhere. They then started shooting at us. The three of us ran off, trying to escape, but I got a bullet in the arm. A frequent client of ours was nearby and heard the shots and so came to our aid. He took me to hospital in his car and just as we were arriving, we were arrested by police because the client had gone the wrong way down a one-way street trying to get there quickly. We explained to them but they arrested him anyway. Meanwhile, my colleagues told a patrol car that had arrived at the corner where we had been to follow the van from which we had been shot at. They pretended to do so but later said that it

had got away down one of those streets in Zone 1 [of Guatemala City]. They could have asked for backup but they didn't, they let them get away. (Transgender defender in Guatemala City, Guatemala, July 2012)

Since in many cases of violence, the police are the aggressors, filing a complaint about an attack means running the risk of further aggression.

There have been many occasions when the police have abused me. When they see me get into a car, on several occasions they have told the client that it's a crime to go with "huecos"⁵⁵, meaning us transgender women. I know the law and my rights, and I know it's not true, but I'm afraid to make a complaint because once a colleague had marijuana put in her bag so that they could arrest her if she started complaining. About a year ago, I was just getting out of a taxi on the corner where I work when a policeman tried to arrest me. As I wouldn't let him, he snatched my bag and started hitting me. I didn't file a complaint because he's the police officer in the area where I work and I have to see him all the time. I'm afraid that later he would take reprisals against me. (Transgender human rights defender in Guatemala City, Guatemala, July 2012)

Furthermore, the transphobia in the justice system means that transgender women are subjected to taunts and aggression when they try to file a complaint.

I went to file a complaint for discrimination at the Procuraduría de los Derechos Humanos, Office of the Human Rights Ombudsman, and they wouldn't even let me use the women's toilet. How on earth are they going to understand what discrimination against transgender women means! (Transgender activist in Guatemala City, Guatemala, July 2012)

2. The lack of a differentiated approach

Another factor preventing the effective investigation of crimes against transgender human rights defenders and other transgender women is that these crimes are underestimated⁵⁶ and are not addressed separately. The authorities themselves help foster prejudice by describing such cases as “crimes of passion”, emphasizing aspects of the personal lives of the victims instead of their vulnerability as transgender women and human rights defenders.

The report entitled *Acceso a la justicia para mujeres víctimas de violencia en las Américas*, Access to Justice for Women Victims of Violence in the Americas, published by the Inter-American Commission on Human Rights, states that “the influence exerted by discriminatory socio-cultural patterns may cause a victim’s credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence”.⁵⁷

The Commission has also called on States to open lines of investigation that take into account whether the killings of LGBTI persons are carried out because of the gender expression, gender identity or sexual orientation of the victim.⁵⁸

However, the authorities from the countries of Latin America appear not to have a comprehensive framework for conducting investigations and inquiries into cases of the intentional violent death of transgender activists that allows a broad range of motives to be considered. Their approach seems to be confined to reproducing prejudices and using derogatory language as a matter of course, thus being a very long way from the creative activity that criminal investigations require if such crimes are to be solved. See the following examples from Mexico, Guatemala, Honduras, Uruguay and Argentina:

[Transgender women are killed because of their involvement in] “prostitution, selling drugs, [for] being involved in organized crime, or stealing from their clients”; or [because] “they have a nocturnal life” and “[t]hey pass themselves off as women, and when an inebriated man sees them, he gets

*the wrong idea but when he discovers he’s been deceived, he kills them”.*⁵⁹ “[T]here might be an element of passion but to the extent that someone will attack them [meaning transgender women], no. We haven’t reached that point; there is maturity in this country.” (Representative of the *Policía Nacional Preventiva*, National Preventive Police, of Honduras)⁶⁰

We have three motives why they [referring to transgender women] are killed: one, for being stood at a corner; two, because they steal from a client; and three, because they belong to criminal groups... Oh! And they also kill each other.
(Representative of the *Policía Nacional Civil*, Civil National Police, Guatemala)

*[O]n 20 June 2012 the body [of a young transgender woman aged 16] was found in a secluded area near the main road in Tepic [Nayarit, Mexico]. Social organizations have expressed concern that the authorities may be less rigorous in the investigation because they may assume that it was a crime of passion, as has happened in the past in similar situations.*⁶¹

We have three motives why they [referring to transgender women] are killed: one, for being stood at a corner; two, because they steal from a client; and three, because they belong to criminal groups... Oh! And they also kill each other.
(Representative of the *Policía Nacional Civil*, Civil National Police, Guatemala)⁶²

They are always saying that the killings are due to the settling of scores, but that is not true. They think that by saying it’s a settling of scores, the matter is closed. (Transgender leader in Montevideo, Uruguay, July 2012)

The police always say that the girls are killed for being mixed up with drugs, or that they are crimes of passion. (Marcela Romero, Regional coordinator of REDLACTRANS)⁶³

3. The ineffectiveness of the justice system

One of the symptoms of the institutional discrimination that transgender activists suffer,⁶⁴ is the fact that, in most cases in which a complaint has been filed with the prosecution service, the follow-up has been flawed. The transphobia and corruption that exist in the ranks of the police extend to the *Ministerio Público*, Prosecution Service, thereby compounding the impunity surrounding human rights violations committed against transgender women.

We have a problem with a policeman who assaulted a girl who stole a weapon from him. Now he is assaulting and threatening other colleagues. He even came into my house looking for the weapon and hit one of the girls from here. The policeman is the husband of a prosecutor. He told us not to stick our noses into something that didn't concern us. I went to the police station and picked up the phone in front of the police in order to file a complaint about the threats with the prosecutor's office, and one of them snatched the phone out of my hand. No one here says anything or files complaints. Even if we did complain, given that the police are moved around a lot, by the time the complaint has got somewhere, the policeman will have already been transferred to another area. (Transgender human rights leader in El Progreso, Honduras, July 2012)

Transgender activists who file complaints do so without the help of a lawyer, and the transgender organizations that support them lack the means to provide them with legal assistance. Even when they do have legal assistance, the transphobia that may also afflict law professionals causes that legal representation may be ineffective.

Through an international cooperation project, we had the support of a [woman] lawyer for six months. Some progress was made but not much because it was a slow process raising the awareness of the lawyer. Lawyers see the issue of transgender women from the perspective of the law and not human rights. (Transgender activist in Cali, Colombia, July 2012)

Prosecutors' offices have the duty to provide information about the progress of cases on a regular basis, something which does not happen. Most cases end up being closed and abandoned for lack of

While the specific units established by some Governments to address cases of violence against LGBTI people are an opportunity to monitor and demand the realization of human rights and consequently, reduce impunity, their mere existence does not guarantee effective criminal prosecutions if it is not be supplemented with protocols and specialist instructions on how they should operate. In Honduras, for example, the setting up of a *Sección de Diversidad Sexual*, Sexual Diversity Department, attached to the *Unidad de Delitos contra la Vida de la Fiscalía de Delitos Comunes del Ministerio Público*, Offences against Life Unit of the Prosecutor's Office for Common Law Offences, of the Prosecution Service, thanks to cooperation from the United States Government, has not entailed establishing technical and objective criteria for the referral and linking of cases, adopting appropriate research and litigation methodologies or capacity-building at a local level.

The prosecutor in charge of the Unit said that the cases are assigned or transferred to them if, at the time a dead body is removed, someone notices that "the victim is a transvestite"⁶⁵ or if, in the course of the investigation, the sexual orientation of the victim is discovered. However, the non-existence of a set of objective criteria for this purpose should be noted. It is impossible to make sound assertions about the methodology followed for bringing criminal prosecutions when the total number of cases being dealt with by the Unit is not even known. Furthermore, when the prosecutor was asked if she could give us a general idea of the backgrounds to the cases under investigation, she said that she "would have to ask the Embassy [of the United States]"⁶⁶ for permission.

This climate of impunity is also present in the courts, thus depriving transgender women of the right to a fair trial. Even if they reach the trial stage, many transgender activists are still in an unequal position because often witnesses are threatened or activists are denied the information they need or there is a delay in handing it over, meaning that they are at a disadvantage when the trial starts.

About a year and a half ago it was our turn to bury a colleague. The two killers were caught with her body in the boot of their car. One of them has been released by the courts. The other

is facing trial but we are concerned he's going to be set free because the prosecutor is looking for an eyewitness to testify and cannot find her. We are afraid that the case will go unpunished

because the witness fled out of fear after being threatened by relatives of the killer. (Transgender activist in Guatemala City, Guatemala, July 2012)

4. Discriminatory laws and the lack of legislation on gender identity and sexual orientation

The region still has discriminatory laws that contravene international human rights law,⁶⁷ including the following:

Federal District of Mexico, there is no equivalent law at national level.⁷¹

Table 2. Laws that contravene international human rights law.

Country	Law	Text
Argentina	Law 8431 - <i>Código de Faltas</i> , Misdemeanours Code, for Córdoba Province (2003)	Chapter 1, article 42. Anyone who bothers another person, affecting their personal decorum, by means of gestures, words or graphics, on the public highway, in places that can be publicly accessed from a public place or from a private place that has an impact on others shall be subject to a fine of up to five penalty units (5 PU) or arrest for a maximum of ten (10) days. The penalty of arrest shall be for a maximum of twenty (20) days if the victim is under sixteen years of age or if the offence takes place at night, whatever the age of the victim. ⁶⁸
Honduras	<i>Ley de Policía y Convivencia Social</i> , Police and Social Coexistence Law	The law contains several ambiguous terms such as “vago” (“vagrant”) and numerous references to “morality” which make it easy for it to be interpreted in an arbitrary and discriminatory way.
El Salvador	<i>Ordenanza para la Convivencia Ciudadana</i> , Civic Coexistence Ordinance, for the Municipality of San Salvador	The following is listed as a serious infringement: Article 32. Offering services of a sexual nature in public places or soliciting sexual services in a way that is noticeable or attracts attention or that disturbs public order; and which, even when in private places, is damaging to morality and decency, offends modesty with nudity or by means of obscene words, gestures, unseemly behaviour or displays, involves indecent touching or impertinent hounding. ⁶⁹
Chile	Criminal Code	Article 373. Those who in any way offend modesty or decency by committing scandalous or serious acts not expressly included in other articles of this Code shall be subjected to minimum to medium term imprisonment. ⁷⁰

Compiled by the author

In most countries of the region there is no legislation explicitly recognising or mentioning transgender identity, thus leaving transgender women legally invisible and dependent on how general clauses relating to their human rights protection are interpreted.

This dissociation between the gender, the social name and the identification document with which transgender people live, dehumanizes transgender women and denies them legal and civic status. For example, in Lima, Peru, around 36 per cent of transgender women do not have the corresponding identity document because many of them prefer to avoid going to registry offices because of the discrimination they suffer there.⁷² In El Salvador, in order to be issued with a *Documento Único de Identidad*, single identity document, “transgender women are obliged to present themselves as men in the document photo, thereby concealing their

With the exception of Argentina, no country of the region allows a person’s name and gender to be changed in identification documents without them having to undergo sex reassignment surgery, and without deeming their identity to be a pathological condition. Although a similar law is in force in the

Supp. Page #196

female appearance. For this purpose, they are obliged to wash their faces to remove any trace of makeup, pin their hair back and wear a jacket".⁷³ Meanwhile, in Guatemala, in a case that went to the *Procuraduría de Derechos Humanos*, Office of the Human Rights Ombudsman, as a result of the *Registro Nacional de las Personas*, National Registry of Persons, refusing to issue a personal identification document to a transgender woman, because of her name and appearance, the Ombudsman ruled that her human rights had not been violated because there was no specific law granting her protection.⁷⁴ In that country, although the police acknowledge the need for transgender women to carry a suitable identification document, they do not believe that legislation to this effect needs to be introduced.

One very great difficulty in investigating crimes against [transgender women] is that they never

*carry identity documents. I think it's because they don't like the fact that the document gives their male name and they do not physically resemble the photograph that appears on it. [...] A Gender Identity Law? No, I don't think that would be right because in this country only man and woman are defined and there can't be anything else. I am not familiar with the law governing RENAP [Registro Nacional de las Personas, National Register of Persons], but I imagine that that is how it is regulated because that is the correct thing to do. [A Guatemalan organization of LGBTI people] should handle the registration of transvestite men [meaning transgender women]. They are the ones who have an obligation to do so, they should do it. (Representative of the *Policía Nacional Civil de Guatemala*, Guatemalan National Civil Police)⁷⁵*

5. Transphobia as a factor that facilitates impunity

The widespread transphobia found among State authorities and actors is illustrated by the way in which they refer to transgender women. All of the authorities from the security and justice systems of Honduras and Guatemala interviewed in the context of this research described transgender women as transvestite or homosexual men. For example, a prosecutor from the *Ministerio Público*, Prosecution Service, in Honduras, referring to the cases in her charge, said that "we don't deal with [t]rans women here, only transvestite men".⁷⁶ At the *Procuraduría de los Derechos Humanos*, Office of the Human Rights Ombudsman, in Guatemala, which should be dealing with cases of human rights violations affecting LGBTI people because they are a group that is subject to specific rights, they were unable to distinguish between lesbian and transgender women.⁷⁷ The *Policía Nacional Civil de Guatemala*, Guatemalan National Civil Police, explained their reasoning for using certain masculine names for transgender women:

I don't want to be offensive but I have studied criminology and we do not call them transgender women but transvestite men because it is a form of deviant behaviour typical of criminals. It is seen especially in the cases of transvestites and prostitution, which are the same thing. But we don't discriminate against them. (Representative of the Guatemalan National Civil Police)⁷⁸

...we do not call them transgender women but transvestite men because it is a form of deviant behaviour typical of criminals.
(Representative of the Guatemalan National Civil Police)

III. “A right that is not defended is a right that is lost”: The vulnerability of transgender human rights defenders in Latin America

Sometimes the police stop me and suggest I help them extort money from the client. If I say no, they put me in the patrol car and take me to the [police] station, leave me there for 24 hours and then release me on the outskirts of the city. But sometimes I’m able to defend myself, I say that I’m a human rights defender, that they don’t have the right to arrest me and that I’m going to report them. If I’m able to get their identity, they usually stop watching me and leave me in peace because they know we know more than they do. For that reason all the training I’ve received has been very useful for me. A right that is not defended is a right that is lost. (Transgender woman in charge of the HIV prevention programmes in San Pedro Sula, Honduras, July 2012)

According to the *Second Report on the Situation of Human Rights Defenders in the Americas*, published by the Inter-American Commission on Human Rights,⁷⁹ organizations that promote and defend the human rights of LGBTI people play a crucial role in terms of social oversight of the observance of States’ obligations with regard to the rights to

a private life, equality and non-discrimination. The report also recognizes that those organizations and their activists face obstacles including the risk of murder, threats, the criminalization of their activities, the failure to take a different approach to the investigation of violations committed against them, and discourse calculated to discredit them.⁸⁰

Similarly, the Special Representative of the United Nations Secretary General on the situation of human rights defenders has appealed to States to address the stigmatization and attacks faced by those working for the rights of lesbian, gay, bisexual and transgender people and find a solution to these problems⁸¹.

In stark contrast, the work of transgender activists in the countries of Latin America is hindered not only by the violence perpetrated against them in reprisal for or to impede their human rights work, but also because of the extreme vulnerability they share with other transgender women and their exclusion from policies on violence against women.

1. The extreme vulnerability of transgender women

The lives of transgender women in the region are marked by a dynamic of exclusion that is the consequence of family, social and institutional transphobia. This begins when they are thrown out of their homes at a young age and essentially excluded from the educational and health care systems, meaning that transgender women in Latin America have a poor start to adult life. This lack of education and access to job opportunities

pushes the vast majority of transgender women in Latin America into sex work, even as teenagers.⁸²

This in turn means that they run the early and ongoing risk of contracting HIV and other sexually-transmitted diseases. It is worth noting that, while the prevalence of HIV in the population as a whole in Latin American countries does not exceed 1.5 per cent⁸³, among transgender women it can be as high as 35 per cent.⁸⁴

Transgender women are also exposed to a series of vulnerabilities, including widespread discrimination from their families and the ethnic communities to which they belong, violence from *maras* and organized crime and the tendency to be the target of hate crimes.⁸⁵

Transgender women in Latin America start suffering abuse from their families from a very young age. This can range from physical, verbal and sexual attacks to murder. For example, interviews in Honduras reported assaults on LGBTI people with knives and machetes are reportedly common in the context of family violence. Because of this, the percentage of transgender women and girls who leave or are thrown out of their homes is between 44 and 70 per cent.⁸⁶ Despite this, the States of Latin America do not host transgender girls and teenagers who have to leave their homes because of violence in institutions that provide protection to girls.

As well as being the victims of family violence, transgender women suffer attacks from various groups within society; in countries such as Guatemala, Honduras and El Salvador, the violence inflicted on them by *maras* and gangs is particularly serious.

In El Salvador, various human rights reports have concluded that gangs often require new recruits to attack members of the LGBTI community as part of their initiation process; such attacks are facilitated and fuelled by the prevailing impunity for crimes committed against these groups,⁸⁷ by a psychosexual aversion to or fear of gays and transgender women or simply by the desire to obtain some kind of material advantage.⁸⁸

In Guatemala, it is presumed that the killings of two transgender women, one in 2009 and the other in June 2012, were carried out by *mara* members but the fear is such that those who could be brought as witnesses or provide evidence to that effect have remained totally silent. Also in Guatemala, a transgender woman recounted an episode of violence believed to be *mara*-related:

I had a small business for a year and everything was going well until 13 January 2012 when four men turned up. I didn't realize when they arrived because I was busy but they took me by the arms and when I looked up, they attacked me in the face with a knife. I think they wanted to make a cross on my face to leave me marked. Given the nature of the attack, the forensic doctor told me

that they had probably been watching me for a year. She believes that they may have been gang members, maybe some gang member who is in prison likes me and this was a way of marking me so that no other gang member goes after me. I don't know whether it's part of some satanic ritual or what but I do know that it marked my life. I was really afraid and didn't go out for a long time and I lost my financial income. I filed a complaint with the Ministerio Público, Prosecution Service, but was unable to follow it up further for fear that they would kill me. The maras have eyes everywhere and if they're watching me, they can kill me. (Transgender activist working for human rights and HIV prevention in Guatemala City, Guatemala, July 2012)

Transgender women are also subjected to violence by non-official armed groups. The latter include the *Juntas Locales de Seguridad*, Local Security Committees,⁸⁹ and patrol groups in Guatemala, whose legality is questionable but who take on community policing and neighbourhood security duties. One of these groups is believed to have killed three transgender women in a social cleansing operation:

In July 2011, the bodies of three transgender women were found on wasteground in Ciudad Quetzal, San Juan Sacatepéquez. All three showed signs of torture and of having been finished off with a gunshot and one of them had been strangled. It is said that a patrol group from the area may have been responsible for these crimes and that members of the group had even threatened the investigators from the Ministerio Público, Prosecution Service. (Transgender defender in Guatemala City, Guatemala, July 2012)

An additional consideration to bear in mind is that the situation of many transgender women in Latin America is further exacerbated by, among other things, poverty, age, ethnic origin, nationality and immigration status, disability and HIV status.⁹⁰ For example, according to the *Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas*, Presidential Commission against Discrimination and Racism against Indigenous Peoples, in Guatemala, physical punishments have been inflicted on LGBTI people in indigenous Maya communities because of their sexual orientation or gender identity.⁹¹ The following is the case of an indigenous transgender woman in Guatemala:

I know of the case of a transgender colleague who is Maya and who witnessed another colleague being murdered while she was doing sex work. She gave up sex work because she was afraid and went to work in a maquila but, in order to work there, she had to cut her hair. When she was working there, people made fun of her because she couldn't speak Spanish very well. And so she began to conceal her Maya origins. She gradually lost her whole identity,

her gender and her ethnic affiliation. (Indigenous transgender leader in Guatemala City, Guatemala, August 2012)

2. Vulnerability caused by combining activism and sex work

The absence of a State response to their situation drives many transgender women to get involved as activists and citizens in promoting and defending their human rights.

I feel that, by earning the right to be what I am, a transgender woman, I have lost other rights, such as education, work, health, freedom, my integrity. But that is why I'm a human rights defender, that's why I'm an activist, because I wouldn't like other generations coming after me to suffer what I have suffered: to be shot, stabbed, imprisoned and have my hair forcibly cut, so many things. (Transgender activist in Guatemala City, Guatemala, July 2012)

Transgender women, especially those who do sex work, usually feel particularly concerned about HIV and that is how they first come into contact with transgender organizations, attracted by the HIV prevention work that these organizations do. In most countries of the region, transgender women only have access to HIV programmes provided by transgender organizations or through peer to peer methodologies. Members of transgender organizations often start off as volunteers on HIV prevention programmes and end up combining that work with work to defend and promote their human rights.

I became an HIV activist when my mother died of AIDS. I was 19. HIV activism helped me to forge my identity as a woman and to develop as a defender of the rights of the LGBT population. For me, HIV activism and human rights activism are the same thing. It's impossible to be an HIV

activist without being a human rights activist. (Transgender activist, San Pedro Sula, Honduras, July 2012)

Sex work and activism against HIV and in favour of human rights are therefore intrinsically linked in the case of transgender women in Latin America. The organization for transgender women in Brazil, Grupo Esperanza, was set up because of concern generated by violence and the HIV epidemic.

Together we are stronger. I always talk about the strengthening and empowerment of transgender people but also the strengthening of a country, it depends on the organization of its people. In 1994, we were going through a very difficult time politically in which enormous violence was being employed against us by the police. And so we got ourselves together to denounce that situation. We also started to do work on AIDS and HIV because lots of us were dying. (Transgender defender in Curitiba, Brazil, September 2012)

In the case of the *Colectivo Unidad Color Rosa* in Honduras, nearly all of its active members, including its board of directors, combine sex work with promoting and defending human rights and working on HIV prevention. One of them said:

I don't do sex work now but up until a year ago the police knew me because of my activism. As soon as they saw me in the street, they arrested me for no reason, took me to the [police] station, forced me to clean the toilets or the patrol cars, moved me from one cell to another, put

me in with men knowing the harassment that transgender women suffer in those cells, and threw cold water over me. Sometimes I had to give a false name to stop them recognizing me. One day I had to hide under some cars because the police were looking for me. (Transgender human rights leader, San Pedro Sula, Honduras, July 2012)

Members of the Colombian organization of transgender women, the *Santamaría Fundación*, have also been facing abuses because of combining their activism with sex work. During 2008 and 2009, pamphlets making threats against LGBTI people as well as indigenous people, prostitutes and people living in extreme poverty appeared.⁹² One of the organization's leaders said the following, talking about the police:

[T]hey constantly ask us for identification when we're working on the street, despite the fact that they know about our defence work or participate in cross-agency meetings with us. For them it's as if we stop being defenders when we are on the streets. (Transgender human rights defender in Cali, Colombia, July 2012)

Combining both activities therefore clearly puts transgender human rights defenders in a more vulnerable position because, although the violence against them happens at any hour of the day and anywhere, the fact that they engage in sex work at night on the street gives the police greater opportunities to take action against them with impunity.⁹³

I don't do sex work now but up until a year ago the police knew me because of my activism. As soon as they saw me in the street, they arrested me for no reason, took me to the [police] station, forced me to clean the toilets or the patrol cars, moved me from one cell to another, put me in with men knowing the harassment that transgender women suffer in those cells, and threw cold water over me.

(Transgender human rights leader, San Pedro Sula, Honduras, July 2012)

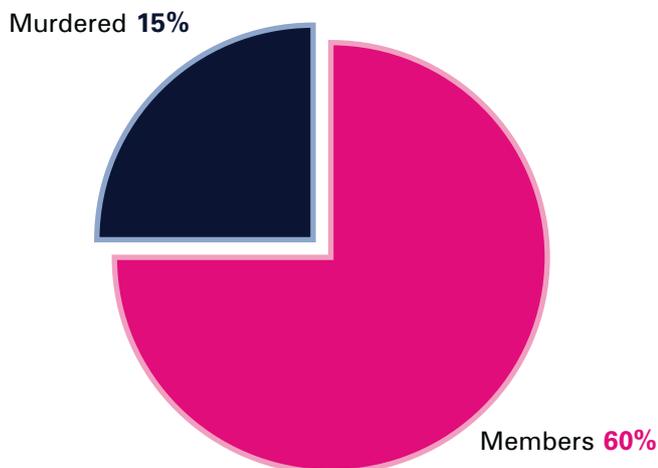
The nature of some of the attacks carried out against transgender activists and the methods used indicate that they may be a direct and explicit result of a crackdown on their human rights work. For example, the case of the raids and robberies carried out on the offices of *Santamaría Fundación* in Cali, Colombia:

Our organization has been attacked several times. The first time was in 2006, at the first office we had, they took all the information we had in a filing cabinet. That time they left the television, and only took the folders [files], the complaints, and our documentation. To date, we've had no response from the police with regard to that robbery. At the next office, shots were fired at the door and windows, and again the police did nothing. In the past six months, we have been robbed twice. They stole the computer from our office, where the information on our activities is kept, but they didn't take anything else; and they also entered the house of the person who coordinates the citizen's observatory. There they stole her computer and it looked as though she had been being watched because it was only 8 days since she had moved house. How did they know she lived alone? Why didn't they take her purse, or her camera or mobile phone? We don't know where these attacks came from but given that they didn't take anything else of value, just the information on our activities, we have no doubt that it was an attack on our human rights work, especially because we are a community-based organization. (Transgender activist in Cali, Colombia, July 2012)

From the specific targeting and recurrent nature of the violence directed at transgender women defenders, it can be inferred that it is largely connected with their activism. For example, in Cali, Colombia, in 2010, armed men tried to forcibly enter a vehicle belonging to a transgender woman leader who had often filed complaints against the police for acts of violence committed against her and her colleagues.⁹⁴ In Honduras, of the seven women who in 2001 founded the *Colectivo Unidad Color Rosa*, six have been murdered. An employee and eight members of the board have also been killed over the past three years, including the chair and vice-chair, both in 2010. Three women belonging to the same Honduran organization have been murdered so far in 2012. Of the 27 transgender women murdered

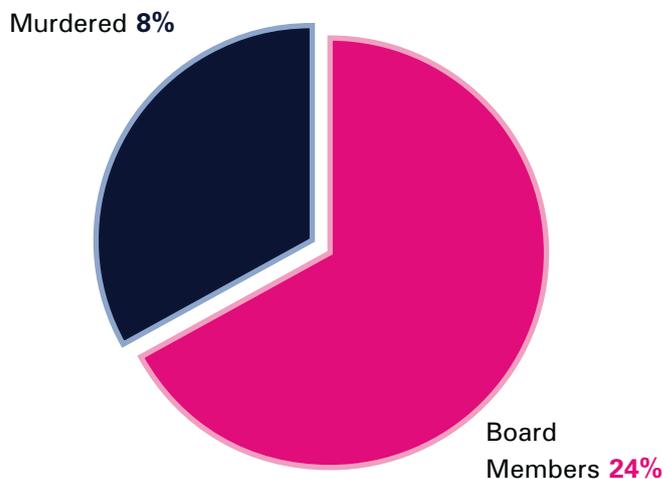
in Honduras between 2009 and 2012, 15 were activists from the *Colectivo Unidad Color Rosa*. These graphics illustrate the situation:

Figure 1. Transgender women from the Colectivo Unidad Color Rosa (CUCR) murdered between 2009 and 2012



days. Three murders had been committed and it was becoming very common for the State not to follow up on such murders. After denouncing

Figure 2. Members of the board of the CUCR murdered between 2009 and 2012



Compiled by the author

A common ploy when cracking down on human rights activism is to attack the relatives and partners of defenders. In Guatemala, the *Organización Trans Reinas de la Noche* reported an incident that may fit this kind of pattern:

One case that has left me distressed is the disappearance, since 2010, of a transgender woman. We have no information about her whereabouts or of how the authorities' investigation to find her is going. She was a person for whom I had very special affection as we got to know each other and had a relationship, like two women experimenting with their sexuality. It's a source of anguish to me to think that my activism put her at risk. I can say this because, before she disappeared, at the end of October and the beginning of November 2009, three colleagues died. I publicly denounced three murders on three consecutive

them, I was hounded and intimidated, and some men driving a red car tried to kill me. Given that I tell the media and complain to the authorities about the violence and the lack of attention paid to us, I fear that it might be related to what happened to her. (Transgender activist in Guatemala City, Guatemala, July 2012)

3. The exclusion of transgender women from the women's rights agenda

Transgender women and, among them, those who are human rights defenders can also be victims of violence in their personal relationships.

However, the authorities often see this type of violence as a dispute between two men, a street brawl, and fail to deal with such cases appropriately as incidents of violence against women.⁹⁵ For example, in Guatemala there is a *Ley contra el Femicidio y Otras Formas de Violencia contra la Mujer*, Law against Femicide and Other Forms of Violence against Women, but one of the assistant prosecutors from the *Ministerio Público*, Prosecution Service, believes that this legislation should not apply to cases of transgender women.⁹⁶ She said on the subject that “[t]he Femicide Law does not apply because in that law is not established for transgender people. The law is precise and specific and talks about the gender of woman, not and/or transgender, bisexual or anything like that. Perhaps

it could be framed in that way, but legally they are not identified by [their female name] but by their male name, and so they cannot be said to be women”.⁹⁷ Furthermore, **the institutions responsible for developing policies on violence against women do not include transgender women within their mandates, even though they are the victims of such violence.**

Similarly, there is no express recognition of the inclusion of transgender women in the protection provided by the Convention of Belém do Pará.⁹⁸ However, it is worth pointing out that preparations are under way for this issue to be discussed at the Assembly of Delegates of the Inter-American Commission of Women,⁹⁹ to be held in October 2012, with a view to ensuring that a diversity-based approach is incorporated into the monitoring of the treaty's implementation.¹⁰⁰

IV. “We are not asking for different opportunities, just equal ones”: Progress and challenges in the protection and promotion of the rights of transgender women

We are not asking for different opportunities, just equal ones. A Gender Identity Law is not going to sort our lives out. It will not mean that tomorrow I will be a university student or that I'm going to have a top job, but it will help to combat the stigma caused by the fact that my identification document says one thing and my appearance and gender identity says another. (Transgender activist in Guatemala City, Guatemala, July 2012)

In the midst of the climate of violence and impunity that transgender defenders in the region face, there has been some progress with regard to the legal questions that surround the rights of this population.

The most significant advance in this respect has been the promulgation of a Gender Identity Law in Argentina in May 2012. This law seeks to reduce discrimination based on gender identity by guaranteeing the rights and dignity of transgender people. It includes mechanisms for allowing people to change the gender and name given in their identification documents.¹⁰¹

The Gender Identity Law [promulgated in Argentina] is a step forward but there is still a long way to go. In order to generate changes in society and the culture, advocacy work needs to carry on. A person without identity does not exist. With the passing of the law, we succeeded in getting our existence recognized. It was a first step. The second step is social, labour market and educational inclusion. [The population of transgender women] [w]as a population excluded

from all rights; I think that what we achieved was the right to citizenship. Now we have to fight to ensure that public policies are also appropriate. (Marcela Romero, Regional Coordinator of REDLACTRANS)¹⁰²

In Mexico, Costa Rica, Uruguay, Chile, Ecuador and Venezuela, laws to protect against discrimination on grounds of sexual orientation have also been successfully introduced,¹⁰³ and in some cases gender identity has also featured in laws from the region. Although Ecuador is still the only country of Latin America whose Constitution explicitly refers to gender identity, anti-discrimination laws have been passed in Chile and Bolivia, while in El Salvador, gender identity has been addressed in an executive decree entitled “*Disposiciones para evitar toda forma de discriminación en la Administración Pública por razones de identidad de género y/o de orientación sexual*”, “Provisions to avoid any form of discrimination in Public Administration on grounds of gender identity and/or sexual orientation”.¹⁰⁴

Despite the fact that Central America is the region of Latin America in which hostility towards transgender women is greatest, there has been some isolated progress in those countries. For example, on 30 November 2009 in Nicaragua, the first *procuradora especial para la Diversidad Sexual*, Special Prosecutor for Sexual Diversity, was appointed with the task of monitoring implementation of the rights of LGBTI people and promoting those rights.¹⁰⁵ In Honduras, the second *Plan de Igualdad y Equidad de Género (2008-2015)*, Equality and Gender Equity Plan (2008-2015), was

passed.¹⁰⁶ In San Salvador, El Salvador, a municipal proclamation concerning article 2 of the Universal Declaration of Human Rights, recognizing the right of citizenship for LGBTI people, was issued¹⁰⁷ and in 2010 a *Dirección de Diversidad Sexual*, Sexual Diversity Office, was set up.

In Colombia too there has been progress on LGBTI issues, especially with regard to endorsing the rights of de facto couples of the same sex by allowing partners to become beneficiaries of the social security system and allocating them a pension in the event of widowhood. In March 2012, a transgender woman was appointed director of the *Gestión Corporativa de Integración Social*, Corporate Management of Social Integration.¹⁰⁸

In Mexico, a transgender woman stood for the Senate for the first time.¹⁰⁹ In 2011, the *Consejo Nacional para Prevenir la Discriminación*, National Council for the Prevention of Discrimination, drew up a *“Guía de acción contra la discriminación comprometida con la inclusión”*, “Anti-discrimination Action Guide committed to Inclusion”, which includes sexual preference but not gender identity.¹¹⁰ An amendment was also made to article 138 of the Criminal Code for the Federal District deeming hate crime to constitute an aggravating circumstance and in this case the definition does include both sexual orientation and gender identity.¹¹¹

In Chile in 2011, the Ministry of Health adopted a national protocol, entitled *“Vía clínica para la adecuación corporal en personas con incongruencia entre sexo físico e identidad de género”*, “The clinical path to body transformation in people whose physical sex and gender identity is not the same”¹¹², which regulates body transformation procedures. It also issued circular No. 34, which obliges the country’s health care facilities to address transgender people by their social name.¹¹³ A third Health Ministry plan expects the *Fondo Nacional de Salud*, National Health Fund, to assume the medical costs of body transformation, and it is hoped that this will come into force in 2013.¹¹⁴ On 12 July 2012 an anti-discrimination law that explicitly includes gender identity was passed.

In November 2011, at regional level, the Inter-American Commission on Human Rights established a Unit on the Rights of LGBTI Persons, which became operational in February 2012, with the aim of strengthening its capacity to protect those

rights. As its strategic areas of work the Unit has identified the provision of advice to bodies within the Organization of American States, the compilation of a report on the situation of that population in the Americas and priority processing of individual cases.¹¹⁵

Unfortunately, the priority processing of individual petitions¹¹⁶ and precautionary measures¹¹⁷ established by the Unit is not a measure that will immediately and effectively help implement the rights of transgender defenders because the nature of their problems and the reality of their organizations are not consistent with the dynamics of the Inter-American human rights protection system. For example, there could be difficulties when determining whether the alleged victims are entitled to resort to the system, given the lack of contact between transgender defenders and their families. The fact that the procedure is computer-based may also lead to transgender women being excluded because of the discrimination they suffer in the education system. Questions also arise about the appropriateness of ordering precautionary measures to be taken by police in the case of transgender human rights defenders who also do sex work and who are the victims of police abuses.

Only to the extent that States take responsibility for complying with their obligations in respect of transgender human rights defenders, can the situation of the latter improve within the broader social context. At the moment, the failure to comply with existing legislation on the issue means that transgender defenders face a lack of protection and that such laws have no impact on impunity

“All with us, nothing without us”: Conclusions and recommendations

Defending the human rights of transgender women is important not only for the filing of complaints but also for those making the complaints, namely us, the community of transgender women itself. All with us, nothing without us. (Marcela Romero, Regional Coordinator of REDLACTRANS) ¹¹⁸

Conclusions

The days when transgender defenders were murdered in the streets of Latin American cities with no one but their friends noticing are gone. Today transgender organizations in the region are empowering thousands of transgender women, both sex workers and those working in other professions, with regard to the effective prevention of HIV and other sexually-transmitted diseases and so that they are able to avail themselves of their human rights.

Unfortunately, as this report shows, the progress made and results obtained as a result of empowering the transgender population are limited. It is precisely the reporting of human rights abuses that is increasing their exposure to threats and reprisals in the context of sex work.

Transgender women have demonstrated that they can defend and promote their rights and serve their societies in many ways. In order for them to be successful, it is essential that national authorities, the international community and civil society organizations join efforts to tackle violence, discrimination and impunity.

Transgender human rights defenders have the right to express their identity, to have their physical integrity protected, to have educational and employment opportunities and to access justice. Transgender women have the capacity to lead in the HIV/AIDS response and the prevention, treatment, care and support efforts that can only be successful if they do it themselves.

Recommendations

A. Recommendations addressed to the States of Latin America

ACTION BY POLICE AND THE JUDICIARY AND IMPUNITY

- All cases of alleged human rights violations, hate crimes and discrimination perpetrated against transgender women should be investigated, prosecuted and punished. No killings of transgender women should go unpunished.
- Police investigators and prosecutors should open lines of investigation that take account of whether crimes are committed on grounds of the gender expression, gender identity or sexual orientation of the victims, or their work to promote and defend human rights.
- Latin American States should provide free and independent legal aid in all cases in which transgender women file complaints for violence or discrimination.
- States are urged to run training courses on human rights and gender theory, including gender identities, for officials working at all levels of the security and justice systems.
- The police authorities should issue internal norms to promote human rights in the course of police work, establish specific sanctions in the event such rights are violated by public officials and introduce internal monitoring systems that are endowed with the necessary resources.
- Disciplinary regimes for prosecutors and judges should include discrimination against transgender women as a serious offence, subject to sanctions.
- The police should cut down on the rotation of officers from one geographical area to another in order to facilitate identification of police officers who have allegedly violated the rights of transgender women and the filing of complaints against them.

All officers and their vehicles should be easily recognizable and the police should sanction any officers who conceal their identity.

- The Latin American States should regularly monitor and sanction all XXX committed by their officials against the transgender community including police forces, justice authorities and health providers.

RECOGNITION OF GENDER IDENTITY AND LAW REFORM

- There is an urgent need for a Gender Identity Law to be promulgated in the countries that do not have one so that the right to identity of transgender people is legitimized and they are allowed to change their name and gender in their personal identification documents without being required to submit themselves to surgical or psychological interventions, sterilization or any other kind of invasive procedure.
- States should recognize gender identity as a category on which demographic, epidemiological, social and political reports should be compiled. Similarly, the police, prosecution service, courts and prison system should recognize transgender as a category to be included in the compilation of statistics on violence. Otherwise, it will be virtually impossible for the system to identify patterns of hate crimes committed because of transphobia or human rights violations against transgender defenders, and to take whatever steps may be necessary.
- States should remove any legislation that is transphobic by disposing of any provision that could be interpreted as criminalizing the sex work carried out by transgender people or as justifying arbitrary detention.

POLICIES ON INCLUSION AND PARTICIPATION IN DECISION-MAKING FORA

- States and international donors should push for transgender people to be able to remain in or return to the education system with their female image by pursuing policies that ensure respect for identity and expression. They should also facilitate the creation of job and business opportunities so that transgender human rights defenders are not exposed to rights violations as a result of doing sex work. The State should also fund and run public campaigns within institutions in order to combat social discrimination against transgender women, ensuring that the latter are fully involved in their design and planning.
- States are urged to boost the participation of transgender people in political fora, both in decision-making and in political representation and the holding of public office. States should implement programs to reinsert transgender adolescents to their homes that include training on gender and human rights for their families.

THE RIGHT TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH

- Comprehensive health care for the transgender community should be strengthened and access to antiretrovirals for transgender women living with HIV improved. The hours of service for transgender women living with HIV should be adapted to the needs of that community.
- Governments are urged to set up training programmes for health professionals on health care, gender identities and human rights in the treatment of transgender women. Transgender women should also be given access to mechanisms for constructing their gender identity and transforming their bodies with professional support and in a healthy manner. In addition, therapies and other medical or psychological activities that seek to change people's sexual orientation or gender identity should be banned.
- Prison, care provision (hospices for people living with HIV, shelters for women, people living on the streets, etc...) and health care systems are urged to accommodate transgender women in facilities intended for women and to protect them from abuse and degrading treatment, including rape.
- Transgender women who take drugs should have access to harm reduction programmes and, on a voluntary basis, rehabilitation centres.
- HIV prevention projects for the transgender community, run by both States and the Global Fund to Fight AIDS, Tuberculosis and Malaria and other donors, should be designed and implemented with the full participation of transgender organizations since only they have the capacity to carry out effective peer education work.
- States should include transgender women in their policies and programmes to eradicate violence against women. Similarly, governments should include young and adult transgender women in all forms of support that are provided for children and adolescents who have survived family violence or been expelled from their homes.

B. Recommendations addressed to the Organization of American States, the United Nations, specialist agencies such as PAHO, third countries and international donors

PROTECTING TRANSGENDER HUMAN RIGHTS DEFENDERS AND OTHER TRANSGENDER WOMEN FROM VIOLENCE AND IMPUNITY

- The international community is responsible for monitoring States' compliance with the international human rights obligations incumbent upon them. In this connection, the Inter-American Commission on Human Rights, the United Nations Human Rights Council, treaty-monitoring bodies, special procedures, specialist agencies and third countries are urged to specifically monitor the human rights of transgender women in Latin America and, within the framework of their respective mandates, publicly state their concerns and recommendations.
- Also, in all their onsite visits to the countries of Latin America, they are urged to consider transgender communities, giving priority attention to testimonies and analyses produced by those communities. In these cases, the issues affecting transgender women should be addressed by adopting an intersectional approach that encompasses not only questions of identity and gender expression but also those relating to age, ethnic and/or national origin, immigration status and HIV status, as well as the rights of the child and the elimination of all forms of violence against women.
- Third countries are urged to accept the systematic violence inflicted on transgender women and the impunity that surrounds such cases as valid grounds for granting them asylum.

PROMOTION OF THE RIGHT TO GENDER IDENTITY AND SEXUAL ORIENTATION

- It is recommended that gender identity and expression be included as an explicit category in all human rights treaties.
- In addition, a specific treaty on the rights of lesbian, gay, bisexual, transgender and intersex

(LGBTI) people should be adopted, allowing, among other things, the establishment of a monitoring system, including indicators, specific objectives and sanctions in the event of non-compliance by the States Parties.

- The Organization of American States and the United Nations should make their respect for the gender identity of transgender women explicit in the work of their agencies and bodies. To this end, it is suggested that the Inter-American Commission of Women as well as the recently established UN Women explicitly include transgender women in their mandates in their work to promote human rights and, in the case of UN Women, in its role as co-sponsor of UNAIDS, by helping to prevent HIV and other sexually-transmitted diseases among transgender women.

INTERNATIONAL FUNDING

- International donors are urged to continue supporting both the States of Latin America and organizations of transgender women to promote the human rights of that group and to combat HIV by monitoring States' compliance with the binding human rights instruments applicable to transgender groups. For this to be done, the support must be comprehensive and sustained, with particular emphasis on ensuring the physical protection of transgender human rights defenders, combating discrimination and the impunity surrounding the human rights violations to which the community is subjected, securing access to justice for transgender women and developing viable educational and work opportunities for transgender women.
- The international community is urged to promote, fund and carry out research that sheds light on the causes of transphobia and gender-based violence in all spheres, especially health care, education, housing and work.

C. Recommendations addressed to other civil society organizations

- It is recommended that civil society organizations, especially those working to promote human rights, collaborate with transgender women's organizations to monitor this issue and disseminate information on it, by sharing their experiences of advocacy and devising institutional strategies and forming partnerships for defending and protecting the human rights of transgender women.
- Civil society organizations are also urged to train the media in the right to gender identity and related issues in order to stop the degrading treatment of transgender women by the media.
- It is also suggested that the issues of sexual orientation and gender identity be included in the shadow reports submitted to the different United Nations bodies as well as in reports submitted to the specific rapporteurships of the Inter-American Commission on Human Rights.
- Women's organizations are particularly urged to include transgender women's organizations as strategic partners in their work to combat violence and discrimination

Notes

¹Including the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171 [from now on, ICCPR], the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 [from now on, ICESCR], the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S.13 [from now on, CEDAW], the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85 [from now on, CAT], the Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3 [from now on, CRC], the American Convention on Human Rights [from now on, American Convention], 22 November 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 143, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights [from now on, Protocol of San Salvador], 17 November 1988, O.A.S.T.S. No. 69, the Inter-American Convention to Prevent and Punish Torture, [from now on, Inter-American Convention to Prevent and Punish Torture], 12 September 1985, O.A.S.T.S. No. 67, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, [from now on, Convention of Belém do Pará], 9 June 1994, 33 I.L.M. 1534.

²To find out the current status of signatures and ratifications of inter-American treaties by States, go to: http://www.oas.org/dil/treaties_signatories_ratifications_member_states.htm; and for human rights treaties within the universal system, see: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

³For example, the Human Rights Committee said that the reference to "equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" in article 26 of the ICCPR includes discrimination on grounds of sexual orientation (Human Rights Committee: Views of 31 March 1994, Case of Nicholas Toonen v. Australia, Communication N° 488/1992, paras. 8.2-8.7. See also Views of 6 August 2003, Case of Edward Young v. Australia, Communication N° 941/2000, para. 10.4 and Views of 30 March 2007, Case of X v. Colombia, Communication N° 1361/2005, para. 7.2.). Similarly, the Committee on Economic, Social and Cultural Rights stated that "[b]y virtue of article 2.2 and article 3 [of the ICESCR], the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of [...] health status (including HIV/AIDS), sexual orientation [...], which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health." (Committee on Economic, Social and Cultural Rights, General Comment N° 14: The right to the highest attainable standard of health (article 12), para. 18. See also: Committee on Economic, Social and Cultural Rights, General Comment N° 15: The right to water, para. 13.). For its part, the Committee against Torture considered sexual orientation to be one of the prohibited grounds included in the principle of non-discrimination (Committee against Torture, General Comment N° 2: Implementation of Article 2 by States Parties, paras. 21 y 22). The Committee on the Rights of the Child listed sexual orientation among prohibited grounds for discrimination in its general comments relating to adolescent health and development, HIV/AIDS and the rights of the child (Committee on the Rights of the Child, General Comment N° 4: Adolescent health and development, para. 6, and General Comment N° 3, HIV/AIDS and the rights of the child, para. 8).

⁴AG/RES. 2653 (XLI-O/11) "Human rights, sexual orientation and gender identity", which ratifies and improves on resolutions passed in previous years: AG / RES. 2600 (XLO/10), AG /RES 2504 (XXXIX-O/09) and AG/RES.2435 (XXXVIII-O/08).

⁵While recognizing it can be diverse, the gender identity to which this report refers is characterized by certain common features. In all cases, it refers to people who see themselves as having a different gender (female) from the one assigned to them at birth (male). This recognition is accompanied by the adoption of a proper noun and usually, but not always, feminine pronouns. It also includes several forms of expression usually associated with different styles of femininity, including clothing, hairstyle, cosmetics and footwear, and possible body modifications such as those resulting from the taking of hormones or the insertion of silicone implants, or even sex reassignment surgery. The situation of female to male transsexuals, transgender men and others is not addressed in this report, although, given its specific nature, it should be addressed urgently as a separate issue.

⁶There is no precise definition of a human rights defender. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to “individuals, groups and associations [who contribute] to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (paragraph 4 of the preamble). According to this general definition, any person or group of persons who is seeking to promote human rights can be defenders without it being essential that, in order to be called a human rights defender, the person in question is known as a “human rights activist” or works for an organization whose name includes the words “human rights”.

⁷See, for example, Comisión Nacional de los Derechos Humanos México (2010), Special Report by the National Human Rights Commission (CNDH) on Homophobia-related Human Rights Violations and Crimes, Mexico D.F., Mexico, para. 169, which states that, while gays and lesbians may suffer harassment only when they show affection in public, the visibility of transgender people, especially women, means that such harassment is constant.

⁸Organización Trans Reinas de la Noche (OTRANS) (2011), Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011, Guatemala, Guatemala, p. 27.

⁹Throughout the report, reports on the issue recently produced in countries of the region are cited. See also Organización OASIS (2006), Guatemala, El Rostro de la Homofobia: Informe Especial. Los crímenes de odio por identidad sexual (1996-200), Guatemala, Guatemala; MOVHIL (2008), Prejuicios y conocimientos sobre orientación sexual e identidad de género en establecimientos educacionales municipalizados de la Región Metropolitana, Santiago, Chile; and Grupo de Acción Gay Lésbico Transgénero (2003), Informe sobre la Situación de los Derechos Humanos de Gays, Lesbianas, y Transgénero 2003, Asunción, Paraguay.

¹⁰A derogatory term used broadly for gay men and often applied also to transgender women in Guatemala and Honduras.

¹¹Colombia Diversa (2011), Todos los deberes, pocos los derechos. Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008 – 2009, Bogotá, p. 22. The statistics presented give the transgender population as a separate category while also including “homosexual” and “gay” as categories.

¹²Centro por la Justicia y el Derecho internacional (CEJIL); Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC); Hivos (2010), Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Costa Rica, p.49. All the statistics provided group gay men and transvestites together, without specifically mentioning transgender women. This study reports the murders of 23 gay men and transvestites between 2000 and 2009.

¹³The Geneva Declaration, p.6, available at <http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011-Ex-summary-ENG.pdf>.

¹⁴OTRANS Op. cit. Pag. 31.

¹⁵Interview with an official from the Dirección de Prosecución de la Procuraduría de los Derechos Humanos de Guatemala, Prosecutions Directorate of the Guatemalan Human Rights Ombudsman’s Office, August 2012.

¹⁶Colombia Diversa, Op. cit. Pag. 40.

¹⁷Instituto Runa de Desarrollo y Estudios de Género; Hivos (2010), Informe de Derechos Humanos sobre la Comunidad Trans en la ciudad de Lima, Lima, p.13.

¹⁸Article 3 of the Universal Declaration of Human Rights; article 6 of the ICCPR; article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 6 of the CRC, article 10 of the Convention on the Rights of Persons with Disabilities; principle 1 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; article 7 of the United Nations Declaration on the Rights of Indigenous Peoples; article 5 of the Declaration on the human rights of individuals who are not nationals of the country in which they live; article I of the American Declaration of the Rights and Duties of Man; and article 4 of the American Convention on Human Rights.

¹⁹Inter-American Court of Human Rights, Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, Judgment of 19 November 1999, Series C No. 63, para. 144.

²⁰Interview with a leader from the Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), Tegucigalpa, July 2012.

²¹This refers to the coup d’Etat occurred in 2009

²²ICCPR (article 7); CAT; CRC (article 37.a); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 10); Convention on the Rights of Persons with Disabilities (article 15.1); American Convention on Human Rights (article 5); Inter-American Convention to Prevent and Punish Torture; and Convention of Belém do Pará (article 4.c).

²³United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 6); Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Code of Conduct for Law Enforcement Officials (article 5); Guidelines on the Role of Prosecutors (guideline 16); Declaration on the human rights of individuals who are not nationals of the country in which they live (article 6); Guiding Principles on Internal Displacement (principle 11); and Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (principle 1).

²⁴Report by the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/56/156, 3 July 2001, para. 18. Similarly, the Committee against Torture expressed concern about people being tortured because of their sexual orientation and recommended that States take effective steps to address complaints of threats and attacks targeted at sexual minorities and defenders (Concluding observations of the Committee against Torture: Italy, CAT/C/ITA/CO/4 (2007), para. 23; Concluding observations of the Committee against Torture: Argentina, CAT/C/CR/33/1 (2004), para. 6.g; and Concluding observations of the Committee against Torture: Venezuela, CAT/C/CR/29/2 (2002), para. 10.d.)

²⁵Universal Declaration of Human Rights (articles 3 and 9), ICCPR (article 9), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 16), CRC (article 37), International Convention for the Protection of All Persons from Enforced Disappearance (article 17), Declaration on the human rights of individuals who are not nationals of the country in which they live (article 5.1), American Declaration on the Rights and Duties of Man (articles I and XXV), American Convention on Human Rights (article 7).

- ²⁶In its General Comment N° 8, Right to liberty and security of persons (article 9), the Human Rights Committee emphasizes that “paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” (para. 1).
- ²⁷Telephone interview with Hege Wagan, UNAIDS Regional Adviser, September 2012.
- ²⁸Interview with the director of the Superintendencia de Justicia, Seguridad y Transporte, Office of the Superintendent for Justice, Security and Transport, for the municipality of San Pedro Sula, Honduras, July 2012.
- ²⁹Red Legal y su Observatorio de Derechos Humanos, VIH y PEMAR (2012), Segundo informe nacional sobre la situación de los derechos humanos de las personas con VIH y poblaciones en más alto riesgo, Guatemala, p. 32.
- ³⁰Decision of the Tercera Sala de la Corte de Apelaciones de Santiago, Third Chamber of the Santiago Court of Appeal, presided by Justice Mauricio Silva Cancino and made up of Fiscal judicial (prosecuting attorney) Juan Escandón Jara and Abogada integrante (associate judge) Teresa Alvarez Bulacio, 19 July 2012.
- ³¹Ibid.
- ³²Human Rights Watch (2009), “Not Worth a Penny”: Human Rights Abuses against Transgender People in Honduras, New York, p. 23.
- ³³Asociación Panameña de Personas Trans (APPT - Panamanian Association of Trans People) and the International Gay and Lesbian Human Rights Commission (IGLHRC) (2009), Situation of lesbian, bisexual, transsexual, and transgender women in Panama in relation to discrimination. Shadow report to the Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), 45th session, 18 January to 5 February 2010. Panama, p. 8.
- ³⁴Telephone interview with transgender activist in Curitiba, Brazil, September 2012.
- ³⁵ICESCR, article 12.1; International Convention on the Elimination of All Forms of Racial Discrimination, article 5.e.iv; CEDAW, article 11.1.f and 12; CRC, article 24; Convention on the Rights of Persons with Disabilities, article 25; Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador).
- ³⁶World Health Organization, Pan American Health Organization (2010), Health and Human Rights: Concept Paper, CD50/12, 31 August 2010, para. 10.
- ³⁷Human Rights Watch (2009), Together, Apart: Organizing around Sexual Orientation and Gender Identity Worldwide, New York, p. 40.
- ³⁸Pan American Health Organization (2011), El derecho a la salud de los jóvenes y las identidades de género: hallazgos, tendencias y medidas estratégicas para la acción en salud pública, Washington, D. C.
- ³⁹OTRANS, Op. cit. Pag. 45.
- ⁴⁰Ulises Borgogno, Op. cit. Pag. 46.
- ⁴¹Interview with an activist working for the human rights of transgender women in San Pedro Sula, Honduras, July 2012.
- ⁴²United Nations General Assembly Special Session on HIV/AIDS.
- ⁴³Ministerio de Salud de Guatemala (2010), Reporte UNGASS Guatemala 2010: Seguimiento de la Declaración de Compromiso sobre VIH y Sida, Guatemala.
- ⁴⁴Comisión Nicaragüense del SIDA (2010), Informe Nacional sobre los Progresos Realizados en la Aplicación del UNGASS, Managua.
- ⁴⁵Ministerio de Salud de Honduras (2010), Informe Nacional sobre los Progresos Realizados en la Aplicación del UNGASS, Tegucigalpa.
- ⁴⁶Colectivo Unidad Color Rosa is the transgender organisation in San Pedro de Sula – Honduras affiliated to Redlactrans
- ⁴⁷Amnesty International (2001), Crímenes de odio, conspiración de silencio. Tortura y malos tratos basados en la identidad sexual, AI Index: ACT 40/019/2001/s, p. 7.
- ⁴⁸See, for example, Organización Trans Reinas de la Noche (OTRANS), Red Latinoamericana y del Caribe de Personas Trans (REDLACTRANS), International Gay and Lesbian Human Rights Commission (IGLHRC), The Heartland Alliance for Human Needs & Human Rights, International Human Rights Law Clinic of the Faculty of Law of George Washington University (2012), Violaciones a los Derechos Humanos de las personas Lesbianas, Gays, Bisexuales y Transgénero (LGBT) en Guatemala: Informe Sombra. Guatemala, p.17.
- ⁴⁹Interviews with officials from the Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate, Tegucigalpa, Honduras, July 2012; an official from the Policía Preventiva, Preventive Police, in San Pedro Sula, Honduras, July 2012; a prosecutor from the Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service), Tegucigalpa, Honduras, July 2012; the fiscal de Derechos Humanos, Ministerio Público (Human Rights Prosecutor, Prosecution Service), Tegucigalpa, Honduras, July 2012; and an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala, August 2012.
- ⁵⁰Amnesty International, Op. cit. Pag. 16.
- ⁵¹Interview with an official from the Departamento de Delitos Sexuales, Trata de Personas, Niñez y Adolescencia y Delitos Conexos de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Sexual Offences, Human Trafficking, Children and Adolescents and Related Offences Department of the Specialist Investigation Division of the National Civil Police of Guatemala), Guatemala, August 2012.
- ⁵²Shadow report on Guatemala, Op. cit. Pag. 17.
- ⁵³Red Lésbica Catrachas, Situación de las muertes violentas de la comunidad LGTTBI en Honduras, summary as of 16 July 2012.
- ⁵⁴Telephone interview with a transgender leader in Cali, Colombia, July 2012.
- ⁵⁵See end note 11.

- ⁵⁶See, for example, a report by Erica Sandoval Rebollo entitled *La transgeneridad y la transexualidad en México: en búsqueda del reconocimiento de la identidad de y género y la lucha contra la discriminación*, Dirección General Adjunta de Estudios, Legislación y Políticas Públicas, Documento de Trabajo N° E-12-2008.
- ⁵⁷Inter-American Commission on Human Rights (2007), *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II, Doc. 68, 20 January 2007, para. 155.
- ⁵⁸Inter-American Commission on Human Rights (2012), *IACHR Condemns Murder of Trans Honduran Woman in Guatemala*, 11 July 2012
- ⁵⁹Interview with officials from the Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate, Tegucigalpa, Honduras, July 2012.
- ⁶⁰Interview with an official from the Policía Preventiva, Preventive Police, San Pedro Sula, Honduras, July 2012.
- ⁶¹Inter-American Commission on Human Rights (2012), *IACHR Condemns Murder of Trans Adolescent in Mexico*, 25 June 2012.
- ⁶²Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala City, Guatemala, August 2012.
- ⁶³Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.
- ⁶⁴In this connection, see Ulises Borgogno, *Op. cit.* Pag. 11.
- ⁶⁵Interview with prosecutor from Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service) Tegucigalpa, Honduras, July 2012.
- ⁶⁶*Ibid.*
- ⁶⁷Human Rights Committee, “General Comment No 18: Non-discrimination”, 37th session, 1989.
- ⁶⁸Federación Argentina LGBT, *Informe sobre códigos contravencionales y de faltas de las provincias de la República Argentina y la Ciudad Autónoma de Buenos Aires en relación con la discriminación y represión a gays, lesbianas, bisexuales y trans*, available at: http://www.lgbt.org.ar/archivos/codigos_contravencionalesyfaltas.pdf. This document contains a list of all the laws of that kind in the country.
- ⁶⁹Ordenanza para la Convivencia Ciudadana del Municipio de San Salvador, consulted at: http://www.sansalvador.gob.sv/pages/sgc/sindicatura/ORD_CONVIVENCIA_CIUADADANA.pdf
- ⁷⁰Código Penal de Chile, consulted at: <http://www.iberred.org/sites/default/files/codigo-penal-de-chile.pdf>
- ⁷¹Global Rights (2010), *The violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico: A Shadow Report*, Mexico D.F., Mexico.
- ⁷²Instituto Runa de Desarrollo y Estudios de Género; Hivos (2010), *Op. cit.* Pag. 23.
- ⁷³Asociación Salvadoreña de Derechos Humanos “Entre Amigos”, International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic, Human Rights Program, Harvard Law School and Red Latinoamericana y del Caribe de Personas Trans, *op. cit.*, p. 40. [Shadow Report submitted to the United Nations Human Rights Committee, October 2010]
- ⁷⁴Interview with an official from the Unidad de Derechos Específicos de la Dirección de Prosecución de la Procuraduría de los Derechos Humanos (Specific Rights Unit of the Prosecutions Directorate of the Office of the Human Rights Ombudsman), Guatemala, August 2012.
- ⁷⁵Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala
- ⁷⁶Interview with a prosecutor from the Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service) Tegucigalpa, Honduras, July 2012.
- ⁷⁷Interview with an official from the Unidad de Derechos Específicos de la Dirección de Prosecución de la Procuraduría de los Derechos Humanos (Specific Rights Unit of the Prosecutions Directorate of the Office of the Human Rights Ombudsman), Guatemala, August 2012.
- ⁷⁸Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala.
- ⁷⁹OEA/Ser.L/V/II., Doc. 66, 31 December 2011, available at: <http://www.oas.org/en/iachr/default.asp>
- ⁸⁰*Ibid.*
- ⁸¹Report of the Special Representative of the Secretary General on the situation of human rights defenders, 27 March 2007, A/HRC/4/37/Add.1, paras. 255-258.
- ⁸²For example, between 94 and 95 per cent of transgender women in Peru and Chile are engaged in sex work (see Instituto Runa de Desarrollo y Estudios de Género; Hivos (2010), *Informe de Derechos Humanos sobre la Comunidad Trans en la ciudad de Lima*, Lima, Peru, p. 5; and Ulises Borgogno, Ignacio Gabriel (2009), *La Transfobia en América Latina y el Caribe: Un estudio en el marco de REDLACTRANS*, Buenos Aires, Argentina, p. 44).
- ⁸³UNAIDS (2010); *Global Report: UNAIDS report on the global AIDS epidemic 2010*; p.202. http://www.unaids.org/globalreport/Global_report.htm

⁸⁴Argentinean HIV/AIDS Bulletin, No.25, December 2007. Department of STIs and HIV/AIDS, Ministry of Health – Argentina, pp.68-69; Monica Pun Chinarro, 'Situation of the HIV/AIDS epidemic in Peru', presentation given by the Department of HIV/AIDS and STIs of the Ministry of Health at the National Sex Work Consultation, Lima, December 2007. HIV and STI and Behavioural Multi-Centric Study among MSM in El Salvador, 2003

⁸⁵There is no universal definition of a hate crime. In this report, it is taken to mean killings or physical attacks on people carried out solely because of their sexual orientation or gender identity.

⁸⁶Ulises Borgogno, Op. cit. Pag. 40.

⁸⁷Harvard University Law Faculty (2010), The Violation of the Rights of Lesbian, Gay, Bisexual, and Transgender Persons in El Salvador, p. 8.

⁸⁸Asociación Salvadoreña de Derechos Humanos "Entre Amigos", International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic, Human Rights Program, Harvard Law School and Red Latinoamericana y del Caribe de Personas Trans (2010), The Violation of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in El Salvador, Shadow Report submitted to the United Nations Human Rights Committee, p. 8.

⁸⁹These were originally set up with the idea of giving a community basis to crime prevention and in some cases they carry out tasks that are the responsibility of the State, including maintaining territorial control and using force, with the acquiescence or direct participation of local authorities.

⁹⁰Cabral, Mauro and Hoffman, Johanna, "Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": Trans Latinoamericanas en Situación de Pobreza Extrema, Latin America and Caribbean Programme, International Gay and Lesbian Human Rights Commission.

⁹¹Interview with a commissioner from the Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas in Guatemala, August 2012.

⁹²Colombia Diversa (2011), Op. cit. Pag. 30.

⁹³Interview with an official from the Ministry of Justice and Human Rights, Tegucigalpa, Honduras, July 2012.

⁹⁴Telephone interview with a transgender activist in Cali, Colombia, July 2012.

⁹⁵Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.

⁹⁶For an evaluation of this law, see Leonardo, Mónica (2009), Análisis del tipo penal de femicidio, Guatemala, Fundación Myrna Mack, in which the author states that, although the law criminalizing femicide seeks to combat gender-based violence, the violent deaths of gays, lesbians and transgender and intersex persons are excluded from it. In this connection, it is clear that such deaths have to be tried as common law offences, despite constituting an obvious form of gender-based violence.

⁹⁷Interview with a prosecutor from the Unidad de Litigio de la Fiscalía de Delitos contra la Vida perteneciente al Ministerio Público (Litigation Unit of the Prosecutor's Office for Crimes against Life, of the Guatemalan Prosecution Service, August 2012.

⁹⁸Interview with Javier Vásquez, Human Rights Adviser at the PanAmerican Health Organization, July 2012. The views expressed in this section by the Human Rights Adviser at the PAHO/WHO are personal and do not necessarily reflect the official position of the PanAmerican Health Organization and/or the World Health Organization.

⁹⁹The Inter-American Commission of Women (CIM) was established to ensure recognition of the civil, political, economic, social and cultural rights of women. It is made up of one Principal Delegate for each OAS member State, as designated by their respective governments. The delegates meet every two years during the Assembly of Delegates, CIM's highest authority, and are responsible for approving the Commission's plans and programs of work. CIM also provides technical and advisory support to the Conference of States Parties and to the Committee of Experts of the Follow-up Mechanism for Implementation of the Convention of Belém do Pará.

¹⁰⁰Interview with Hilary Anderson, a specialist from the Inter-American Commission of Women, July 2012.

¹⁰¹Law 26,743, available at <http://www.1.hcdn.gov.ar/BO/boletin12/2012-05/BO24-05-2012leg.pdf>

¹⁰²Interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.

¹⁰³Mexico: Article 1 of the Constitution, consulted at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>, and the Ley Federal para Prevenir y Eliminar la Discriminación, Federal Law to Prevent and Eliminate Discrimination, article 3, consulted at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>.

Ecuador: articles 11.2, 66.9 and 83.14 of the Constitution, consulted at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf and the Criminal Code, articles 30.6, 450.10 and addendum 555 of 24 March 2009.

Costa Rica: Criminal Code, article 123bis, available at: <http://www.iberred.org/sites/default/files/codigo-penal-costa-rica.pdf>.

Colombia: Criminal Code, article 58.3, available at: <http://www.iberred.org/sites/default/files/codigo-penal-de-colombia.pdf>.

Chile: Ley Antidiscriminación, Anti-discrimination Law, article 2, available at: http://www.bcn.cl/carpeta_temas_profundidad/ley-antidiscriminacion-fue-aprobada-por-el-congreso-nacional.

Uruguay: Law No. 17,817, article 2, available at: <http://sip.parlamento.gub.uy/leyes/ AccesoTextoLey.asp? Ley = 17817 &Anchor>, and the Criminal Code, articles 149bis and 194 ter, available at: <http://www.iberred.org/sites/default/files/codigo-penal-uruguay.pdf>.

Venezuela: Ley Orgánica contra la Discriminación Racial, Organic Law against Racial Discrimination, article 11, available at: http://www.observatorioafro.com/Documentacion/LEY_ORGANICA_CONTRA_LA_DISCRIMINACION_RACIAL.pdf.

¹⁰⁴Ecuador: article 11.2 of the Constitution, available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf.

El Salvador: Executive Decree No. 56, available at: <http://es.scribd.com/doc/33472123/Decreto-Ejecutivo-56-Republica-de-El-Salvador>.

Bolivia: Ley 045 Contra el Racismo y toda forma de Discriminación, Law 045 Against Racism and All Forms of Discrimination, article 5.a, available at: <http://bolivia.infoleyes.com/shownorm.php?id = 2395>.

Supp. Page #20409, article 2, available at: <http://www.leychile.cl/Navegar?idLey = 20609&idVersion = 2012-07-24>.

¹⁰⁵Fundación CATTRACHAS, Fundación Triángulo (2012), "Trans" Centro América: Impacto político/social en mujeres trans en la región más violenta de Latinoamérica y el Caribe. Honduras, p. 13.

¹⁰⁶Ibid. p. 18.

¹⁰⁷Proclama Municipal, available at: <http://es.scribd.com/doc/8506901/Declaracion-Derechos-Humanos-y-Divers-Id-Ad-Sexual-San-Salvador>.

¹⁰⁸Runa, ¡Mujer transgénero asume cargo público!, Dirección Gestión Corporativa de Integración Social, Alcaldía de Bogotá, available at: <http://www.runa.org.pe/hot-news-1/%C2%A1mujertransgeneroasumecargopublicodirgestioncorporativadeintegracionsocialalcaldiadebogota>.

¹⁰⁹Runa, Mujer Transexual postula al senado mexicano, available at: <http://www.runa.org.pe/hot-news-1/mujertransexualpostulaalsenadomexicano>.

¹¹⁰Guía de Acción contra la Discriminación, available at: <http://ici.conapred.org.mx/oldsite/>.

¹¹¹Letra S, Sida, Cultura y Vida Cotidiana A.C. (2009), Informe de crímenes de odio por homofobia, México 1995-2008, Mexico D.F., Mexico.

¹¹²Ord. B22 (2011), available at: <http://www.movilh.cl/documentacion/trans/Ord%2057%202988%20Env%C3%Ada%20v%C3%ADa%20cl%C3%ADnica%20para%20la%20adecuaci%C3%B3n%20corporal%20en%20personas%20con%20incongruencia-1.pdf>

¹¹³Circular 54, available at: <http://www.movilh.cl/documentacion/trans/circular%2034%20instruye%20sobre%20la%20atenci%C3%B3n%20de%20personas%20trans%20y%20fortalecimiento%20de%20la%20estrategia.pdf>

¹¹⁴MOVILH (2012), X. Informe anual de derechos humanos de la diversidad sexual en Chile. Hechos 2011, Santiago de Chile, p. 193.

¹¹⁵Inter-American Human Rights Commission (2011), IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons, 3 November 2011, available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/115.asp, and interview with Fanny Gómez, a human rights specialist at the Inter-American Human Rights Commission, August 2012.

¹¹⁶The individual petition system is one of the main functions of the IACHR in compliance with its mandate "to promote the observance and protection of human rights", established in article 106 of the Charter of the Organization of American States, and comprises the procedures set up through the inter-American instruments that authorize the IACHR to take cognizance of complaints of human rights violations.

¹¹⁷The aim of the precautionary measures system is to ensure a rapid response by the IACHR to grave and urgent situations in which there is imminent risk of irreparable harm being done to persons, or groups of persons, in Member States of the OAS (article 106 of the OAS Charter, article 41.b of the ACHR, article 18.b of the IACHR Statute and the Inter-American Convention on the Forced Disappearance of Persons).

¹¹⁸Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.



Red Latinoamericana y del Caribe de Personas Trans (REDLACTRANS) is the Latin American and the Caribbean network of transgender people aimed to defend and promote the human rights of transgender people. Through advocacy, increased visibility, participation in decision making and the organizational development of transgender organizations, REDLACTRANS implement activities on health, education and justice.



International HIV/AIDS Alliance (la Alianza) supports communities to play a full and effective role in the global response to HIV and AIDS. It is a partnership of Linking Organisations (national, independent, locally governed and managed NGOs) around the world. In the context of a concentrated epidemic, the work in Latin America and the Caribbean is focused mainly on key populations, including transgender people.



'What's Preventing Prevention?' is a global campaign of the International HIV/AIDS Alliance. The campaign calls for an HIV response based on the human rights of most at risk communities, including the transgender community.

For more information on the campaign, visit www.whatspreventingprevention.org, and about the work of the Alliance in Latin America: <http://www.aidsalliance.org/Pagedetails.aspx?Id=500>



The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in MEXICO

A Shadow Report

Submitted to the Human Rights Committee by:

Global Rights

International Gay and Lesbian Human Rights Commission (IGLHRC)

International Human Rights Clinic, Human Rights Program, Harvard Law School

Colectivo Binni Laanu A.C.

March 2010

Introduction

The International Human Rights Clinic, Human Rights Program of Harvard Law School, Global Rights, and the International Gay and Lesbian Human Rights Commission (IGLHRC) have worked together to produce this report on the status of LGBT persons in Mexico.¹ The purpose of this report is to provide an evaluation of Mexico's compliance with the International Covenant on Civil and Political Rights (ICCPR) and to complement ongoing advocacy of greater protection and promotion of LGBT rights in Mexico.

Mexico ratified the ICCPR on March 23, 1981 and submitted its fifth periodic state report to the Human Rights Committee in October 2009. The Human Rights Committee will evaluate this report and consider Mexico's compliance with the ICCPR in March 2010. Shadow reports submitted by non-governmental organizations (NGOs) may serve as an additional source of information for UN committee members.

Executive Summary

Article 1 of the Mexican Constitution states that all individuals are guaranteed the protections and immunities found in the Constitution.² It prohibits discrimination based on ethnic or national origin, gender, age, disability, social status, health condition, religious opinion, preferences of any kind, civil status or any other reason which degrades human dignity.³ The Mexican Constitution does not specifically prohibit discrimination based on sexual orientation or gender identity. However, the general ban on discrimination based on preferences of any kind may encompass discrimination based on sexual orientation.⁴ **Despite this strong anti-discrimination norm enshrined in the Constitution, LGBT persons in Mexico face violations of their human rights based on sexual orientation and gender identity.**

Mexico has recently seen increased protection of the rights of LGBT persons. On March 4th, marriage for same-sex couples will become legal in the federal capital district of Mexico City.

A federal act prohibiting discrimination on the basis of sexual orientation in employment and occupation was passed in 2003⁵. This law prohibits any "distinction, exclusion or restriction" based, inter alia, on sexual orientation that "has the effect of impeding or annulling the

¹ This report was drafted by Virginia Corrigan (2L HLS), under the supervision of Mindy Jane Roseman (J.D., Ph.D. HLS) with the assistance of Stefano Fabeni of Global Rights and Marcelo Ferreyra of IGLHRC. Information were provided by Amaranta Gomez Regalado of Colectivo Binni Laanu A.C., Roberto Guzman of Diversex Quintana Roo, Armando Diaz and Juan Miguel Moran of Centro de la Diversidad y los Derechos Sexuales A.C. Jalisco.

² Mexican Constitution, Article 1.

³ Id.

⁴ Comisión de Derechos Humanos del Distrito Federal [CDHDF], Informe especial sobre violaciones a los derechos humanos por orientación o preferencia sexual y por identidad o expresión de género 2007-2008 18 (2008) [Hereinafter INFORME].

⁵ Ley Federal Para Prevenir y Eliminar la Discriminación, available at <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/262.pdf>

recognition or exercise of the rights and equality of all persons.”⁶ However, similar protections for discrimination on the basis of gender identity are not enshrined in law.

Mexico has also created a National Council to Prevent Discrimination (CONAPRED). CONAPRED is responsible for receiving and resolving complaints of discrimination in both the public and private sector. In addition, CONAPRED is charged with creating proactive antidiscrimination programs, and has been active in the field of LGBT rights, publishing numerous reports on the issue.

Despite these advances, however, LGBT persons continue to face discrimination and human rights violations based on their gender identity and sexual orientation. The overall culture in Mexico remains highly repressive in its attitudes towards LGBTI persons. The persistence of discriminatory sentiment towards the LGBTI community is illustrated by a recent poll of the Mexican population, which showed that 48.4% would never live with an LGB person and that 11.6% would never hire one.⁷

There have been multiple instances of discrimination and violence towards LGBTI individuals in Mexico over past few years, including hate crimes and serious abuses by state authorities, some of which are documented below. LGBT persons in Mexico face a serious threat of violence. One recent study has found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico.⁸ Another study indicates that 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had been assaulted in public spaces.⁹ Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police.¹⁰ Travesti and transgender persons are subjected to mass detentions, extortion, and physical abuse at the hands of police and military officials. LGBT persons face widespread employment discrimination in both the public and the private sector.

Despite these continuing problems, Mexico’s report fails to mention these violations. This report traces the numerous human rights violations LGBT individuals have suffered in the past few years even though Mexico has a duty to protect them from these violations under the ICCPR. It is our hope that the information contained in this report will aid the evaluation of Mexico’s adherence to the principles set forth in the ICCPR, and eventually lead to greater progress—and full acceptance—of the civil and political rights of LGBTI persons in Mexico.

⁶ *Id.* The law also defines discriminatory conduct to include, among other acts, “impeding access to public or private education; prohibiting free choice of employment, restricting access, permanency or promotion in employment; denying or restricting information on reproductive rights; denying medical services; impeding participation in civil, political or any other kind of organizations; impeding the exercise of property rights; offending, ridiculing or promoting violence through messages and images displayed in communications media; impeding access to social security and its benefits; impeding access to any public service or private institution providing services to the public; limiting freedom of movement; exploiting or treating in an abusive or degrading way; restricting participation in sports, recreation or cultural activities; incitement to hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion; promoting or indulging in physical or psychological abuse based on physical appearance or dress, talk, mannerisms or for openly acknowledging one's sexual preferences.” *Id.*

⁷ Fernando Ríos, *Minimizan autoridades asesinatos de homosexuales*, EL SOL DE MÉXICO, July 18, 2009.

⁸ *464 crímenes de odio por homofobia en México: CCCCOH*, NOTIESE, May 19, 2009.

⁹ Mariana Saynes, México, *Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

¹⁰ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

Substantive Violations of the Convention

Articles 2(1) and 26 (Non-discrimination) and Article 3 (Gender Equality)

The ICCPR defines non-discrimination standards by which state signatories should abide in Articles 2(1) and 26. Article 2(1) state:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹

General Comment 31 to Article 2 holds state parties accountable for actions of private parties that encroach on ICCPR rights if the state has not provided measures to protect individuals from this encroachment.¹² Article 26 further qualifies the nature of the state's protection from discrimination, stating:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹³

The Human Rights Committee explicitly recognized the ICCPR's inclusion of sexual orientation in its 1994 decision *Toonen v. Australia*.¹⁴ In *Toonen*, the Committee applied Articles 2(1) and 26 to find discrimination based on sexual orientation.¹⁵

Mexico's constitution prohibits discrimination based on preferences, and federal legislation prohibiting discrimination on the basis of sexual orientation in employment and occupation was passed in 2003. This antidiscrimination legislation prohibits any "distinction, exclusion or restriction" based, inter alia, on sexual orientation that "has the effect of impeding or annulling the recognition or exercise of the rights and equality of all persons."¹⁶ This act does not provide protection against discrimination based on gender identity. Nevertheless, individuals experience societal discrimination in Mexico based on their sexual orientation or gender identity. A recent

¹¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A, 999 U.N.T.S. 171, art. 2 (Dec. 16, 1966) [hereinafter ICCPR].

¹² General Comment 31 to Article 2 of the ICCPR.

¹³ ICCPR, *supra* note 13, at art. 2.

¹⁴ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

¹⁵ *Id.*

¹⁶ Ley Federal Para Prevenir y Eliminar la Discriminación, available at <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/262.pdf>

study demonstrated that about 75% of Mexican LGB persons have faced discrimination based on their sexual orientation.¹⁷

Discrimination against LGBT persons has manifested in the form of homophobic public statements by prominent Mexicans, including public officials. The president of Mexico, Felipe Calderón, has stated that the Mexican Constitution establishes that marriage is only between a man and a woman.¹⁸ Prominent religious leaders have expressed similar opinions.¹⁹ The LGBT community should be protected from such public displays of homophobia.

The recent closing of the Sexual Diversity program of National Council to Prevent Discrimination (CONAPRED) is especially troubling.²⁰ CONAPRED is the organ of the Mexican government responsible for investigating discrimination across the country. The closing of its Sexual Diversity program is a step backward in the fight against discrimination, especially in the light of the numerous reports of discrimination, as described below.

Discrimination in State Penal Codes.

Discrimination against LGBT persons also remains in the Penal Code of Tamaulipas State. Despite the federal antidiscrimination act, and despite the passage of a similar state antidiscrimination law by the Tamaulipas State Congress²¹, the Tamaulipas Penal Code still includes homosexuality as a form of the crime of corruption of a minor.²² Additional penalties are imposed if the minor in question “acquires the habit of...homosexual practices.”²³ This legislation is absolutely incompatible with the antidiscrimination law in force in Tamaulipas and constitutes a particularly invidious form of discrimination against LGBT persons in the state.

Employment Discrimination

Despite the existence of federal anti-discrimination laws, LGBT people in Mexico face employment discrimination in Mexico. The situation is especially troublesome for transgender persons, as gender identity is not a protected category in the anti-discrimination law and as there is no country-wide law allowing amendments to birth certificates and other identification

¹⁷ Mariana Saynes, *México, Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

¹⁸ Claudia Bolaños, *Marcha comunidad lésbico-gay a Los Pinos*, EL UNIVERSAL, Feb. 7, 2010.

¹⁹ Filberto Cruz, *Denuncia penal contra el cardinal Norberto Rivera por discriminación*, EL SOL DE MÉXICO, Jan. 15, 2010.

²⁰ Gabriel Gutiérrez García, *Inoportuna, desaparición de del programa de diversidad en el CONAPRED*, ANODIS, Feb. 10, 2010.

²¹ Ley Para Prevenir y Eliminar la Discriminación en el Estado de Tamaulipas, Decreto No. LVIII-1146. Similar laws have been approved at state level in other jurisdictions.

²² Código Penal Para el Estado de Tamaulipas, Art. 192, available at <http://info4.juridicas.unam.mx/adprojus/leg/29/971/208.htm?s=>.

²³ Código Penal Para el Estado de Tamaulipas, Art. 193, available at <http://info4.juridicas.unam.mx/adprojus/leg/29/971/208.htm?s=>. Article 192 of the code reads: “Comete el delito de corrupción de menores e incapaces el que procure o facilite la corrupción de un menor de dieciséis años de edad o de quien no tenga capacidad de comprender el significado del hecho, mediante actos de exhibicionismo corporal, lascivos o sexuales, o los induzca por cualquier medio a la práctica de la mendicidad, la ebriedad, la toxicomanía, la prostitución, al homosexualismo, a formar parte de una asociación delictuosa, o a cometer cualquier delito”.

documents.²⁴ This exposes transgender people to invasion of privacy, marginalization, and discrimination, as will be explained in further detail below. Education professionals are also especially vulnerable to workplace discrimination.

Since 2007, Agustín Estrada Negrete, a gay special education teacher in a public school in Mexico State, has faced discrimination, threats, and imprisonment due to his sexual orientation.²⁵ In May of 2007, Negrete participated in a gay rights march. As a result of this, in June 2007 Negrete began to be subjected to homophobic statements in his place of work. Shortly thereafter, a fellow teacher presented an administrative claim against Negrete, citing the “bad example” he was setting for the student population by “dressing as a woman in public”.

Subsequently, on February 14, 2008, Negrete was informed that his license was about to expire and was presented with documents which included his falsified signature. On February 16th, as Negrete arrived at work, a fight broke out among the parents gathered at the school. Police had to be called in to calm the crowd.

Since that time, Negrete has been subjected to 18 warrants of arrest for illegal occupation of the school premises. On the 21st of June, one of these warrants was executed, and he was taken to the Social Readaptation Center of Cuauhtémoc City (Centro de Readaptación Social de Ciudad Cuauhtémoc). He was released on bail the next day. On May 7th, he went to the Palacio del Gobierno to attempt to resolve the situation, but was apprehended by police. He was taken to Almoloya Prison, where he was raped by the inmates. Again, he was released on bail the next day. Since that time, he has been faced with death threats and has been under the surveillance of the State Security Agency.

The National Council to Prevent Discrimination (CONAPRED) published a report in 2008 which highlighted the case of a transgendered woman who was fired from her job as a school teacher in a Naucalpan public school when she began to present as a woman at work.²⁶ After lodging a complaint with the State Human Right Commission, she reached an agreement in which she was to receive a different job.²⁷ However, she was not allowed to return to her work as a school teacher.

In June 2008, two gay men were fired from their jobs with the Cuauhtémoc Delegation, a borough of Mexico City, when their employers learned of their sexual orientation and HIV-positive status.²⁸ The couple was abused with homophobic slurs from their employers and

²⁴ Consejo Nacional Para Prevenir la Discriminación [CONAPRED], *La Transgeneridad y la transexualidad en México: En búsqueda del reconocimiento de la identidad de género y la lucha contra la discriminación* 134 (2008) [Hereinafter TRANSGENERIDAD].

²⁵ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009. All facts cited below in this case are derived from this article.

²⁶ Consejo Nacional Para Prevenir la Discriminación [CONAPRED], *La Transgeneridad y la transexualidad en México: En búsqueda del reconocimiento de la identidad de género y la lucha contra la discriminación* 130 (2008) [Hereinafter TRANSGENERIDAD].

²⁷ *Id.* at 132.

²⁸ Leonardo Bastida Aguilar, *Despidan autoridades de la delegación Cuauhtémoc a dos trabajadores seropositivos*, NOTIESE, July 9, 2009.

accused of malfeasance upon their status being discovered; their work had not been criticized prior to this.

Even if the federal law prohibits discrimination in employment and occupation and offers remedies, cases of discrimination are reported. In June of 2009, two lesbian women were fired from their jobs because photos of them with their arms around each other were made public.²⁹ The women had previously been exposed to homophobic comments by their boss. The pair filed a complaint with CONAPRED.

Educational Discrimination

In November 2009, two lesbian students attending public high school were prevented from accessing school because of their sexual orientation.³⁰ Previously, they had been subjected to homophobic assaults, both verbal and physical, from teachers and students. One of the young women was struck by fellow students with a bag filled with rocks, which resulted in bruising. When she complained to her teachers, they responded that she had provoked the attack by being different from everyone else. The students presented a complaint to the State Commission for Human Rights, which concluded that no discrimination or rights violation had occurred.

A 2008 survey on transgender people found that about 50% had faced discrimination in the school system.³¹ This discrimination took various forms, including physical abuse and denial of academic support.³² In some cases, it led to slowed academic progress or to the transgender person leaving school.³³

Discrimination in same-sex families.

In *Young v. Australia*³⁴ and *X v. Colombia*³⁵, the Human Rights Committee argued that distinctions in benefits granted to unmarried same-sex and opposite-sex couples constitute a violation of articles 2 and 26. Same-sex couples who marry under Mexico City's same-sex marriage law would not be eligible for certain federal benefits afforded to opposite-sex couples.³⁶ Based on the reasoning of *Young* and *X.*, this would constitute a violation of the principle of non discrimination of articles 2 and 26.

Article 6 (Right to Life)

²⁹ *Denuncian lesbianos haber sido despedidas por abrazarse*, MILENIO, May 20, 2009.

³⁰ Rubisela Moreles Cruz, *Estudiantes de Morelos, víctimas de discriminación sexual en escuela*, LA JORNADA SAN LUIS, Nov. 27, 2009.

³¹ TRANSGEDERIDAD, *supra* note 29, at 168.

³² *Id.*

³³ *Id.* at 170.

³⁴ *Young v. Australia*, Communication No. 941/2000, U.N. Doc CCPR/C/78/D/941/2000 (2003).

³⁵ *X v. Colombia*, Communication No. 1361/2005, U.N. Doc CCPR/C/89/D/1361/2005 (2007).

³⁶ CNN, *La Asamblea en DF aprueba matrimonio gay*, 21 December 2009; Time, *Mexico City's Revolutionary First: Gay Marriage*, 24 December 2009, at <http://www.time.com/time/world/article/0,8599,1949953,00.html>.

Article 6 of the ICCPR guarantees every human being an inherent right to life that should be protected by law.³⁷ It states that “No one shall be arbitrarily deprived of his life.”³⁸ Nonetheless, despite the lack of systematic information, advocates report that individuals in Mexico are victims of killings due to their sexual orientation or gender identity.

Hate Crimes

Despite the fact that LGBT persons are frequently the victims of hate crime, there is no federal hate crimes statute.³⁹ The Federal District of Mexico City does have hate crimes legislation, but this is the exception rather than the rule.⁴⁰ There is also evidence to suggest that possible hate crimes are left uninvestigated or are dismissed as “crimes of passion”.⁴¹ One 2009 study demonstrated that 80% of homophobic murders are left unpunished.⁴² Another recent study found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico.⁴³ Lack of preventive measure and effective response by law enforcement agencies and the judicial system suggests state violation of articles 6 and 7 of the Covenant.

Reports indicate that in the first eight months of 2009, around 40 homosexual persons were murdered in Michoacán.⁴⁴ The majority of these deaths were concentrated in the Tierra Caliente area.⁴⁵ In January 2010, a travesti woman was beaten to death in Michoacán on her way to her place of employment.⁴⁶ She was found the next day with multiple contusions on her head and face.

In 2009, 15 LGBT persons were murdered in Guerrero State.⁴⁷ None of these crimes have been solved, and they have been characterized by the state as crimes of passion.

In July 2009, a gay man was murdered in Aguas Calientes.⁴⁸ He was found beaten in a pool of blood in his apartment by his partner.

In June 2009, a transgender woman was murdered in Puebla.⁴⁹ She worked as a performer in a travesti show. This was the third murder of a transgender person in Puebla in 2009 to that date.

³⁷ ICCPR, *supra* note 13, at art. 6.

³⁸ *Id.*

³⁹ Mexico City does have such a statute. *Tipifican crímenes de odio por homofobia en el DF*, ANODIS, Aug. 24, 2009.

⁴⁰ *Id.*

⁴¹ *Minimizan autoridades crímenes de odio: CDHDF*, ANODIS, July 20, 2009.

⁴² *Notimex, Impunes, el 80% de crímenes contra homosexuales*, EL ECONOMISTA, Nov. 16, 2009.

⁴³ *464 crímenes de odio por homofobia en México: CCCCOH*, NOTIESE, May 19, 2009.

⁴⁴ *Agencia Quadratín, Asesinados 40 gays en Michoacán en lo que va de 2009*, ANODIS, Aug. 24, 2009.

⁴⁵ *Id.*

⁴⁶ *Asesinan a golpes a homosexual en Zacapu*, CAMBIO DE MICHOACÁN, Jan. 31, 2010.

⁴⁷ *Ossiel Pacheco, Reporta ONG 15 asesinatos por homofobia en 2009 en el estado*, LA JORNADA GUERRERO, Oct. 13, 2009.

⁴⁸ *Asesinan a estilista homosexual*, AGUASDIGITAL, July 27, 2009.

⁴⁹ *Leonardo Bastido Aguilar, Asesinan a transgénero en Puebla*, NOTIESE, June 18, 2009.

In March 2009, a *muxe* (transgender woman) sex worker was murdered in Juchitán.⁵⁰ Local activists called the crime an act of homophobia perpetrated against the entire *muxe* community in the region. This was the fourth murder of a *muxe* in the city in the past eight years.

In 2005, Octavio Acuña, an HIV/AIDS activist in Querétaro, a central Mexican city, was stabbed multiple times in the condom shop he ran.⁵¹ Nothing was stolen from the shop, indicating that the motive was not robbery. The shop was a center for sexual rights and HIV/AIDS information for young people in the city, and had previously been targeted with graffiti and vandalism. In 2004, Acuña and his partner had made a complaint to the local Human Rights Commission that they had been discriminated against. No action was apparently taken on this complaint, and a few weeks before his murder, Acuña spoke out at a public meeting against this discrimination and inaction. Local human rights NGOs reported at the time that another gay activist was drugged and beaten in what appeared to be a hate-motivated attack and that officials have failed to carry out serious investigations into these hate crimes, instead attempting to blame them on other members of the gay community.

Article 7 (Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment)

LGBT individuals in Mexico experience police brutality prohibited under Article 7 of the ICCPR. Article 7 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵²

Nevertheless, the police and other state employees harass and assault individuals because of their perceived gender identity and/or sexual orientation in Mexico. A recent study indicates that 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had been assaulted in public spaces.⁵³ Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police.⁵⁴

In particular, the sex workers in the travesti community experience habitual harassment and violence by both the police and the general public. In July 2009, men in a passing car shot at transgendered sex workers in Hidalgo.⁵⁵ Two women were hospitalized as a result of the attack.

Also in July 2009, two individuals, one of them a travesti sex worker, were forced into a van, where more than 10 military personnel proceeded to kick them in the head and chest and threaten them with guns.⁵⁶ The military threatened to rape them, kill them and their families, and to kill all the sex workers in the area one by one if they made a complaint. After stealing their money and clothing, the military personnel released the two individuals. A demonstration followed the

⁵⁰ *Asesinan a muxe en Juchitán*, NOTIESE, Mar. 13, 2009.

⁵¹ Amnesty International, Mexico: Fear for Safety 1 (2005) (available at <http://www.amnesty.org/en/library/info/AMR41/025/2005/en>).

⁵² ICCPR, *supra* note 13, at art. 7.

⁵³ Mariana Saynes, México, *Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

⁵⁴ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

⁵⁵ Emmanuel Rincón, *Balean a 2 transgénero en Hidalgo*, EXCELSIOR, July 27, 2009.

⁵⁶ *Agreden militares a trabajadores sexuales*, NOTIESE, July 7, 2009.

next day, during which the military confronted the gathered sex workers. The sex workers have filed a complaint with the Public Ministry.

In 2009, the LGBT group Comunidad Gay in Durango condemned extortion and sexual abuse of LGBT persons by members of the police.⁵⁷ The group stated that those affected have not filed criminal complaints because of their fear of reprisals. The group noted that the problem was especially grave for travestis; the police often assume that such persons are sex workers and demand sex or money in exchange for not arresting them.

In May 2007, approximately 40 female transsexual and transgender sex workers were detained and brutally assaulted by about 20 members of the Military Police in Ciudad Juárez in Chihuahua state.⁵⁸ The police stole money from the women and destroyed their homes. Many of the women were hospitalized, some of them in grave condition.

In 2004, a gay man was assaulted by guards in the Metro Collective Transportation System (STC-Metro).⁵⁹ He was detained by three guards, pulled into a room and beaten until he was bruised and his face was swollen. During the assault, the guards yelled “since you’re homosexual, you shouldn’t have been born” and that if they saw him around again, he knew what would be waiting for him. The guards also stole a chain and a gold ring. Upon speaking to the station chief, the man was able to identify his assailants and file a complaint. The Mexico City Human Rights Commission concluded that the man’s rights had been violated, but the director of the STC-Metro initially rejected this conclusion. Eventually, the STC-Metro agreed to training and an anti-discrimination campaign.

In 2004, Octavio Acuña and his partner filed a complaint with the Comisión Estatal de Derechos Humanos (CEDH), alleging that municipal police officers detained them in a public park and told them that “their sort” should not be there.⁶⁰ The CEDH apparently took no action on the case.⁶¹

Article 9 (Right to Liberty and Security of Person)

Article 9 of the ICCPR protects the right of individuals to be secure in their persons and to be free from arbitrary detention.⁶² The Article also protects the right of a detainee to be brought before a judge and informed of the charges against him and the right to protest an allegedly unlawful detention in a proper court.

Nevertheless, LGBT persons in Mexico are frequently detained without cause. LGBT persons are also subject to extortion and abuse at the hands of police. One recent study found that 11% of LGBT persons in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation.⁶³

⁵⁷ Saúl Maldonado, *Denuncian gays acoso policiaco en Durango*, LA JORNADA, Nov. 10, 2009.

⁵⁸ TRANSGENERIDAD, *supra* note 29, at 95.

⁵⁹ INFORME, *supra* note 4, at 65.

⁶⁰ AMNESTY INTERNATIONAL, *supra* note 53.

⁶¹ *Id.*

⁶² ICCPR, *supra* note 13, at art. 9.

⁶³ INFORME, *supra* note 4, at 58.

In July 2009, Vanessa, a transsexual woman, was detained by municipal police and threatened with rape.⁶⁴ Vanessa managed to record the encounter on her cell phone, which caused the police to detain her and bring her before a judge. Her cell phone was seized by the police and returned to her with the recording erased, and a fine of 600 pesos was imposed on her. Vanessa complained to the CEDH, which recognized that her detention was illegal and ordered that the fine be returned to her. The CEDH stated that Vanessa's case implicated "arbitrary detention, violation of the right to legality and security, violation of the right to personal security, false accusation and wrongful use of public services".

In April 2008 and December 2009, practices of social cleansing have been reported in the city of Cancun. At least 40 travesti sex workers have been robbed, beaten and arrested by the police in the area Supermanzana 63 of the municipality. Following the intervention of the local trans activists, the president of the municipality confirmed the action by the police that would have been justified by the need of "cleaning the garbage from the streets".⁶⁵

In October 2005, approximately 50 travesti sex workers were detained by police in Mexico City.⁶⁶ Arresting officers gave differing accounts of the reason for their arrest, with some claiming that it was part of a search for a murderer and others stating that it was in connection with robberies or drug charges. Despite the fact that no charges were ultimately filed, the police retained fingerprints and photographs of the detained individuals.

Transgender persons are also threatened by the existence of public morals laws throughout the country. These laws, found in several areas around the country, are often very vague, criminalizing such acts as "obscene exhibitions",⁶⁷ "causing a scandal in a public way",⁶⁸ "acting in such a way as to offend one or more persons",⁶⁹ "acting in ways which fail to respect human dignity, public morality and good customs".⁷⁰ Because these laws are so vague, they are frequently used by police officials to harass, detain, and extort transgender persons and travestis. For example, the International Gay and Lesbian Human Rights Commission has documented that the mere presence of a travesti person in public may be interpreted as an "obscene exhibition" by police in some states.⁷¹ Some travestis and transgender persons pay "fines" to police officials almost daily to avoid being detained under these laws, a clear act of extortion and a violation of the right to be free from arbitrary detention.⁷²

⁶⁴ Christian Rea Tizcareño, *Derechos Humanos de NL emite recomendación por 'detención arbitraria' de transexual*, NOTIESE, July 27, 2009.

⁶⁵ Email communication with a Mexican activist, sent on March 4th, 2010, on file with Global Rights.

⁶⁶ Mario Alberto Reyes, *Acuden travestis ante Derechos Humanos del DF*, NOTIESE, Oct. 20, 2005.

⁶⁷ This language is used in laws in Nuevo León, Jalisco, Veracruz, and Colima states, among others. IGLHRC, Informe a OACDH 2003.

⁶⁸ This language is used in Mexicali, Baja California, La Paz, Baja California, and Monterrey, Nuevo León, among others. *Id.*

⁶⁹ This language is used in Puebla. *Id.*

⁷⁰ This language is used in Cuernacava, Morelos. *Id.*

⁷¹ *Id.*

⁷² *Id.*

In December 2002 in Monterrey, a transgender activist was detained twice by police and accused of prostitution and offenses against the public order for “wearing women’s clothing in public”.⁷³ She then made a complaint to the State Human Rights Commission, which found that these detentions violated both the Mexican Constitution and the Universal Declaration of Human Rights.

Article 10 (Humane Treatment of Detainees)

Article 10 of the ICCPR states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁷⁴

As noted above, when special education teacher Agustín Estrada Negrete was sent to Almoloya Prison, he was raped by fellow inmates.⁷⁵ It is the responsibility of the state to ensure the humane treatment of detainees. Estrada Negrete’s rape constitutes a violation of the Article 10 provisions mandating the humane treatment of anyone who is deprived of his or her liberty by the state.

Article 17 (Right to Freedom from Arbitrary Interference with Privacy, Family, and Home)

Article 17 ICCPR establishes that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”.⁷⁶

The lack of legal recognition of transgender and *travesti* individuals’ identity in ID documents before gender reassignment exposes them to risk of abuses and discrimination and heavily affect their privacy, jeopardizing their enjoyment of the right enshrined by article 17 ICCPR. The City Code of Mexico City federal district provides that transgender people may change the sex and name on their birth certificate without a requirement of gender reassignment surgery.⁷⁷ However, the lack of similar protection at a national level is troubling. This is especially so as a birth certificate is required to exercise civil and political rights—a birth certificate is required to obtain a voter identification card.⁷⁸ Having identification papers which contradict one’s appearance may place gender non-conforming persons at risk for rights violations.

Marriage between same-sex couples recently became legal in federal capital district of Mexico City, providing important protection to LGBT persons there. In a totally different perspective, in Yucatán state the legislative assembly recently rewrote the state Constitution specifically to prohibit same-sex unions.⁷⁹ Same-sex families, even when legally sanctioned by state authority in a specific location, will be subjected to scrutiny and denied rights and benefits if they decided

⁷³ *Id.*

⁷⁴ ICCPR, *supra* note 13, at art. 10.

⁷⁵ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

⁷⁶ ICCPR, *supra* note 13, at art. 17.

⁷⁷ International Gay and Lesbian Human Right Commission, *Mexico: Mexico City Amends Civil Code to Include Transgender rights*, June 15, 2004, available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/511.html>.

⁷⁸ *Id.*

⁷⁹ Leonardo Bastida Aguilar, *Aprueban leyes contra uniones de personas del mismo sexo y antiaborto en Yucatán*, NOTIESE, July 16, 2009.

to travel to another state from the one that sanctions and recognizes their marriage. This constitutes an intrusive and arbitrary interference with family life of legally married same sex couples, contravening the principle enshrined by article 17 and the prohibition of discrimination of articles 2 and 26.

Article 24 (Special Protection of Children)

Article 24 of the ICCPR establishes special protection for the rights of minors, without discrimination on the basis of race, color, sex, etc. In those cases where LGBTI minors are discriminated against or otherwise have their rights violated, Article 24 is violated as well.

The case of the two young lesbian women who were prevented from attending classes and who faced harassment and abuse because of their sexual orientation constitutes a violation of the special protection of children. The discrimination against and alienation of transgendered children in the school system violates these children's right to education.

In 2006, in the state of Jalisco, eight years old child Rosa Isela J.H. was removed from Alondra Avila Velez, a 38 years old transgender woman who had the child in custody since her birth. The child had been abandoned by her own biological mother after birth, and given into custody to Alondra whose partner was at the time the brother of Rosa's biological mother. After 8 years, on May 2nd, 2006, the child was removed by the DIF Jalisco (the state office of the Agency on family issues, the *Sistema para el Desarrollo Integral de la Familia*) and, with the intervention of the Office of the State Prosecutor, given into custody of another agency, the Consejo Estatal de Familia (State Family Council) where Alondra could visit the child once a month.

On October 28th 2008 the VII section of the Family Court ordered that the child should be returned into Alondra's custody. The State Family Council refused to comply with the judges' decision, arguing alleging the lack of "moral character" of the transgender woman, and moved her to an unknown place. Up to now, the child has not been reunited with her mother Alondra⁸⁰. The practice of the state agencies in this case, in violation of the court decision, does not take into account the best interest of the child and violate her right under article 24 of the ICCPR.

In some Mexican states, adoption by same-sex couples is prohibited by law. For example, in Hidalgo state, laws are in place to prevent same-sex couples from adopting, and Judge Jorge Antonio Torres Regnier of the Second Superior Civil and Family Chamber of Justice has stated that "if a gay couple came to Hidalgo to adopt, they would get a 'no'".⁸¹ The recent law legalizing same-sex marriage in Mexico City also includes the right to adopt children. The best interests of children legally adopted by same-sex couples or through step parent adoption in Mexico City could be affected if such families were to move to an area which does not recognize same-sex families, affecting the rights of children living in those families.

⁸⁰ Email communication with a Mexican activist, sent on March 4th, 2010, on file with Global Rights.

⁸¹ José Luis Rico, *Gays no podrán adoptar en Hidalgo*, EL SOL DE HIDALGO, Jan. 10, 2010.

Concluding Notes

- Mexico has provided increasing protection for LGBT individuals. Troublingly, however, most of the country lags far behind Mexico City in recognition of LGBT rights. The protections given to LGBT individuals in Mexico City—including the ability to change the name and gender on identity documents—should be expanded to reach LGBT persons throughout Mexico.
- Greater protection of transgender rights is still needed. Anti-discrimination laws should be amended to include gender identity as a protected category, as transgender people face discrimination in the work force and education system.
- Individuals are vulnerable to hate crimes on grounds of their sexual orientation and gender identity, including hate-motivated killings. The existing hate crimes legislation should be given effect in Mexico City, and similar legislation should be passed on a national level. Murders of LGBT persons should be investigated as hate crimes and not just as “crimes of passion”.
- Sex workers, especially transgender/transsexual/travesti sex workers, are particularly vulnerable to abuse and extortion on the part of state officials and other individuals encouraged by the culture of impunity for crimes against this population. Greater protection must be afforded to sex workers, and police and military personnel must cease arbitrary detentions, extortion, and abuse of sex workers.
- LGBT persons are especially vulnerable in the education system. Both teachers and students have faced discrimination on grounds of their sexual orientation or gender identity in the public school system.

Proposed Questions for the Government Delegation

- Why has the Government failed to mention any issues regarding discrimination, killings and other ill treatments, also by state actors, against individuals on grounds of their sexual orientation and gender identity in its state party report?
- How does the government intend to address the problem of inadequate investigation by police into the murders and other ill treatments of individuals on grounds of their sexual orientation and gender identity?
- How does the government plan to ensure that sex workers, especially travesti and transgender sex workers are free from police violence and intimidation?
- How does the government plan to ensure that one of the most vulnerable segments of Mexico's population, LGBT minors, are adequately protected against discrimination when exercising their right to education, especially in the public school system?
- Given the steps already undertaken with federal antidiscrimination legislation, how does the government plan to deal with evidence of widespread discrimination on grounds of sexual orientation and gender identity, most likely caused by the entrenched conservatism in Mexican society?
- What steps will the government take to ensure that the right of same-sex families will be respected throughout Mexico?



SCREENING FOR VIOLENCE AGAINST MSM AND TRANSGENDERS: REPORT ON A PILOT PROJECT IN MEXICO AND THAILAND

OCTOBER 2009

This publication was produced for review by the U.S. Agency for International Development (USAID). It was prepared by Myra Betron of the USAID | Health Policy Initiative, Task Order I.

Suggested citation: Betron, M. 2009. *Screening for Violence against MSM and Transgenders: Report on a Pilot Project in Mexico and Thailand*. Washington, DC: Futures Group, USAID | Health Policy Initiative, Task Order I.

The USAID | Health Policy Initiative, Task Order I, is funded by the U.S. Agency for International Development under Contract No. GPO-I-01-05-00040-00, beginning September 30, 2005. The project's HIV activities are supported by the U.S. President's Emergency Plan for AIDS Relief (PEPFAR). Task Order I is implemented by Futures Group, in collaboration with the Centre for Development and Population Activities (CEDPA), White Ribbon Alliance for Safe Motherhood (WRA), and Futures Institute.

SCREENING FOR VIOLENCE AGAINST MSM AND TRANSGENDERS: REPORT ON A PILOT PROJECT IN MEXICO AND THAILAND

OCTOBER 2009

The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development (USAID) or the U.S. Government.

TABLE OF CONTENTS

Acknowledgments	v
Abbreviations	vi
Executive Summary	vii
Background	1
Gender-based violence and HIV vulnerability in most-at-risk populations.....	1
Violence against MSM and TG: Definitions and overview.....	3
Project Objectives	4
Overview of project components	5
Context of pilot sites	5
Project partnerships.....	7
Findings from the participatory assessment.....	8
Project Implementation Phase	12
Country-specific project adaptations	12
Thailand	12
Mexico	14
Screening Tool Design	15
Training providers to screen for violence against MSM and TG.....	16
Pilot Screening Phase	19
Thailand	19
Mexico	20
Screening Results	22
Levels of violence detected.....	22
Help seeking and referrals	23
Evaluation Findings	25
Evaluation of the screening tool design	25
Strengths of the screening process	27
Challenges associated with the screening process	29
Policy outcomes	32
Leadership.....	32
Replication	32
Collaboration.....	33
Policy changes	33
Conclusions and Recommendations	35
Glossary	38
Annex I. Screening Tool Piloted in Mexico	39
Annex II. Screening Tool Piloted in Thailand	44
Annex III. Flow Chart of Health and Social Services for MSM and Transgenders	50
Annex IV. Thailand Referral List: Agencies Providing Medical Care, Legal Services, and Temporary Shelter that Form Projects	51
Annex V. Thailand Referral Registration Form	53
Annex VI. Receiving Registration Form	54

Annex VII. Providers Interviewed in Thailand..... 55
Annex VIII. Average Minutes to Apply Screening Tool at Mexican Sites..... 56
**Annex IX. Mexico Stakeholders’ Meeting to Discuss Next Steps and Scale-up of Screening for
Violence against MSM and Transgenders 57**
Annex X. Final Screening Tool 59
References..... 69

ACKNOWLEDGMENTS

This publication was based on final project reports written by Phongsak Sakhunthaksin of the Policy Research Institute Foundation in Thailand and Guillermo Egremy of the USAID | Health Policy Initiative, Task Order 1 in Mexico. Without their documentation and collaboration, this report would not have been possible. Additional inputs by Anne Eckman, consultant, and Ken Morrison, HIV Technical Advisor for the Health Policy Initiative, were also invaluable to this report. The project itself would not have been possible without the leadership and support of Dr. Wiput Phoolcharoen, Nonthathorn Chaiphet, Dr. Somchai Sriplienchan, and Dr. Werasit Sittitrai, advisors to the Policy Research Institute Foundation, as well as Clif Cortez, Nithya Mani, Patchara Rumakorn, and Cameron Wolfe of the USAID regional mission in Bangkok, Thailand. Likewise, we are grateful to Dr. Beatriz Ramirez, Chief of the HIV/AIDS Program in Mexico State and Dr. Marcela Ruiz, director of the CAPASITS of Puerto Vallarta, as well as Nancy Alvey of USAID Mexico and Mirka Negroni and Anuar Luna of USAID | Health Policy Initiative Mexico for their leadership and support of the project. Finally, many thanks go to all of the project participants, including the health providers and staff at Banglamung Hospital, Pattaya Rak Center, SISTERS and SWING in Thailand, and the CAPASITS in Puerto Vallarta and Mexico State and Vallarta Engrente al SIDA, for their contributions and efforts in designing and implementing the screening tool and the project overall.

ABBREVIATIONS

AIDS	acquired immune deficiency syndrome
CAPASITS	HIV & STD Ambulatory Care and Prevention Clinics
CBO	community-based organization
CDC	Centers for Disease Control and Prevention
GBV	gender-based violence
HIV	human immunodeficiency virus
IDU	injection drug user
IPV	intimate partner violence
MARP	most-at-risk population
MSM	men who have sex with men
MSW	male sex worker
NGO	nongovernmental organization
OSCC	one-stop crisis center
PRI	Policy Research and Development Institute Foundation
S&D	stigma and discrimination
STI	sexually transmitted infection
SW	sex worker
TG	transgender(s)
U.S.	United States
VCT	voluntary counseling and testing

EXECUTIVE SUMMARY

Recent studies and anecdotal evidence have shown that gender-based violence perpetrated against men who have sex with men (MSM) and transgenders (TG) can increase their HIV vulnerability, especially in the context of sex work and concurrent partnerships. Few interventions directly address this vulnerability, however. The project described in this document piloted the integration of screening for violence against MSM and TG into HIV health services. The pilot hypothesized that health providers would be an effective entry point to (1) identify violence faced by MSM and TG, (2) facilitate access to appropriate GBV services for MSM and TG, and (3) improve community organization and health service collaboration. The project was implemented in Mexico and Thailand, countries with concentrated HIV epidemics but differing services for MSM/TG.

Based on a desk review and field research, a screening tool and protocol were designed and piloted to detect violence among MSM and TG, especially those engaging in sex work, often one of the few livelihoods open to these populations.¹ Important features of the tool include request for consent to screen, questions for identifying violence related to stigma and discrimination, recommendations on when to apply the tool, indications on referral to specialized support services, and simplicity. Screening was piloted in HIV clinical services, including VCT and treatment programs, in Pattaya City, Thailand, and in Puerto Vallarta, Mexico and the state of Mexico. In Thailand, screening also was integrated into community drop-in services, which included VCT and outreach for MSM and TG. Evaluation assessed the acceptability of the tool from provider perspectives and in Thailand, client perspectives.² Barriers to screening and referral in the different contexts were also evaluated.

Although not a population-based study, data from six weeks of implementation at 11 sites (n= 279) in both countries identified high levels of violence among those MSM and TG screened. Results showed that at least half of MSM and TG experienced violence in the year prior to being screened (Mexico: 50% among MSM, n=142 and 65% among TG, n=51; Thailand: 69% among MSM, n=59 and 89% among TG, n=27), with TG experiencing greater levels. All forms of violence were high in both countries. Emotional violence was most common in Thailand (63% among MSM; 78% among TG); sexual violence was most common in Mexico (47% among MSM; 65% among TG). Higher levels of sexual as opposed to physical violence were identified in almost all groups (except for MSM in Thailand, where levels of the two kinds of violence were comparable).

Consultation with providers identified general acceptability of the tool. In Mexico, where the first draft of the tool was developed, providers found the tool to be easy to use and comprehensible. In Thailand, some providers found the language academic and difficult to understand. Providers in both countries found screening to be appropriate for the HIV/STI clinic setting but challenging in a hospital setting, due to larger caseloads, which limited providers' time to apply the screening tool.

The tool helped providers to improve communication and trust with patients, as well as identify and better understand the range of social vulnerabilities MSM and TG face. Providers requested additional training on sexual diversity and how to counsel victims of violence. They also indicated the importance of having in place referral services that cover all needs of MSM and TG, such as legal services and shelters. Overall, providers saw the tool as beneficial to their work and agreed that screening should continue, provided there is institutional support, training, and adequate time and space.

¹ The pilot screening process took place in sites where there are large populations of sex workers. However, for purposes of confidentiality and safety, the screening tool itself did not record whether clients were sex workers.

² In Thailand, clients interviewed were those who had close relationships with the personnel of screening sites, which included drop-in/support services for MSM and TG. In Mexico, follow-up of clients would have been necessary, which was beyond the scope of the design and ethical review board approval for the project.

Given the high levels of HIV and violence against MSM and TG, services for them must address the causes and consequences of this violence. In settings with favorable policies and a legal environment that protect MSM and TG, where confidentiality can be ensured, and where an understanding of addressing health issues of HIV includes respect for human rights, HIV programs should sensitize and build the capacity of providers to screen for violence against these populations. Providers also should promote efforts in the community to strengthen multisectoral support services for MSM and TG before screening. In this way, the screening tool can provide an impetus to initiate community-health system collaboration to better respond to violence against these populations in the context of HIV/STI services. The pilot project identified the following key criteria to establish before screening:

- Screen only where there are assurances of no increased harm to MSM and TG or where their human rights are recognized.
- Conduct screening in a space that is private and confidential.
- At a minimum, ensure that psychologists and self-support groups within the clinic are available to counsel victims after screening for violence.
- Continually sensitize and train providers on gender, sexual diversity, violence, and stigma discrimination.
- Before developing screening services, assess, consult with, and engage external referral services to ensure that they can adequately address the needs of MSM and TG.
- Develop clear protocols of who, when, where, and how to screen; make providers aware of the protocols by training these personnel, posting the protocols in visible places, and including them with screening documents.

Screening is hardly enough and certainly not the only or even most appropriate response to violence against MSM and TG. A multisectoral approach, including collaboration with community-based organizations, is essential in responding to the needs of MSM and TG who face gender-based violence. Given that these groups are extremely marginalized and may not readily access health services, there is a special need to develop and support services such as drop-in centers and peer support activities. These may act as the first-line response to MSM and TG who have undergone violence. Likewise, national and community policies and norms must ensure that no increased harm will come to MSM and TG accessing these services. In some cases, this might require parallel advocacy and awareness-raising efforts. The screening and referral process should be complementary to behavior change efforts and activities in these communities.

BACKGROUND

Gender-based Violence and HIV Vulnerability in Most-at-Risk Populations

Men who have sex with men (MSM) and transgenders (TG)—some of the most-at-risk populations (MARPs) for HIV—often face stigma, discrimination, poverty, violation of human rights in the form of homophobia, and heterosexism. Negative attitudes can foster environments that support violence against MSM and TG. Findings from a global literature review on violence, stigma, and discrimination faced by MARPs indicates that worldwide, MARPs face violence from their families, friends, fellow students, and teachers, and in the wider community. Law enforcement and healthcare providers often are guilty of widespread corruption, intimidation, and harassment directed at gay men, other MSM, and TG (Medina et al., 2006; Chakaprani et al., 2002; Khan and Bondyopadhyay, 2005). These acts frequently are cited in India, Latin America, and the Caribbean. Laws also are misused to target and harass MSM and TG in the Middle East, China, and Egypt. In Africa, two-thirds of its countries have laws banning homosexual sex, or at least male-to-male sex. Punishments range from imprisonment (five years in Cameroon, Senegal, and Ghana; life in Uganda) to death (Mauritania, Sudan, and parts of Nigeria) (Betron and Gonzalez-Figueroa, 2009.)

The rates of violence against MSM and TG, particularly those engaging in sex work, are alarming. For example, in Cambodia, rates of rape and physical violence perpetrated against freelance³ TG sex workers by the police reached 29 percent and 58 percent, respectively (Jenkins, 2006). In a survey of more than 2,000 MSM in Thailand, which included TG, 18.4 percent reported being coerced into sex and, of those, 67.3 percent were coerced more than once (Guadamuz et al., 2006).

This violence is a manifestation of stigma and discrimination (S&D) against MSM and TG, primarily because they do not fit into traditional gender categories. In other words, violence experienced by MSM and TG often is a form of gender-based violence (GBV). The same study in Thailand, for example, found that identifying as female or visibly gay or taking a receptive sexual role, are significantly and independently associated with coerced sex (Guadamuz et al., 2006).

Stigma, discrimination, and violence foster isolation, depression, low self-esteem, and behaviors that put one at high risk for HIV, such as drug and alcohol use and sex work. For MSM and TG populations, stigma, discrimination, violence, and sex work are vulnerabilities that anchor HIV as an epidemic. Although accurate prevalence statistics of HIV among MSM and TG—including those engaged in sex work—are difficult to determine because of the marginalization of those groups, studies reported by UNAIDS (2008) found that rates of HIV among MSM range from 6.2 percent in Egypt to 43 percent in the port of Mombasa, Kenya. For the general TG population and male or TG sex workers, few data are available, but one study from Vietnam reported 33 percent HIV prevalence among male sex workers (UNAIDS, 2008).

Researchers have only recently begun to explore the intersection between violence and HIV vulnerability in MARPs. Nonetheless, strong evidence points to the importance of these linkages. For example, in Kenya, researchers found that MSM who were victims of verbal, physical, or other forms of violence in the past 12 months were significantly less likely to have used a condom at their last receptive anal sex, were more likely to have had unprotected sex at their last insertive anal sex, and were more likely to "never use" condoms (Onyango-Ouma et al., 2006). Moreover, evidence has been found that violence or fear of violence prevents MSM, transgendered people, and sex workers, regardless of HIV serostatus, from accessing HIV and other health services. For example, a study of MSM in the United States showed

³ Not contracted by an agency.

that participants reporting intimate partner violence (IPV) were significantly less likely to get tested for HIV in the past year or on a regular basis (Leung et al., 2005). Finally, sexual coercion puts MARPs at risk for HIV. In Cambodia, a survey of 1,000 sex workers found that 90 percent had been raped, with more than half of the TG sex workers raped without a condom (Jenkins, 2006).

Just as the research on violence against MARPs is scarce, programs and services that address violence and related health issues are rare or nonexistent (Betron and Gonzalez-Figueroa, 2009). Health-related violence services are limited to a handful of HIV programs that acknowledge the problem of violence, usually through awareness raising, as it emerges as a key issue for MARPs. On the whole, MARPs are so marginalized that they often do not access health services because of poverty, fear of discrimination or social consequences, or general lack of knowledge (Betron and Gonzalez-Figueroa, 2009).

Screening for violence, particularly IPV, against women in the healthcare setting has been recommended by many experts as an opportunity to reach out to victims of violence. Benefits include the potential to counsel victims, to consider violence as a factor in HIV prevention and/or risk reduction and adherence counseling, and to raise the awareness of clients on their rights to live free from violence (Betron and Gonzalez-Figueroa, unpublished). There may also be potential benefits from screening for violence with MSM and TG in the areas of outreach, prevention, and community building.

Violence against MSM and TG: Definitions and Overview

Gender-based violence is “any harmful act that is perpetrated against a person’s will and that is based on socially-ascribed (gender) differences between males and females” (IASC, 2005). The perpetrator has the objective of using violence as a way to maintain power and control over the victim (PAHO, 2002). The perpetrator’s sense of entitlement to greater power and control is based on the perception that his/her gender holds a higher social status than that of the victim.

Stigma is “an undesirable or discrediting attribute that an individual possesses, thus reducing that individual’s status in the eyes of society” (Goffman, 1963). It is labeling an individual or group as different or deviant. *Discrimination* moves into acts and behavior—a differential treatment based on those negative attitudes (Morrison, 2006). Violence against MSM and TG is related to and often can be equated with gender-based stigma and discrimination (S&D). When S&D is enacted against MSM and TG through verbal insults, threats, blackmail, or differential treatment, it becomes—along with physical and sexual violence—part of the spectrum of gender-related abuse that sexual minorities typically face. (Throughout the document, when referring to the range of gender-based S&D and violence perpetrated against MSM and TG, the term *abuse* is used.)

MSM are defined by the U.S. Centers for Disease Control and Prevention (CDC, 2007) as “all men who have sex with other men, regardless of how they identify themselves (gay, bisexual, or heterosexual).” Thus, MSM comprise a broad range of individuals, including, but not limited to, sexually active gay males who identify as such, bisexuals who are sexually active with other males, “closeted” homosexuals having sex with other men, anonymous sexual encounters between males, and male sex workers with clients.

Unlike MSM, TG are not unambiguously of one sex. Instead, **transgenderers** are “people who were assigned a gender, usually at birth, based on their genitals but who feel that this is a false or incomplete description of themselves” (T-VOX, 2009). Similar to MSM, however, transgender does not imply any specific form of sexual orientation or identity. In fact, transgender people may identify as heterosexual, homosexual, bisexual, pansexual, polysexual, or asexual. Beyond sexuality, transgender identities include many categories that may overlap, including transvestite or cross-dresser; androgynies (those who are non-gendered or between genders); people who live cross-gender; drag kings and drag queens (those who cross-dress for special occasions); and, frequently, transsexuals (those who undergo sex reassignment therapy to physically change their bodies so as to live and be accepted as a member of the sex opposite to that assigned at birth). The definition of transgender is still in flux and is often hotly contested. Recognizing these ambiguities in terminology and the absence of clear distinctions between transgender subcategories in the existing literature, this review tries to be as inclusive as possible. Nonetheless, most literature reviewed did not necessarily differentiate among the aforementioned subgroups of TG. Therefore, this review will use TG to refer to all of the subgroups described above.

Finally, there are definitional challenges about what constitutes a sex worker (SW), particularly a male and transgender SW. According to UNAIDS, a basic definition of **sex work** is “the exchange of money or goods for sexual services, either regularly or occasionally, involving female, male, and TG adults, young people and children, where the sex worker may or may not consciously define such activity as income-generating” (UNAIDS, 2005). In other words, sex work occurs in very diverse contexts besides the traditional prostitute selling sex on the street or in a bar or brothel. For example, there is the boy who sells sex to the office worker in the park, the drug addict who occasionally sells sex to finance his next high, or the young man who has a “sugar daddy” to pay the rent.

Excerpted and adapted from: Betron and Gonzalez-Figueroa, 2009.

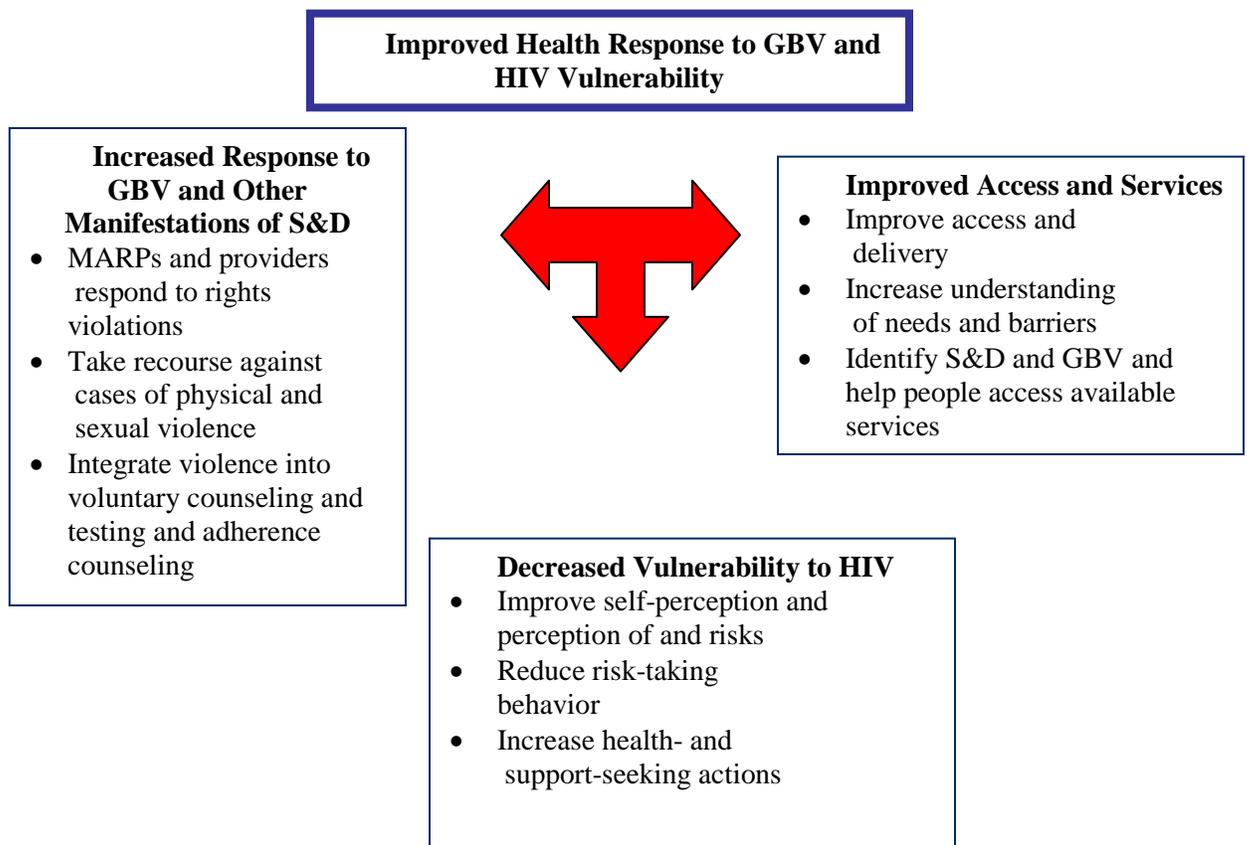
PROJECT OBJECTIVES

Given these important opportunities and benefits in screening for violence, the USAID | Health Policy Initiative, Task Order 1 assessed the feasibility of HIV clinic-based screening for gender-based violence and other forms of S&D in select sites in Mexico State and Puerto Vallarta, Mexico and Pattaya, Thailand. The objectives of the project were the following:

- To *pilot a screening tool* for GBV and S&D against MSM and TG to be applied by health service providers for increasing their recognition of and responses to these issues when providing HIV counseling;
- To *increase understanding of links* between GBV, S&D, and sexual risk taking and access to health services; and
- To foster collaboration of community organizations and health services *to respond to cases of GBV and S&D* that affect HIV risk.

Through these objectives, the project ultimately sought to test a model of care and response to violence against MARPs that would reduce vulnerability to HIV. The project objectives are elaborated in the conceptual model below.

Diagram I. Conceptual Framework



Overview of Project Components

The first phase of the project consisted of an assessment to identify relevant issues and factors that affected the design of the project, including the following:

- (1) A *literature review* to identify and understand (a) the impact of stigma, discrimination, and violence against MSM and TG on their vulnerability and risk behavior related to HIV; (b) promising interventions among programs and policies worldwide that are responding to S&D and violence against MSM and TG; and (c) best practices in screening for violence in the healthcare setting.
- (2) A *participatory assessment* comprising in-depth interviews with service providers and focus group discussions with select subpopulations of MARPs to determine the following: (a) types and dynamics of S&D and GBV in the pilot areas; (b) how they affect risk behavior and access to services; and (c) characteristics of HIV clinics selected as pilot sites that would affect the design and success of the GBV screening intervention, such as how clinics organized their services and services providers' openness to addressing GBV.

The second phase of the project, the implementation phase, consisted of the following:

- (1) *Design of a screening tool and training module* for healthcare providers to better respond to violence against MSM and TG. The project team incorporated information gathered from the literature review and field research into the design of a tool for service providers to use in HIV health services to screen for violence against MSM and TG. Likewise, the team designed a module to train service providers on the use of the screening tool and on appropriate referral and follow-up.
- (2) *Sensitization and training* of health providers and administrators at the pilot sites on (a) gender, S&D, and violence against MSM and TG; (b) the linkages between violence and HIV vulnerability in MARPs; and (c) application of the screening tool, including best practices in screening for violence, particularly intimate partner violence (IPV).
- (3) *Set-up of referral systems*, including identifying and establishing linkages with organizations that provide services for victims of violence and for MSM and TG, such as counseling programs, human rights and legal services, and other social support programs.
- (4) *Piloting of the screening tool* for approximately six to eight weeks in seven HIV clinics in Mexico, as well as one HIV clinic, one hospital, and two community drop-in-centers in Pattaya, Thailand.
- (5) *Evaluation of the screening tool*, including interviews with service providers and, in Thailand, select clients at drop-in-centers who had familiar relationships with screening personnel⁴. Evaluation determined the ease of applying the tool; its appropriateness and components; the perceived improvement in identifying services, access, and delivery for MARPs; and overall, possible improvements to the tool and process for future use. Based on evaluation findings, the project team adapted the tool. (See Annex II for the final version of the screening tool.)

Context of Pilot Sites

Mexico and Thailand both have high levels of discrimination against MSM and TG. Studies have identified and elaborated on the levels and forms of stigma and discrimination—often manifested as physical and sexual violence—perpetrated against MSM and TG in these countries (e.g., Gayet et al.,

⁴In Thailand, clients interviewed were those who had close relationships with the personnel of screening sites, which included drop-in/support services for MSM and TG. In Mexico, follow-up of clients would have been necessary, which was beyond the scope of the design and ethical review board approval for the project.

2007; Jenkins, 2006). It is estimated that two people a week are killed in Mexico because of their sexuality (UNAIDS, 2009). Newspapers in Thailand commonly report on denial of services to TG. Nonetheless, both Mexico and Thailand have developed more progressive laws and policies seeking to eliminate discrimination against MSM and TG. In 2001, Mexican legislators amended the Constitution to prohibit discrimination based on (among other factors) sexual orientation, and in 2003 the Parliament passed the “Federal Law to Prevent and Eliminate Discrimination,” which includes a ban on discrimination based on one’s sexual preferences (International Gay and Lesbian Human Rights Commission, 2003). Sodomy was decriminalized in Thailand in 1956 and important gains have been made more recently for the equal status of MSM and TG, including the removal of homosexuality from the Department of Mental Health’s list of mental disorders (2002) and the creation of “transsexual” as a third category in the military (Armbrecht, 2008).

The project carried out pilots in Mexico State and Puerto Vallarta, Mexico and Pattaya City, Thailand, where there are high concentrations of MSM and transgender populations and high rates of HIV among these populations. Accurate data on the prevalence of HIV among MSM and TG are limited. However, a recent study in select cities with large MSM and TG populations in Mexico found HIV to be approximately 10 percent among MSM (Acapulco, Monterrey, Tampico) and 10–15 percent among TG (Acapulco, Monterrey) (Gayet et al., 2007). Mexico City, its surrounding metropolitan area, and Puerto Vallarta generally are known to have relatively higher numbers of MSM and TG—many are sex workers—although precise numbers are undocumented. Pattaya is a major tourist city and sex work destination in Thailand, with an estimated 4,500 male sex workers (MSW) and 1,200 transgender sex workers (Sakhunthaksin, unpublished). These populations have reported HIV rates as high as 30 percent (CDC TUC et al., 2005).

Due to the high rates of HIV among MARPs in Mexico and Thailand, their governments have implemented HIV and STI services for these groups. Among Thailand’s government-run clinics and hospitals that offer specialized HIV and STI services for MARPs, there is one hospital (Bangrak Hospital) within the Bangkok Metropolitan Authority (BMA) health system,⁵ one clinic in Phuket,⁶ and one clinic in Pattaya (Pattaya Rak).^{7,8} These clinics typically are staffed with one or two doctors, one or two nurses, and a social worker.

Similarly, in Mexico, between 2006 and 2008, the Secretary of State put into place 55 public clinics, or CAPASITS (Centros Ambulatorios para la Prevención y Atención del SIDA e Infecciones de Transmisión Sexual), which provide specialized services for people living with HIV and so predominantly serve MSM, TG, SWs, and injection drug users (IDUs) (La Jornada, 2006.) A CAPASITS normally is staffed by a range of health professionals, including two medical doctors, two nurses, a psychologist, a social worker, a lab technician, a dentist, and an infectious disease specialist (Egremy, unpublished). The CAPASITS and the clinics in Thailand provide HIV treatment, testing, care, and support, as well as some prevention and outreach activities.

In both Mexico and Thailand, models of screening for IPV against women have been implemented in select sites with some degree of success. The Thai government has implemented screening in 20 hospitals throughout the country, using the “One-Stop Crisis Center” (OSCC). Women identified as IPV victims are referred to counseling and psychosocial support services incorporated on site within the hospital

⁵Interview with Director of the BMA Health Clinic #9, February 21, 2007.

⁶Interview with Dr. Kimberly Fox, CDC Thailand, January 31, 2007.

⁷Interview with a nurse at Pattaya Rak clinic, May 3, 2007.

⁸There are also a number of private clinics that offer services to MSM and TG based on special arrangements made with SISTERS and SWING, community-based organizations that conduct HIV/AIDS education and outreach.

(Grisurapong, 2002). Mexico has a multisectoral Integrated Model for the Prevention and Care for Family and Sexual Violence; the health sector's role is to provide quality care for women experiencing violence. The Secretary of Health also has a policy of universal screening for violence against women. However, health providers interviewed in the initial participatory assessment indicated that the screening tool is not used consistently either in their clinics or others because some clinic staff perceive the questionnaire to be too long or unnecessary.

In both Mexico and Thailand, high levels of HIV among MSM and TG, a legal and political environment relatively accepting of these populations, and the existence of clinics with experience and interest in serving MARPs all provided appropriate settings to pilot screening for violence against MSM and TG. Although attitudes and practices are far from equitable and non-discriminatory in these countries, there is heightened awareness, especially in HIV settings, for the need to address social vulnerabilities faced by MSM and TG. Moreover, many stakeholders recognize that HIV services in the health sector have an important role to play in addressing those vulnerabilities.

Project Partnerships

In Thailand, the Health Policy Initiative partnered with the Policy Research and Development Institute Foundation (PRI), a Thai policy and research organization working in the area of sexual and reproductive health, to lead the project at the local level. In turn, PRI worked closely with the following four implementing partners: SISTERS, SWING, Banglamung Hospital, and Pattaya Rak Centre. (See Box 1 for a full list and description of project partners in Thailand.) SISTERS and SWING, two NGOs run by transgenders and MSM, respectively, played key roles in the project by training service providers, serving as screening sites, and providing referral services. Both SISTERS and SWING have drop-in centers in Pattaya and conduct prevention outreach for transgenders and MSW, respectively. The clinical pilot screening sites were Banglamung Hospital, the main government hospital in Pattaya City and Pattaya Rak Centre, a government-run STI clinic for male and female sex workers and TG. All partners provided input to the project and screening tool design. The municipal government in Pattaya and the government-run domestic violence shelter in the province of Chonburi also provided input for the project design and collaborated in its implementation by participating in referral networks for follow-up support to victims of violence.

Box I. Project Partners in Thailand

Policy Research and Development Institute Foundation: NGO conducting research and analysis of policies at the community, civil society, local, national, and international levels to promote fair, equal, and inclusive public policy.

SWING: NGO providing STI- and HIV-related education, outreach activities, and counseling services targeting male and female sex workers in Pattaya.

SISTERS: NGO providing STI- and HIV-related education, outreach activities, and counseling services targeting transgendered sex workers in Pattaya.

Banglamung Hospital: District-level government hospital providing general medical services for the general population.

Pattaya Rak Centre: Governmental clinic providing STI-related screening, treatment, and counseling services, targeting male and female sex workers and transgendered populations.

Pattaya Municipal Government: The district-level entity responsible for social security and welfare for the Pattaya population.

Nhongprue Municipal Government: The subdistrict entity in charge of social security and welfare for the Nhongprue subdistrict population.

Children and Family Housing: Chonburi province: The government shelter in Chonburi Province providing temporary accommodation and counseling for women and children facing domestic violence and other family problems.

Source: Sakhunthaksin, Unpublished.

In Mexico, local project staff also worked with key partners, in particular the HIV/AIDS Program of the state of Mexico and the CAPASITS of Puerto Vallarta. The directors of these programs were instrumental in providing an enabling environment to implement the project activities. In both Puerto Vallarta and the state of Mexico, NGOs were involved, but to a lesser extent than in Thailand. It is worth noting that at the time of the pilot there were no NGOs in Mexico specifically organized to undertake outreach to MSW or TG. Instead, project staff worked with organizations such as Vallarta Enfrenta el SIDA and APROASE that offer services to MSM and female sex workers.

Findings from the Participatory Assessment

A participatory assessment in both countries informed the development and design of the pilot implementation of the screening tool. The assessment consisted of in-depth interviews and group discussions using participatory learning and assessment methodologies, such as free-listing, community mapping, open-ended stories, and problem trees. Discussions with health providers identified their attitudes and behavior, as well as perceived barriers to and opportunities for integrating screening for violence against MARPs within their services. In discussions with MSM and TG, the project team sought to identify types of violence, including S&D, that these populations face and how those experiences may limit access to, or could be addressed by, health services.

In Thailand, PRI staff conducted in-depth interviews with key stakeholders, including 11 health providers at Banglamung Hospital (the main hospital in Pattaya City), 3 providers at Pattaya Rak (the STI clinic specializing in services for MSM and TG), and 8 representatives from government and SISTERS and

SWING. Staff also facilitated focus group discussions with two MSM groups recruited by SWING and two TG groups recruited by SISTERS, each group consisting of 10–11 individuals.

In Puerto Vallarta, Mexico, the project research team conducted in-depth interviews with 12 health providers and a focus group with 5 providers, all of whom CAPASITS identified as having worked with HIV patients who have experienced violence. The project team also conducted a focus group with TG in Mexico City (n=5) and in-depth interviews with 5 TG in Puerto Vallarta and 8 MSW in Puerto Vallarta, Jalisco, and Mexico City. The NGOs Vallarta Enfrenta el SIDA in Puerto Vallarta and APROASE and the Network of People Living with HIV in Mexico City identified the focus group participants. Because there were no NGOs that reached out to TG and MSW in Mexico, project staff found recruitment to be more difficult and interviewed fewer respondents than initially planned.

The assessment identified common themes regarding violence, S&D, and HIV vulnerability in both Mexico in Thailand. In both, violence was widespread. In Mexico, MSM and TG experience the range of forms of violence identified in the literature review—physical, sexual, and emotional/psychological, including S&D. When asked with whom they felt most unsafe, Mexican TG cited gangs, police, drug addicts, priests, neighbors, and co-workers.

- *“There are more unsafe than safe spaces.”—TG in Mexico*
- *“He tied him up, with a bat he hit him in the ribs, he burned his hair, and he penetrated him without a condom.” MSM sex worker in Mexico, referring to a fellow MSM*
- *“There are many who deny violence [in MSM and TG], but it is perhaps as high 60 percent.”—Health provider in Mexico*
- *“The police have gone as far as to rape and beat me and my friends...”—TG in Mexico*
- *“Anyone that is passing by yells profanities, throws objects, or hits us.”—TG in Mexico*

In Thailand, assessment results also indicate that violence—particularly as an expression of S&D—is pervasive and is perpetrated by various members and institutions throughout the community, such as businesses, employers, and hospitals.

- *“Some hotels did not allow us to stay in their premises. Some treat us very bad like we were just animals. Some asked for the identity card and when they knew that we were not women, but TG, they did not permit us to stay as well. Some asked for additional charge.”—TG sex worker in Thailand*
- *“Some people hate TG. When we were passing by, they splashed water on us.”—TG in Thailand*
- *“When [I] go shopping, some shopkeepers were staring at me as if I were a disgusting monster.”—MSM in Thailand*

Health providers, MSM, and TG alike acknowledged that the police are recurring perpetrators of violence in both Mexico and Thailand. This was particularly true for TG in Thailand. Violence by police consists of verbal harassment as well as physical abuse and extortion of money or sex to avoid arrest.

- *“Any place can be unsafe for us, but particularly in the street, above all with the police.”—TG in Mexico*
- *“Occasionally, I did not have money, so I had to do oral sex for a police as reciprocity of a fine.”—TG in Thailand*
- *“Police were extremely rude to us and treat us like animals. Sometimes we did not have enough money for a fine; then they seize our properties and belongings.”—TG in Thailand*

In both Mexico and Thailand, evidence from the focus group discussions with MSM and TG also point to the fact that violence is gender-based. Respondents in Mexico perceived “feminized” MSM and TG to be

at greater risk for violence. In Thailand, TG respondents cited their distinctive appearance as a key factor in the violence and related S&D they experienced.

“It is when we show visible feminine traits that we are most at risk [for violence].”—MSM in Mexico

Finally, it was enlightening to find that the violence described above has gone largely unacknowledged and indeed is seen as the norm; MSM and TG who experienced violence did not necessarily recognize it as such. Because they were so accustomed to ridicule, discrimination, and other forms of abuse, many MSM and TG in Thailand had never realized or considered that they were living an experience of violence. In Mexico, some respondents seemed resigned to the abuse they faced, saying

“We have always suffered this rejection, and it will always be that way.”—TG in Mexico

Health providers generally did not make the connection between violence against MSM/TG and HIV vulnerability. In Thailand, they did not seem to recognize violence as a public health problem at all. For example, health providers interviewed in Thailand did not see violence as something that could undermine the confidence of MSM or TG to access health services, nor did they perceive their own attitudes toward these populations as a potential barrier. In Mexico, on the other hand, providers recognized that violence isolates MSM and TG, preventing them from accessing care and causing them to abandon treatment:

“The violence has effects in that [MSM and TG] do not attend consultations and they isolate themselves a lot.”—Health provider in Mexico

Still, providers had not made the explicit link between violence against MSM/TG and HIV:

- *“No, I have never thought about that [the link between violence against these populations and HIV].”*—Health provider in Mexico
- *“Before I had not thought about the link between HIV and violence.”*—Health provider in Thailand
- *“In the past, I thought about violence as only physical and sexual harm. I had not thought about emotional abuse as a form of violence.”*—Health provider in Thailand

Despite having little experience in addressing issues of violence, most providers interviewed in Mexico welcomed the idea of screening for violence against MSM and TG. Providers in Mexico recognized that they were not prepared to respond to violence against these populations but could do so if provided with the proper training.

- *“We are not prepared, but we have to help.”*—Health provider in Puerto Vallarta, Mexico
- *“It seems like a very good idea. What we need in this is trained personnel; there is no training.”*—Health provider in Puerto Vallarta, Mexico

Although providers in Thailand also were open to testing the screening tool, they reported that, in the past, they had not seen the importance of their role in responding to violence against MSM and TG. Some felt that MSM and TG in Pattaya are widely accepted and so do not need special attention related to violence and S&D. Others initially saw the police or friends as the first line of response for MSM and TG experiencing violence. In fact, as described above, the police often are the worst perpetrators of this violence.

- *“When this population [is] faced with violence, they coped with it by themselves without their request [for] help and support from others. They could go to report their experience to the police. They always asked for help from their peers, but never asked from us.”*—Health provider in Thailand

On the other hand, those MSM and TG interviewed said that they were open to a GBV screening intervention and, in Mexico, identified health clinics or CAPASITS as the most appropriate sites for implementing the screening (Egremy, unpublished; Sakhunthaksin, unpublished). They also recommended training for health providers to ensure that MSM and TG are treated with respect throughout the process. On the whole, in both Mexico and Thailand, MSM and TG who were interviewed sought comprehensive, non-discriminatory, quality health services.

- *“They could have talks for the abused and abuser for men, the same as for women and men.”*—MSM in Mexico
- *“There has to be training, to treat everyone with respect.”*—MSM and TG in Mexico
- *“The hospital staff just performed their duties but in reality they did not like us.”*—MSM in Thailand

PROJECT IMPLEMENTATION PHASE

Country-Specific Project Adaptations

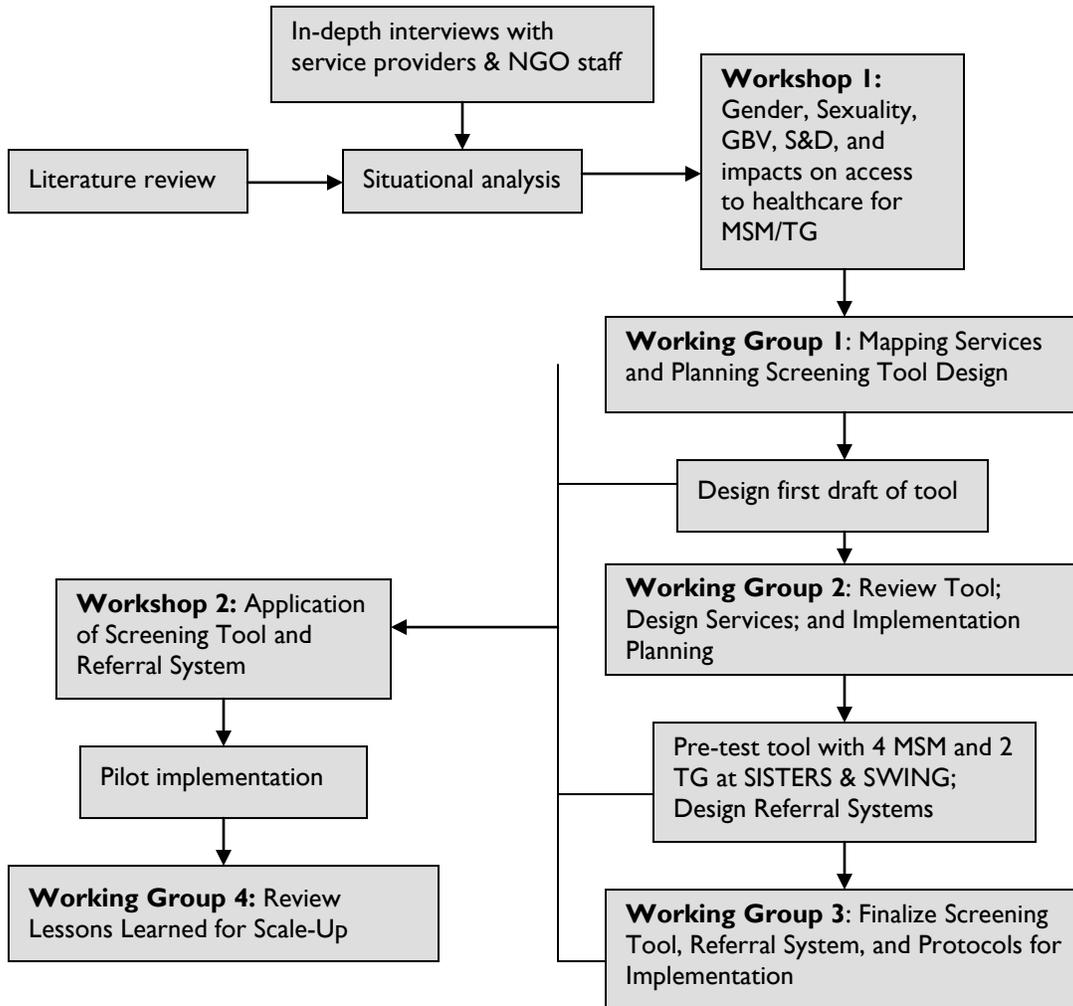
As a project that focuses on improving the health policy environment and overcoming policy barriers in sexual and reproductive health, the Health Policy Initiative works closely with—or often through—existing government programs and services. This project was no exception. In cooperation with the state and municipal governments of the pilot sites, the project team adapted an implementation approach that fit local needs, resources, timelines, and other constraints and opportunities.

Thailand

Following the participatory assessment to determine the types and dynamics of violence against MSM and TG, as well as the qualities of participating clinics (as described in the next section), these government and civil society stakeholders came together in a series of workshops and meetings (see diagram below) to collectively

- Design the screening project;
- Participate in training on issues of gender, sexuality, S&D, and GBV, as well as applying the screening tool;
- Determine the flow of patient services from health to other services that could provide some type of support for MSM and TG who experience GBV (i.e., the referral system); and
- Discuss the project findings, outcomes, and implications for future services and programs.

Diagram 2: Overview of Project Implementation Process in Thailand



Mexico

Once the participatory assessment phase was complete, the HPI Mexico team developed a training package to sensitize health providers on gender, sexuality, gender-based violence and HIV/AIDS, and best practices in screening for violence. Participating health providers in Mexico were trained more extensively than the Thai collaborators on the minimum requirements needed before screening (as described in Box 2) and implementing referral systems. Unlike the Thai team, however, the providers also led the set-up of referral systems and protocols for screening. HPI Mexico assisted by holding meetings with participating clinic staff to discuss devising possible safety plans for clients and arranging for referral organizations; both of these elements are considered critical minimum support for victims.

Box 2. Elements to Address before Screening

- Be aware of the legal environment, including laws on homosexuality, homophobia, and sexual and domestic violence
- Provide ongoing in-service training sessions on gender, sexual diversity, and GBV for *all* staff.
- Establish norms, policies, and protocols for screening.
- Ensure infrastructure to allow for private consultations.
- Ensure the supply of STI/HIV prophylaxis.
- Identify counseling, legal aid, and support groups as referral services for MSM and TG; consider providing services where none exist.
- Identify elements of a safety plan or specific to MSM and TG
- Maintain adequate records/information systems.

Adapted from: Heise et al., 1999.

As in Thailand, HPI Mexico also conducted mid-term site visits to check on the progress of the screening and encourage the clinic staff to apply the tool. Finally, the project team facilitated a meeting of stakeholders, including providers who applied the screening tool, the coordinators of the CAPASITS of Puerto Vallarta, the Chief of the HIV/AIDS Program of the state of Mexico, the director of the National Center for the Prevention and Control of AIDS (CENSIDA), and the Program Officer for the Program for Transgender People at CENSIDA to share findings from the pilot intervention, discuss possible scale-up, and recommend policy-related actions.

SCREENING TOOL DESIGN

Based on the literature on screening for IPV against women, screening tools for violence are most effective when they are designed with language that is simple, direct, and non-judgmental. Best practices in IPV screening also indicate that questions may best be asked in person, in a confidential setting, and in a way that allows victims to choose whether they will report their case to the authorities or seek follow-up care (Betron, unpublished). A verbal screen also is important for allowing the provider to collect contextual information related to the incidence of violence; provide valuable advice to the client, such as safety planning for those in immediate danger for heightened abuse, murder, or suicide; and refer patients to specialized support services for violence, such as psychosocial care or legal services (Betron, unpublished).

Box 3. Screening Tool Questions to Identify Experience of Violence

- (1) In the past year, has anyone insulted you, threatened you, made you feel inadequate, or yelled at you?
YES () NO () NO RESPONSE ()
- (2) In the past year, has anyone made you feel threatened, fearful, or in danger?
YES () NO () NO RESPONSE ()
- (3) In the past year, has anyone slapped you, punched you, hit you, or caused you any other type of physical harm?
YES () NO () NO RESPONSE ()
- (4) In the past year, has anyone forced or coerced you to have sexual relations against your will?
YES () NO () NO RESPONSE ()

Based on these and other important findings from the literature, the project designed a questionnaire to do the following:

- Ask for a client's consent to inquire about his/her experience of violence.
- Identify whether a patient has experienced emotional, physical, or sexual violence at the hands of a partner or other individual among family, friends, or community (see Box 3).
- Determine the context of violence, including the perpetrator's identity and potential effects of that violence.
- Assess the risk that the client will experience ongoing or life-threatening violence.
- Refer the victim to a counselor, human rights ombudsman, or other social service, such as a drop-in center.

During workshops in Mexico and Thailand, the project team asked health providers and NGO representatives to help vet and adapt the initial set of questions to be used in the screening tool. This process sensitized providers on issues related to GBV and S&D and oriented them on the use of the screening tool and follow-up care (as described in the next section). In Thailand, MSM and TG participated in the workshops and gave input on the tool's design. The resulting screening tools applied in each country were very similar. (Annexes I and II show the English translation of screening tools applied in each country.)

Nonetheless, a few variations emerged from the country vetting processes. One key difference was that the questions applied in Thailand aimed at identifying gender identity (male, female, MSM, TG) by asking clients to indicate their sex as well as the sex of their partner/s. In Mexico, however, the screening

tool assumed that providers would rely on being an integral part of the client history intake, which provided this information.

Training Providers to Screen for Violence against MSM and TG

Box 4. Topics on which Providers were Trained

- Sexuality, sexual diversity, and gender
- Violence and S&D against MARPs
- Violence, S&D, links to HIV
- Health sector role in responding to violence against MSM and TG
- Best practices in screening for violence: lessons from IPV screening
- Hands-on practice in applying screening tool
- Referral system and follow-up support

Previous studies on GBV screening, particularly intimate partner violence against women, have identified sensitization and training of health providers on issues related to GBV care for victims as critical for encouraging providers both to screen and to do so appropriately. Recognizing this important best practice, the project team developed training modules covering a range of topics, from sexual diversity and gender, to lessons learned in IPV screening, as described in Box 4. The project team adapted training sessions on IPV patterns and screening from lessons and programs for women to fit the contexts of MSM and TG, including those in sex work.

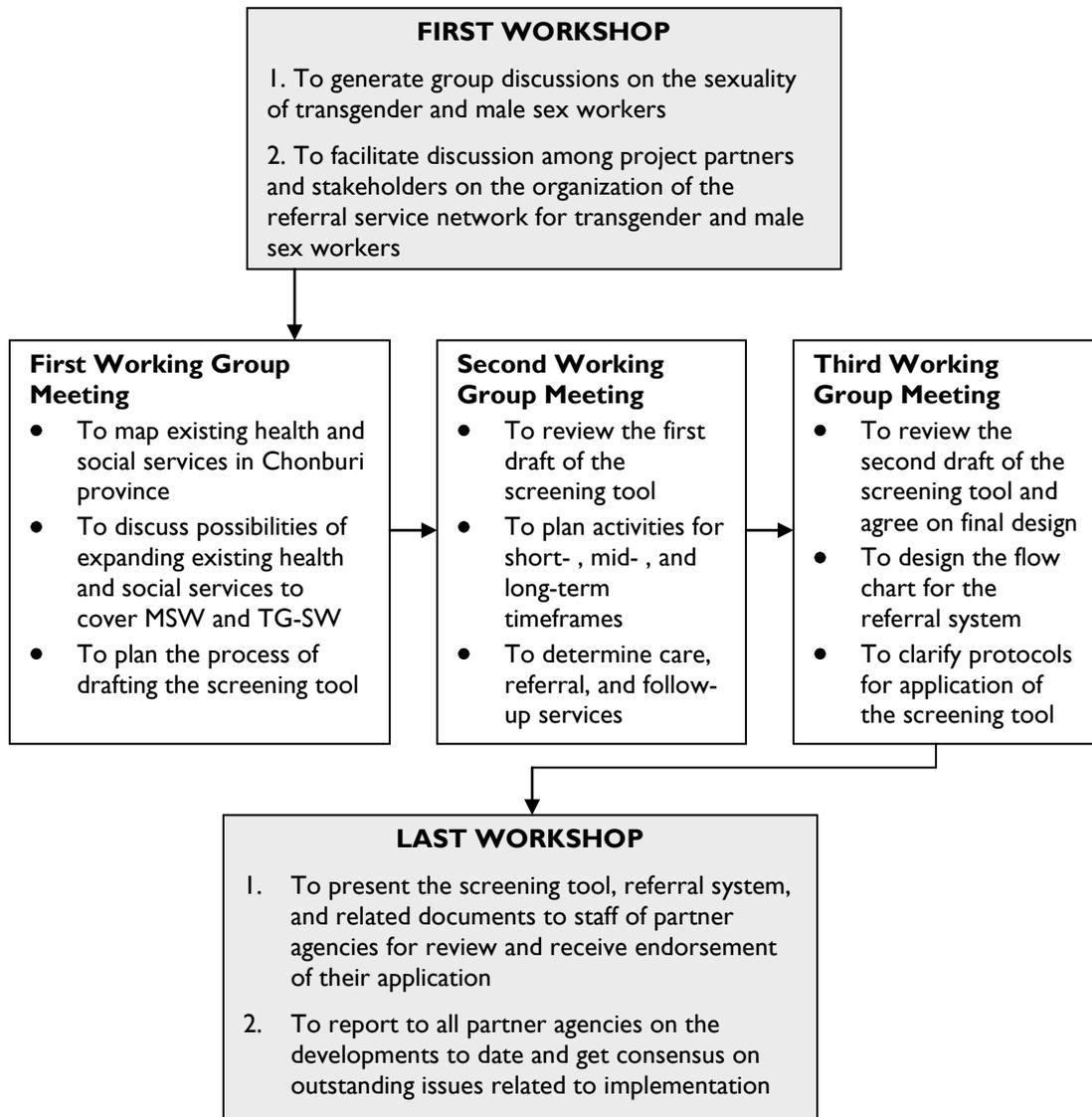
During the application of the training modules, the project team identified sessions that worked well and those that needed further adaptation, in addition to gathering new ideas and feedback from the participants. In Thailand, due to time limitations for some participants, the team used an abbreviated version of the training, with less focus on experiences of screening for IPV in women. (The training workshops in Mexico and Thailand had specific training objectives of their own.)

In Mexico, the project team applied the training modules during two workshops of approximately 28 hours each, with 42 participants from five CAPASITS (Ecatepec, Naucalpan, Netzahualcóyotl, Tlalnepantla, and Toluca) and two hospitals in the state of Mexico (General Hospital of Cuautitlán and Atizapan); and another 14 participants from the CAPASITS in Puerto Vallarta. Participants included doctors, nurses, psychologists, dentists, and social workers in both the state of Mexico and Puerto Vallarta, some of whom piloted the screening tool in their clinics. Other participants in Puerto Vallarta included representatives from the NGO Vallarta Enfrente el SIDA (VES) and local and state governments (the Municipal Committee against AIDS (COMUSIDA/Vallarta), the Institute of Social Security and Services for State Employees (ISSSTE), Mental Health and Prevention, the Secretary of State Health, and the State AIDS Program (COESIDA/Jalisco).

This participation by NGO and government representatives was important in developing referral systems and establishing cooperation among NGOs, health providers, and other government services that could form a network of support services for MSM and TG experiencing violence. In follow-up sessions of approximately two to four hours, the project team worked with individual clinics in the state of Mexico to identify referral services. The team presented the concepts of referral directories and safety planning for those at risk of immediate grave or life-threatening violence. However, establishing referral systems was left to the individual clinic to pursue. This variation ultimately resulted in weaker referral systems in Mexico, as described later.

The training model in Thailand differed in that there were only 10 hours of traditional training—5 hours on gender, sexuality, S&D, and GBV and 5 on how to use the screening tool and referral system. The project team trained a limited number of clinic/organization directors (21–24 participants per session). However, between the two workshops, the team in Thailand also conducted three working group meetings; the groups were composed of key stakeholders and decisionmakers from participating health services, SISTERS, SWING, and local government (13–16 per meeting). The goal was to develop adaptations to the screening tool and referral system. Participating in these working groups helped to further sensitize and train service providers on the use of the tool and referral system. The entire training process, which took place over three months (February–April 2008), is described in Diagram 3.

Diagram 3. Objectives of Training in Thailand



Adapted from: Sakhunthaksin, unpublished.

In addition to the workshops and meetings facilitated by PRI described above, the director of Banglamung Hospital arranged a half-day of in-service training for 10 more members of the hospital staff. Training covered application of the tool, as in the second workshop shown in the diagram above. Although these individuals did not administer the tool, they did refer clients who fit the target profile to other staff who had participated in the PRI-led trainings. In turn, those staff administered the screening tool to the referred clients.

PILOT SCREENING PHASE

Thailand

The screening tool was tested in the following six pilot settings: Pattaya Rak Center, an STI clinic for male and female sex workers and TG; SISTERS drop-in centers; SWING drop-in centers; and three departments in Banglamung Hospital, the city's main government hospital. Outpatient services (OPD), Emergency, and Sanitation were selected, based on interest from staff in these departments who volunteered to participate in the project. Providers at the hospital sometimes had difficulty in identifying whether a client was an MSM or TG, or felt awkward asking. As a result, these providers screened only clients they perceived to be MSM or TG; the exceptions were VCT counselors, who felt comfortable openly discussing sexuality with clients. Pattaya Rak Center, SISTERS, and SWING have a small enough number of clients that they were able to apply the screening tool more broadly throughout their services. Screening began one month after the last training session and lasted six weeks (between May and July 2008). (See Table 1 for further details on the screening sites and timeframes.)

Table 1. Sites of Screening in Thailand

Site	Total Days of Pilot Test	Types of Clients	Interviewer / Persons Responsible	Number of Tools Applied, % of Target Clients Screened
1. Outpatient Department, Banglamung Hospital	40 Days	- VCT clients - All clients presenting any types of violence - General clients perceived as MSM/TG	1. Nurse 2. Nurse	9, 0.05%
2. Emergency Department, Banglamung Hospital	40 Days	- All clients perceived as MSM/TG	1. Nurse 2. Nurse	7, 0.07%
3. Department of Sanitation, Banglamung Hospital	39 Days	- VCT clients	1. Other health provider 2. Other health provider	13, 1.21%
4. Pattaya Rak Center	41 Days	- Clients for STI checkup	1. Nurse	42, 26.09%
5. SWING	45 Days	Clients for: - Counseling - Emergency service - Drop-in center	1. Outreach worker	10, 28.5%
6. SISTERS	45 Days	Clients for: - Counseling - Health service - Drop-in center - Outreach to target individuals	1. Outreach worker 2. Outreach worker 3. Other health provider	6, 1.55%

Following best practices in screening for IPV against women, providers also were instructed to refer MSM and TG clients to other specialized services if they were experiencing abuse. The referral network

devised by the working groups was included as an annex to the screening tool. Due to the variation in services they offered, Banglamung Hospital, Pattaya Rak, SISTERS, and SWING referred clients experiencing violence to each other for specialized areas of care. For example, Pattaya Rak could refer clients to SISTERS and SWING for peer support services and SISTERS or SWING might refer clients to Banglamung or Pattaya Rak for VCT services. In addition, other referral agencies included local shelters for women and children or those living with HIV, municipal social welfare offices, child legal services, and occupational training centers. Also included with the screening tool was a form to register referrals made to other organizations and a list of referral organizations for clients identified as victims of violence (see Annex V). Another registration form recorded information about clients referred from other institutions participating in the referral network (see Annex VI). This form recorded which institution referred the patients and what follow-up service they may need. (See Annex III for English translations of the referral network, Annex IV for the list of referral agencies, and Annexes V and VI for the referral registration forms.)

Mexico

In Mexico, five of the trained health sites piloted the screening tool, including the CAPASITS of Ecatepec, Naucalpan, and Tlalnepantla, the General Hospital of Cuautitlán in the state of Mexico (which will be converted to a CAPASITS in the near future), and the CAPASITS in Puerto Vallarta. These sites were selected based on their interest and experience in working with MARPs and MARPs' involvement in facilitating self-support groups and promoting services in the community. Screening was conducted in two departments per CAPASITS and, in most cases, the psychologist and/or social worker conducted the screening with one other provider. The CAPASITS screened clients seeking testing and treatment for HIV. In Cuautitlán General Hospital, clients seeking HIV treatment were screened. In four out of five sites—those in Mexico State—screening took place over a period of six weeks; in Puerto Vallarta, screening was conducted for just four weeks, as further detailed in Table 2.

Table 2. Sites of Screening in Mexico

Site	Weeks of Testing	Types of Clients	Interviewer / Persons Responsible	Number of Tools Applied
Puerto Vallarta	4	VCT and HIV-related or AIDS-related treatment	Administrator, Doctor, Psychologist, Social Worker	17
Ecatepec	6	VCT and HIV/AIDS treatment	Doctor, Social Worker	39
Tlalnepantla	6	VCT and HIV/AIDS treatment	Social Worker, Psychologist	61
Cuautitlán	6	HIV/AIDS treatment	2 Doctors, Nurse	18
Naucalpan	6	VCT and HIV/AIDS treatment	Social Worker, Pharmacist	58
TOTAL				193

The referral systems varied for each site in Mexico but overall, clinics had trouble identifying formal services that could respond adequately to the needs of MSM and TG experiencing violence. Most sites depended largely on services internal to their health center, such as psychosocial services. In other cases, providers reported that they referred clients to family or friends. Just one site, the CAPASITS of Tlalnepantla, developed a list of services to which clients who had experienced violence could be referred. These services included NGOs that provide HIV/AIDS services for MSM/TG; the State family

social services institution; the government-run family violence care and prevention units in Mexico City; an NGO that offers health, legal, and psychological services to rape survivors; the human rights ombudsman for the government of Mexico; the public prosecutor's office; and a juvenile rehabilitation center that attends to family conflicts.⁹ One of the key aims of the project was to link health to specialized community services outside of the health system. Thus, for the purposes of this analysis, referrals to family, friends, and psychological services internal to the clinic were excluded in data analysis.

⁹ Desarrollo Integral de la Familia, Unidades de Atención y Prevención de la Violencia Familiar del Gobierno del Distrito Federal (UAPVIF), Asociación para el Desarrollo Integral de Personas Violadas, A.C. (ADIVAC), Consejo Nacional para Prevenir la Discriminación (CONAPRED), Ministerio Público. Centro de Integración Juvenil.

SCREENING RESULTS

To collect and analyze screening data while still maintaining confidentiality, a form attached to the end of each screening tool provided a summary of key data identified from each screening. Such data included the sexual orientation of the client (MSM or TG); whether the client experienced violence; which type of violence (emotional, if the client answered “yes” to questions 1 or 2 in Box 3; physical, if “yes” to question 3; or sexual, if “yes” to question 4); whether the provider referred the client to other services; and whether the client accepted the referral.¹⁰ In Mexico, the form also asked the provider to report whether he/she helped the client to create a safety plan. The project team (PRI in Thailand and Health Policy Initiative in Mexico) collected these forms, coded the data, and aggregated data using Excel.¹¹

Levels of Violence Detected

First and foremost, it is important to note that this was a screening, not a survey, and so was not intended to produce results that could be generalized to all MSM and TG. Instead, the results of this pilot project are indicative of the high levels of violence found in groups at risk for HIV and accessing HIV services. Indeed, the screening tool found that half or more than half of MSM and TG in both Mexico and Thailand experienced violence. A full 50 percent of MSM in Mexico and 69 percent in Thailand had experienced some form of violence. A much smaller number of TG was screened in both countries, but the screening still identified high levels of violence in this population. In Thailand, 89 percent of TG reported having experienced violence. In Mexico, 58 percent of TG were officially registered as experiencing violence, and another 15 of 20 individuals indicated on the forms as both MSM and TG had experienced violence. The researchers coded these individuals as TG, as they were likely male-to-female TG who might not always be visually identifiable as female or had undergone sex reassignment therapy or surgery.¹² (As discussed in more detail in the section on findings for screening tool use, providers seemed to be confused about how to classify clients according to the categories provided in the screening tool.) If the clients registered as both MSM and TG are considered in the TG category, levels of violence reached 65 percent for this group.

Emotional violence was most common in Thailand, with one out of three MSM and four out of five TG experiencing this type of violence. In Mexico, sexual violence was the most common type, with nearly half of MSM and three out of five TG experiencing this. Both physical and sexual violence levels were high, but higher levels of sexual violence (compared to physical violence) were identified in almost all groups in both countries except for MSM in Thailand, where levels of these types of violence were comparable (20% vs. 24%). Based on the literature, MSM and TG who are sex workers—as many in this sample are—often face extortion, blackmail, and threats by police. This may explain the higher levels of sexual violence.

¹⁰ In Thailand, separate referral forms were used to track whether referrals were accepted. In Mexico, referrals were not tracked. Providers only judged whether clients showed interest in pursuing the referral service. This was a major limitation of the study.

¹¹ Due to the small sample sizes for all groups in each setting, statistical significance could not be established.

¹² As discussed in the background section, definitions of MSM and TG can be fluid, overlapping, and open to debate, which also can lead to confusion.

Table 3. Levels of Violence Detected

Persons Screened	Number Screened	Violence Experienced within Past Year, #, %			Type of Violence, #, % of those screened				If Experienced Violence, previously sought help? #, %
		Yes	No	No answer	Emotional	Physical	Sexual	All Types	
Mexico-MSM	142	71 50%	67 47%	4 3%	42 30%	22 16%	67 47%	16 23%	29 41%
Mexico-TG	51	33 65%	16 31%	2	29 57%	28 55%	33 65%	26 51%	10 20%
Thailand-MSM	59	41 69%	18 31%	0	37 63%	14 24%	12 20%	4 6.8%	4 10%
Thailand-TG	27	24 89%	3 11%	0	21 78%	9 33%	16 59%	5 18.5%	4 17%

Help Seeking and Referrals

The majority of those who experienced violence had not sought help from anyone; this confirmed what the project had learned from the literature review and participatory assessment. Only two out of five (41%) MSM in Mexico sought help for violence, yet this was the group that had the highest reported levels of help seeking. In Thailand, help seeking was very low for both MSM and TG, with 1 in 10 and 1 in 5, respectively, seeking help.

In both Mexico and Thailand, few screened clients indicated the need for specialized referral services. According to providers, most positive screens accounted for cases of violence that took place in the distant past rather than recent incidents. Thus, most providers did not find that clients needed referral services beyond basic counseling available on-site. In Mexico, because of the limitation of specialized services for MSM and TG in the community, most participating clinics generally referred only those positive screens who demonstrated need for further care and support to the on-site psychologist (in cases where the psychologist did not conduct the screening). Tlalnepantla, the clinic at which staff developed and distributed referral lists, was the exception in that its providers referred positive screens by distributing copies of the referral list. Providers reported that 59 out of 104 positive screens were referred, but 15 of these were referred to family, friends, or psychologists internal to the organization.¹¹ For purposes of project analysis, providers in Mexico referred 42 percent (44 out of 104) of those who experienced violence. (More than half of these—27—comprised Tlalnepantla clients.) Of those referred, 38 percent seemed to accept the referrals, according to providers. The project did not conduct tracking and follow-up in Mexico to determine whether clients actually accessed the referral services, however.

Table 4. Referral Made and Accepted

Persons Screened	Experienced Violence #	Referred by Provider, #, % of those who experienced violence	Referral Accepted, #, % of those referred
Mexico—MSM and TG	104	44 ¹³ 43%	23 38%
Thailand—MSM and TG	65	7 11%	5 71%

In Thailand, staff recorded referrals only for clients who demonstrated immediate need for specialized services. All clients screened received a list of referral agencies that could provide related services, however. There were a total of seven clients who were referred: SWING and SISTERS referred three clients to Pattaya Rak for STI screening and treatment, and Pattaya Rak referred four clients to SWING for peer counseling. The success in tracking these referrals indicates the functionality of the tracking forms used and the partnerships formed among service providers in the referral network.

It is important to note that, of the referrals made for immediate services needed, a high proportion—five out of seven—resulted in clients accessing the services to which they were referred. (Two clients referred by Pattaya Rak did not seek services.) However, given the small number of referrals recorded, little scientific analysis can be made as to the types of services needed by clients. Most clients screened indicated that they did not need further help with respect to the violence they experienced. Instead, they preferred to seek support from friends, indicating that strong peer support networks may be a possible complementary service that should be developed.

¹³ Providers actually reported referring 59 clients, but 15 of these were referred only to family, friends, or psychologists internal to the organization. For the purposes of this research, we have included referrals only to formal institutions outside of the screening service setting.

EVALUATION FINDINGS

In addition to analyzing screening data, project teams in each country interviewed providers who had implemented the screening tool. In Mexico, all providers who applied the tool—a total of 13—were interviewed, and in Thailand, 10 out of 11 providers were interviewed. (See Annex VII for a list of providers interviewed.) These interviews verified the adequacy and appropriateness of the language used in the tool; ease of use; any barriers to screening for violence against MARPs; perceived benefits or drawbacks to screening; additional capacity building needed to apply the screening tool; and recommendations for scaling up the screening intervention. The team in Thailand also interviewed 16 clients after the screening process, which was approved by a local ethical review board. In Mexico, follow-up with clients was beyond the scope of the evaluation design.

Evaluation of the Screening Tool Design

Providers in both countries found the tool useful and comprehensive. Those in Thailand said that the tool helped them better understand the violence and related struggles that MSM and TG face. In Mexico, providers found the screening tool useful not only in helping them understand violence against these populations but also in raising awareness among clients, who began to realize that what they have experienced constitutes violence.

“Using the screening tool was a great opportunity for me to know their way of lives that I had never known before. Further, I could understand more about the concept of violence, which was not limited only to physical and sexual violence, but also includes emotional violence, which could [be] severely affect[ted to] their lives. In addition, due to the real experiences I faced [in applying the screening tool], this resulted in my good and positive attitudes towards them.”—Provider in Thailand

“Yes ... it surprised me that the people’s answers were positive, but when you talk of violence and its different types, they catch on that they are living it.”—Provider in Mexico

The language of the tool proved to be more acceptable to providers in Mexico than those in Thailand. In Mexico, providers generally found the language to be appropriate and easy to understand.

“[It’s] simple, clear, concrete.”—Provider in Mexico

“All the patients answered me. It was not difficult for them, they respond quickly.”—Provider in Mexico

Perhaps reflecting the fact that a first draft of the screening tool was developed with the team in Mexico and then translated to English and then to Thai, a few (2 out of 10) providers in Thailand found the language of the tool to be academic, technical, and difficult to understand early in the pilot process. They became confused and had difficulty when applying the tool at the start of the pilot. Clients, in turn, became confused and did not understand questions asked by providers. As a result, in some cases, the screening process collected some information not intended, such as details regarding the past help that patients obtained related to experiences of violence (Sakhunthaksin, unpublished). Challenges due to the language dissipated, however, as providers became more familiar with the tool.

“For the first case, I was very confused how to use it, but after a few cases, it was easier later.”—Provider in Thailand

“Sometimes I could understand what the staff said, but sometimes it was so confusing. I heard that even the staff did not understand when they had to read the long questions.”—Client in Thailand

In analyzing screening forms and interviews with providers in both countries, the following two items in the tool stand out as requiring further clarification: how to identify whether a client is MSM or TG, and when and how to carry out safety planning. First, as explained above, Mexico’s screening forms did not have questions asking clients to identify their sex/gender identity, while the Thai forms did. Providers in Mexico were expected to identify whether a client was MSM or TG based on clinical history notes and then check a box indicating one or the other on screening forms. However, this proved to be problematic in that several providers checked both MSM and TG boxes. While male-to-female TG may in fact be considered a subset of MSM by some, many TG themselves consider that they have distinct identities, neither male nor female or, in some cases, both.¹⁴ Moreover, for the purpose of this project, experiences and screening of TG were to be analyzed separately from MSM more broadly. The Thai screening forms explicitly asked clients what they considered their sex/gender to be—male, female, TG—as well as the sex/gender of his/her sexual partner, minimizing confusion about whether a client screened was MSM or TG. However, service providers in clinical services said that they were uncomfortable proposing the screening service to clients who appeared “masculine.”

“Sometimes I dared not to ask whether a client was gay, because he looked very masculine. If I asked him and he was not gay, I became very embarrassed and felt shame.”—Provider in Thailand

To address these issues, the final screening tool (see below and Annex X) includes the original Thai questions that identify sex/gender of the client and his/her partner. However, it excludes the introductory statement, “Our hospital is currently providing special services for men who have sex with men and transgenders,” which eliminates the indication that the interviewer may be presuming that a client is an MSM or TG. Moreover, it is recommended that the screening tool be applied in HIV services catering to clients that include MSM and TG and where, ideally, questions to identify sex/gender of clients would be integrated into existing clinical forms in place of the standard “male” or “female” check boxes. Questions regarding the sex/gender of the client in the form would thus be commonplace and asked of all clients.

¹⁴For a definition of MSM and TG, see the box “Violence against MSM and TG: Definitions and Overview” in the Background section of this report.

Box 5. Screening Form Questions that Identify Gender Identity of Client

I.1 We would like to first ask information regarding your sex and sexual identity? We ensure that this information will be kept confidential and will be used only as a basis for providing you services that will best respond to your needs. So, if you don't mind, could you please indicate whether you are:

Male Female TG (Multiple answers allowed)

I.2 Please indicate the sex of your sexual partner:

Male Female TG Do not have sexual partner (Multiple answers allowed)

In order to determine whether one is MSM or transgender, it is important to consider 1) sexual identity: or the sex with which the person considers him/herself to be or has adopted; 2) sexual orientation: as defined by the sex or sexes of the person's sexual partner/s; and 3) gender expression: the preferences and behavior that communicates one's sex/gender, for example, clothing, hair styles, mannerisms, way of speaking, roles we take in interactions, as defined by traditional social and gender norms. Questions I.1 and I.2 pertain to sexual identity and sexual orientation. Based on this information, is the client:

MSM TG Other, specify: _____
(Please choose one.)

Safety planning is another concept that providers did not adequately understand. Although most providers reported that the positive screens they detected consisted of cases of violence that occurred long ago and did not pose an immediate threat to the patient, when interviewed, providers in Mexico and Thailand did not differentiate between referrals and safety planning. Although safety planning was discussed with providers, they had difficulty in grasping the concept of a safety plan and identifying options for safety planning beyond referral to specialized services. Additional guidelines on safety planning attached to the screening tool could have helped to remind providers that this step is important, beyond simply referring the client to other services. Such guidelines, now incorporated into the final tool, should indicate when to conduct safety planning, the objectives of such planning, and possible elements of a safety plan. Overall, clear protocols are an essential component for any efforts to screen for violence, as discussed in the next section.

Strengths of the Screening Process

On the whole, providers found the screening process beneficial to their work. Providers in both Mexico and Thailand noted that the screening process helped them to better understand the social situations that MSM and TG face and, in turn, their increased vulnerability to HIV. Likewise, providers in both countries indicated that asking the questions via the screening tool improved communication and trust between themselves and the client, despite the fact that several initially were hesitant to ask what they perceived to be very private questions.

"I heard the violence issues in some interviews in the past, but there was no direction to focus in this issue. When applying this tool, it was easier for me to interview on the violence issues."—
Health Provider in Thailand before pilot screening began

"After using the screening tool, it was a great opportunity for me to know their way of lives that I had never known before. Further, I could understand more about the concept of violence, which was not limited only to physical and sexual violence, but also included emotional violence, which

could severely affect their lives. In addition, due to the real experiences I faced, this resulted in my good and positive attitudes towards them.”—Provider in Thailand

“Yes, it has given us tools, better knowledge to investigate what we can do; we know more about the legalities; it allows us to identify [violence] as a factor of importance for prevention of STIs and HIV, not just a primary [factor] but also a secondary one.”—Provider in Mexico

“Obviously, asking these questions and contributing knowledge with respect to them, has given me more trust with them; touching on this rather intimate point has given me the opening to address other issues.” —Provider in Mexico

For many clients, the screening process allowed them to realize for the first time that the abusive experiences they have faced are forms of violence. The simple act of asking clients about the mistreatment that they have experienced reinforced that those experiences consisted of violence and a violation of human rights; this seemed to have improved some clients’ self-esteem.

“[In the past] I met the staff almost everyday...The issue of violence used to be our topic of conversation, but it was never taken seriously, since I had never known before that what I faced with is the violence.”—Client in Thailand

“I feel that it surprised them; one is accustomed to all violence and when one emphasizes that [what they experienced was violence], it makes them feel important and that they do not deserve the violence. I felt that it bolstered their self-esteem.”—Provider in Mexico

Providers and clients in both countries also found the referrals to other specialized services to be beneficial. In Thailand, where MSM and TG organizations and social support services were identified and included as partners in the pilot intervention, the system of referrals proved to be a key positive outcome and resulted in strengthened collaboration among health, MSM/TG, and social support services. In Mexico, where the participating HIV clinics and project team identified few referral services, providers emphasized the need for such services and expressed their feeling of helplessness due to this lack. They noted the potential value of having peer organizations as partners in dealing with violence.

More specifically, in Thailand, providers reported that, prior to the screening intervention, they did not refer patients who shared experiences of violence to other services. Providers believed that clients preferred to cope with such problems themselves and/or that there was no recourse for such clients. Also, some providers did not trust or know of services that could offer an adequate specialized response to MSM and TG experiencing violence. For that reason, if they did refer clients to other services, some providers used their own personal network of services (Sakhunthaksin, unpublished).

“Most of clients did not want help for the violent circumstances, because such violence was common to them, and they did not see a solution for them. They tried to cope with it and did not want any help.”—Provider in Thailand

“If we had to refer a client, we were not sure that the receiving agency could provide the best services responding to such client as we did. So we were afraid that if we refer him to other services, he might be in a worse situation.”—Provider in Thailand

“I have never seen any list of organizations providing help and support. Mostly, I knew such organizations by personal connections. So the list is very helpful to me.”—Provider in Thailand

As a result of the screening intervention, however, providers at health sites and SISTERS and SWING developed more formal linkages with each other. Moreover, clients at SWING and SISTERS who were screened (and agreed to be interviewed afterward) indicated that the referrals were useful in letting them know where they could access help and prevented them from feeling abandoned or ignored by the attending clinic/provider.

“I could feel that nurses paid more attention to me. In the past, they rarely talked to me. Now I was very glad that they tried to talk to me more. So in the future if I am faced with such violence, I know where I can go for help.”—MSM at SWING

The length of time needed to conduct the screening itself generally was not perceived as burdensome by providers in Mexico. (This differs from Thailand, as described in the Challenges section.) Screening took a mean average of just under 12 minutes (13 minutes for those who had experienced violence and 10 minutes for those who had not) and a mode average of 10 minutes to complete, based on general estimates recorded by providers.¹⁵ Most providers did not see time as a barrier. (See Annex VIII for a complete analysis of the average time to complete screening forms by clinic.)

“I do it at the same time as the identification forms, so it does not take much time from them.” — Provider in Mexico

“It’s adequate, quick; no problem.”—Provider in Mexico

Challenges Associated with the Screening Process

Providers and clients in Thailand, on the other hand, found the screening process to be time-consuming. On average, providers in Thailand reported that they needed 15–20 minutes to apply the screening tool (based on general estimates recorded by providers at the end of each screening session.) The minimum was 8 minutes at Pattaya Rak Center. The maximum was 30 minutes at the Department of Sanitation at Banglamung Hospital, which included VCT counseling sessions into which the tool was incorporated. This problem was evident in the very low percentages of individuals screened, especially at the hospital (as seen in Table 1). Where there was a much lower volume of clients, such as at Pattaya Rak or SWING, higher numbers of clients were screened.

“I could not [always] use the screening tool. That was because there were so many clients and if I used it, other clients would wait for me for a long time. For this reason, I used it only when there were not so many clients.”—Health provider in Thailand

“When I went to there, I did not have much time for an interview, because I had to go for my appointment. The staff could only ask me a few questions, and I had to go out.”—Client in Thailand

Other challenges with the screening tool confirm best practices in IPV screening with women. As described in Box 2, these include identifying counseling, legal aid, and support groups as referral services for victims, or providing services where none exist; ensuring infrastructure to allow for private consultations; and providing ongoing in-service training sessions on GBV for *all* staff.

¹⁵ It is important to note that there was a wide range in the length of time to complete the screening for both positive and negative screens, as reported by providers. For those who were screened positive, the range was 5 to 35 minutes; for those who were screened negative, the range was 5 to 20 minutes. In two of the CAPASITS, Puerto Vallarta and Ecatepec, there was a significant difference in the average time to complete positive screens—approximately +4 and +9 minutes, respectively. In the other three sites, the HIV/AIDS clinic at the hospital of Cuautitlan and the CAPASITS of Tlalnepantla and Naucalpan, the difference between average time for positive and negative screens was little to none, at 0, -.76 and +2.34, respectively. For full details, see Annex VIII.

In Mexico, most providers found a dearth of referral services. Instead, providers referred clients who had experienced violence to psychosocial services within their own clinics and found these to be good sources of support. Still, providers emphasized a lack of legal services, shelters, and self-support groups for MSM and TG. One provider also noted the need for post-exposure prophylactics for the violence victims they identified. Overall, lack of referral services was a major impediment and was identified by providers as the principal barrier to and reason for not continuing to use the screening tool. When asked about the negative aspects of the screening, the following were some of the responses:

“Outside the CAPASITS, we did not identify more support. In the majority of the cases, they go to self-support groups organized by our psychological services...they are a great support to us, since there are people [there] with the same characteristics. We also sent them to human rights office for work-related cases.”—Provider in Mexico

“I felt very limited...if there were other options to channel them to, it would be more comprehensive...that they choose the services.”—Provider in Mexico

“That we do not have a structured referral network. I don’t see a positive aspect; the patient will think that he can ask for help, but where? If no, [and] the institution doesn’t exist, [then] how?”—Provider in Mexico

Where referral services were available and providers made appropriate referrals, clients sometimes found them inadequate. However, providers noted that the act of referring clients and drawing their attention to the possibility of taking action to deal with their experiences gave clients information.

“I had difficulty in where to refer them; I feel that it should not be like this...[thinking of] the time and the needs of the [client]. The slow services, the phones that were not answered...also, the hours...what about the weekends, the holidays, after 4 p.m., [for] for PEP?” —Provider in Mexico

“The patient knew that he was experiencing violence but was not aware that he needed help; upon telling him about the services at UAPVIF,¹⁶ [he had a moment of enlightenment], that he could do something about it.”—Provider in Mexico

The dearth of referral services posed a problem for providers in Mexico in particular. Yet, interviews with providers in both Mexico and Thailand indicate that adequate emotional support through peer support groups proved to be a great help to clients.

“Outside the CAPASITS, we did not identify more help. In the majority of cases, they go to the self-help groups more than our psychological support services. The self-help groups helped us a lot; they are a great support, since there are people there with the same characteristics.”—Provider in Mexico

Likewise, providers in Thailand reported that clients preferred counseling services over other referral services, especially legal recourse. Clients generally opposed the idea of being referred to OSCCs (as explained earlier in the Background section), where women who experience violence get support, because police typically are part of service teams there. In Mexico, when asked what clients seemed to need most, providers stated that simply being listened to when they share their experiences of violence was the main need demonstrated by clients.

¹⁶ In Mexico City, the Family Violence Attention Units (UAPVIF) provide legal assistance and psychological counseling to victims of domestic violence.

“To feel actively listened to, to reflect on what happens to them, their pain, their limitations. That we pay attention to them.”—Provider in Mexico

“To be listened to, above all in the case of trans[gender], that have said that people that [around] them made them feel that they are crazy, they do not believe them.” —Provider in Mexico

The ability to provide emotional support or counseling services varied at each clinic setting, however. As indicated above, self-support groups were a great resource at SISTERS and SWING, where such services are available. However, at hospital and clinic settings, providers felt that they had inadequate skills for consoling victims. Accordingly, several providers requested further training in counseling and psychotherapy.

Lack of time was a barrier in the hospital settings in each country because providers attended to a much higher number of clients¹⁷ than in the specialized HIV/STI clinics/services. Participating providers interviewed at Banglamung Hospital in Thailand expressed a concern that application of the screening tool would further prolong other clients’ waiting time. In Mexico, providers at the hospital of Cuatitlan noted competing activities that prevented them from using the screening tool.

“[Sometimes] I could not use the screening tool. That was because there were so many clients and if I used it, other clients would wait for me for a long time. For this reason, I used it only when there were not so many clients.”—Provider at hospital in Thailand

“If there were space and time [screening should continue]...one should give the consultation [medical] and then pass the client on to the social worker or other department to carry it [the screening] out.”—Provider at hospital in Mexico

Privacy and confidentiality are a must when conducting screening for gender-based violence. In the interest of identifying and serving victims under challenging conditions, this principle may be overlooked at times. During the pilot intervention, providers sometimes conducted screening in the hallway or in a room that did not ensure privacy and confidentiality. As a result, providers were compelled to whisper questions, which could have interfered with comprehension (a challenge described above). The lack of privacy also inhibited responses by some clients.

“...[screening] has been done little, and it would be done more if there were adequate space.”—Provider in Thailand

“Sometimes the interview room was not vacant, so I had to interview a client in the hall. However, I talked to him very softly so that no one could listen to us.”—Provider at hospital in Thailand

“When I was interviewed in a hall, it was so crowded and noisy. I felt uncomfortable to be interviewed among other clients surrounding me. I was afraid that they could hear what we talked and they may gossip about me with their peers.”—Client in Thailand

Finally, providers also expressed their need for greater capacity and skills to respond to the emotional needs of patients who experienced violence. In both Mexico and Thailand, when asked what recommendations they had for further application of the screening tool, providers called for more training on psychosocial support and counseling for victims of violence.

¹⁷ In Thailand, for example, the outpatient department attended to 8,804 patients in the month of June 2008, while Pattaya Rak attended to 73, and SWING and SISTERS attended to 16 and 188 clients, respectively.

Policy Outcomes

Leadership

Leaders of local governmental institutions have demonstrated strong interest and participation in the project activities. In Mexico, although the project was to be piloted in just two clinics in the state of Mexico, the director of the state's CAPASITS requested that all clinics participate in workshops to sensitize and train providers on screening for violence against MSM and TG. Likewise, four clinics in the state of Mexico ultimately piloted the screening intervention instead of two. In Thailand, representatives of local government institutions participated in the project throughout its lifecycle, from working group meetings for designing the intervention and training workshops to a final meeting on identifying the intervention's strengths and weaknesses. Participating offices included the following: Nongprue Municipality, Camillian Social Center of Rayong Province, the Center for Child Welfare Protection and Development, and the Shelter for Children and Families of Chonburi Province.

Replication

During the course of the project and in the months after the completion of the intervention and evaluation, other health clinics expressed interest in *replicating portions of the project*. The director of the CAPASITS in Tampico, Mexico requested that health providers working in five clinics throughout the state of Tamaulipas also be trained on issues relating to violence and S&D against MSM and TG, as well as on how to respond to the problem within health services. For this reason, an additional 74 health providers in the area of Tampico were trained by the project team in Mexico.

Additionally, most participating services supported continuing the use of the screening tool. In Thailand, SISTERS, SWING, and Pattaya Rak all reported that they will continue screening for violence among MSM and TG clients. Banglamung Hospital's outpatient department and VCT division will continue this screening for TG and MSW. Due to their limitations in clearly identifying MSM (for fear of offending other males who do not have sex with men), staff at the hospital have chosen not to screen MSM. In Mexico, although they struggled with the lack of referral services, the majority of providers still appreciated the value of screening as a way to help them understand the comprehensive needs of their clients. Various providers (4 out of 10 in Thailand and 2 out of 13 in Mexico) interviewed after the intervention said that the screening tool should be incorporated into the standard procedures for serving clients. The lack of overwhelming consensus may indicate that providers still felt that they had inadequate capacity to conduct screening, as previously discussed. Overall, many recognized the need to understand how violence affects HIV vulnerability and the provision of comprehensive care:

"To me, it is an important tool since it forms part of comprehensive care, and we can suggest this care to identify violence. And if we do it, we would have more benefits...I think it can remain within my services permanently."—Provider in Mexico

"Yes, [the tool] should [be maintained] because it helps us to understand a little more the emotional situation of the patient." —Provider in Mexico

"The doctor and nurse took time to talk to me about violence. I feel more self-confident to respond to violence in my life."—MSM in Thailand

"It is a good thing that the health provider asks me about violence, but I am not sure she really understands what this means in my life."—TG in Thailand

In the hospital setting of Cuatitlan, Mexico, where lack of time was an issue due to large caseloads, providers recognized the need to incorporate the screening intervention into their services. However, they emphasized the need for additional staff to be designated to attend to violence victims.

“Yes, it is necessary...just that one has to consider that an MSM that has been assaulted is not likely to ask for help because of the discrimination [he fears]...maybe someone that is available during the consultation and helps in the consultations or another space [and] gives appointments for these services.” —Provider in Mexico hospital

Collaboration

In Thailand, *improved collaboration* between participating health services and NGOs was also a key outcome of the project. Through the design of the project itself, the main public health services for MSM and TG in Pattaya—Banglamung Hospital and Pattaya Rak Center—and the MSM and TG drop-in-centers and HIV community outreach programs—SISTERS and SWING—collaborated in the design of the intervention, jointly participated in trainings, and ultimately referred clients to each other. By participating in the project, particularly the screening intervention, and consequently seeing first hand the violence and related social vulnerabilities that MSM and TG face, nurses at Banglamung Hospital have demonstrated strong willingness to collaborate with SISTERS and SWING to support MSM and TG. Most notably, the nurses have agreed to facilitate the process of offering quality services to clients who present a letter stating that they have been referred by SISTERS OR SWING.

Policy Changes

A number of noteworthy *institution-level policy changes* also occurred as a result of the project. In Thailand, the OSCC at Chonburi Hospital (the provincial hospital in Pattaya), which traditionally has served women, agreed, along with the members of the project’s multisectoral working group, that their clinic could be a place where MSM and TG could access services related to gender-based violence. Since OSCCs also offer services for youth, and many of the MSM or TG identified were younger people, the OSCC is seen as a safe place for victims to seek services. To be sure, work still needs to be done to ensure that these services meet the special needs of MSM and TG. For example, once clients are referred to OSCCs, typically the police and courts get involved, but most screened MSM and TG did not want to be referred to OSCCs because they did not want to deal with the police. As the literature reflects, police often harass and commit violence against MSM and TG (Betron and Gonzalez-Figueroa, 2009). Therefore, stronger emphasis may need to be placed on counseling, which clients prioritized as a need, or on linking clients with human rights and empowerment groups that can raise awareness of clients’ rights. Still, OSCC administrators’ willingness to open their doors to MSM and TG demonstrates that the screening intervention has raised awareness and improved attitudes of some health systems personnel regarding the needs of MSM and TG.

In Mexico, when the project team shared the results in a meeting of key stakeholders, representatives from national and state-level AIDS organizations, sexual diversity and violence programs, and CAPASITS coordinators, key policy recommendations were made as follows:

- The director of the national AIDS program’s Prevention and Social Participation division requested that the sensitization and training program on stigma, discrimination, and violence against MSM and TG be included in the training and certification programs for health providers working in the CAPASITS.
- Participants in the stakeholders’ meeting also recommended that TG with the appropriate skills participate in the sensitization of providers and work with them in serving MSM and TG at CAPASITS.
- Participants also agreed that TG identified as experiencing violence should be referred to services for women who experience violence.

In Thailand, policy recommendations and initiatives were put forth by leaders of local government entities that had been involved in the intervention's design, implementation, and evaluation. The recommendations were as follows:

- The project's (multisectoral) working groups identified the need to include legal services and the human rights committee in the referral networks.
- The Pattaya municipal government is working with the advisor of the project at PRI to integrate screening for violence against MSM and TG into a long-term plan for health services.
- The project team is designing strategies to conduct advocacy to reduce violence, stigma, and discrimination against MSM and TG, including disseminating the project results to six other regions.

CONCLUSIONS AND RECOMMENDATIONS

This pilot project hypothesized that health providers would be an effective entry point to (1) screen for violence faced by MSM and TG, and (2) facilitate access to appropriate GBV services for these populations. To that end, the project developed a screening tool to identify violence against MSM and TG for use in the HIV service setting. The tool included (1) an introduction and informed consent, (2) questions about the history of violence experienced by the respondent, (3) an assessment of the client's current safety, and (4) indications of interest in referrals to other specialized services. The tool was piloted in Mexico and Thailand, both of which have concentrated HIV epidemics, as well as laws that are progressively seeking to provide equal rights to MSM and TG.

The screening tool, which was widely accepted by providers, identified high levels of physical, sexual, and emotional violence. In most cases, identified levels of violence for MSM or TG in both countries were greater than 50 percent. The tool also helped providers to improve communication and trust with patients and identify the range of social vulnerabilities MSM and TG face. Importantly, providers came to recognize the link between violence against MSM/TG and HIV vulnerability.

Providers identified additional factors that would enable them to support the screening process, however. These included additional training on counseling for victims of violence and on sexual diversity and a need for referral services that cover all needs of MSM and TG, particularly legal services and shelters. In the hospital setting, providers saw lack of time and competing workloads as a challenge and thus recommended that a specialist dedicated to issues of GBV be responsible for handling GBV cases for MSM and TG. Overall, providers saw the tool as beneficial to their work and agreed that screening should continue, provided there is institutional support, training, and adequate time and space.

Given the high levels of HIV and violence against MSM and TG, services for them must address the causes and consequences of this violence. Where the legal environment is favorable, HIV programs should build capacity of providers to understand sexual diversity and screen for violence against MSM and TG. Likewise, they should promote efforts in the community to strengthen multisectoral services for socially vulnerable MSM and TG before screening. In this way, the screening tool can provide an impetus to initiate community-health system collaboration to better respond to violence against MSM and TG and its relationship to HIV. The following key criteria should be put in place before screening.

Screen only where laws do not criminalize MSM and TG and/or that recognize the human rights of MSM and TG. Laws protecting equal rights for MSM and TG do not necessarily translate into equitable policies, norms, and actions, however. Likewise, there may be instances where services have been set up to cater to MSM, TG, and other MARPs despite their actions being illegal, or where service providers recognize and try to meet the needs of MSM and TG as human beings. Asking questions about one's sexual identity, however, (as is done in this screening tool) can be highly contentious and dangerous for clients where laws criminalize homosexuality or same-sex sexual activity. Thus, at a minimum, screening should take place only where laws protect individuals as MSM and TG.

Conduct screening in a space that is private and confidential. Several providers in Thailand and some in Mexico reported that they conducted the screening in hallways or rooms that lacked privacy due to lack of space. As one client in Thailand pointed out, this may cause the client to hesitate about responding due to shame and fear that others are listening. Although unwarranted, there is usually a great deal of stigma associated with being a victim of GBV, particularly sexual violence. For MSM and TG, there may be the added concern of revealing information about his/her sex or sexuality that he/she may want to keep private.

At a minimum, it is important to *ensure that psychologists and/or peer support groups within the clinic are available to counsel victims after screening for violence.* Providers in Mexico indicated that they felt helpless once they identified that a patient had experienced violence because there were no services to which they could refer them. However, providers also indicated that in-house psychologists and peer support groups were an important resource for these clients and that those identified as victims of violence needed above all to be heard. This supports the findings from the situation assessment prior to the screening intervention in which MSM indicated the need for psychological services. In Thailand, victims of GBV were most accepting of emotional support, as opposed to legal recourse. Moreover, evidence from the literature on screening for violence against women also has shown that victims of violence simply need someone with whom they can discuss their difficult experiences (Betron and Gonzalez-Figueroa, 2009). Development of peer support organizations would be a complementary element to the screening process and a vital component of a functional referral service.

Continually sensitize and train providers on gender, sexual diversity, violence, and stigma discrimination. As noted above, providers requested further training on sexual diversity. While the piloted violence screening intervention helped providers to understand and empathize with their clients more, some providers in Thailand expressed that they were embarrassed to ask clients about their sexuality if the clients appeared “masculine”; providers in Mexico acknowledged that they needed more training on sexual diversity, as many were confused about who would be considered MSM or TG.

Before screening, assess, consult with, and engage external referral services to ensure that they can address the needs of MSM and TG adequately. In Thailand, the project team invited women’s shelter services to project design and preparation meetings; through that process, the women’s shelter agreed to offer space for MSM and TG violence victims who might need shelter. In Mexico, this type of engagement was limited. In some cases, no such services were available in the immediate area of the clinic. In others, providers either simply did not know of violence-related services to which they could send MSM and TG or the referral services were inappropriate because they considered their programs to be for women only or could not adequately address the needs of MSM and TG. Programs for women who have experienced violence teach that engaging services in other sectors and in the community is important for ensuring a coordinated response to GBV. It is critical that this multisectoral engagement happens at the start of screening or even before it begins.

Akin to referral services, strategies for safety planning that meet the specific needs of MSM and TG should be explored and tested in future operations research. The experience of the pilot efforts described here did not identify situations that required safety planning. However, it was clear in the evaluation findings that most providers saw little differentiation between safety planning and referrals. This likely could have been because the concept of safety planning, derived originally from the field of intimate partner violence perpetrated against women, does not yet have clear practical strategies that apply for the dangerously violent situations in which MSM and TG might find themselves. Further research is required to identify practical strategies that MSM or TG typically use or could use to protect themselves from extreme forms of violence.

Develop clear protocols for who, when, where, and how to screen. Help make providers aware of the protocols by training them, posting protocols in visible spaces, and including these protocols with screening documents. As experiences from screening for GBV against women have shown, clearly stating protocols for violence screening is a fundamental strategy to reinforce the key steps for conducting screening and providing proper care for victims (Skye et al., 2001). In this project, for example, protocols would have been particularly helpful in reminding providers to conduct safety planning when necessary.

In conclusion, responding to violence against MSM and TG in the health setting is not enough. As this project highlights, the need for a multisectoral approach, including collaboration with community-based

organizations, is essential in responding to the needs of MSM and TG who face GBV. Given that MSM and TG are extremely marginalized and may not readily access health services, there is a special need to develop and support drop-in centers and group support activities, such as those offered by SISTERS and SWING in Thailand, which can act as the first-line response to MSM and TG who are suffering violence. Indeed, such support may have to be conducted through informal or non-traditional channels, such as in bars, clubs, or other areas where MSM and TG meet. Likewise, limiting action to improving health providers' attitudes and treatment of MSM and TG would be a short-sighted vision. National and community laws, policies, and norms must be changed to put into practice the human rights of MSM and TG, which will require strong advocacy, awareness raising, and behavior change efforts across society.

GLOSSARY

Gender-based violence – any harmful act perpetrated against a person’s will, and based on socially-ascribed (gender) differences between males and females (IASC, 2005). The fundamental differences between gender-based violence and other manifestations of interpersonal violence are that (1) the former has the objective of using violence as a way to maintain power and control over the victim, and (2) the perpetrator’s sense of entitlement to greater power and control is based on the perception that his/her gender holds a higher social status than that of the victim.

Gender expression – gender identity is commonly communicated to others through gender expression—clothing, hairstyle, gestures.

Gender identity – refers to a person’s internal, deeply felt sense of being either male or female, or something else in between. Because gender identity is internal and personally defined, it is not visible to others.

Men who have sex with men – all men who have sex with other men, regardless of how they identify themselves (gay, bisexual, or heterosexual) (U.S. CDC, 2007).

Safety plan – A safety plan is a combination of suggestions, plans, and responses created to help victims reduce their risk of harm. To address situations in which someone is in imminent danger of harm from an abuser, survivors of gender-based violence can develop a safety plan. A safety plan can involve thinking about the best way to leave a home quickly in case violence begins to escalate. It can involve alerting trusted neighbors or friends about the situation and enlisting their help or perhaps planning ways to leave an abusive spouse/partner to prevent the type of violence that is common at the time of separation. (Adapted from Bott et al., 2004)

Sexual identity – the overall sexual self-identity—male, female, masculine, feminine, or some combination, and the individual’s sexual orientation. It is the internal framework, constructed over time, which allows an individual to organize a self-concept based upon sex, gender, and sexual orientation and to perform socially in regard to perceived capabilities based on sex and sexuality.

Sexual orientation – the organization of an individual’s eroticism and emotional attachment with reference to the sex and gender of the sexual partner.

Transgender – gender identity or expression differs from conventional expectations regarding biological sex, including the following:

Transsexuals – people who feel they were born with the wrong biological sex. They may be in a time of pre-operation, post-operation, or not having an operation.

Transvestites or cross-dressers – use clothing of the other gender with to better express their inner identity.

Intersexual – A general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy different from the standard definitions of female or male in terms of his/her internal or external body features. For example, a person might be born appearing to be female on the outside but have mostly male-typical anatomy on the inside; or a person may be born with genitals that seem to be a combination of the usual male and female types (International Planned Parenthood Federation, 2008).

ANNEX I. SCREENING TOOL PILOTED IN MEXICO

Screening Tool to Identify Violence against Men Who Have Sex with Men and Transgenders

Introduction

Why screen?

Gender-based violence (GBV) can increase a patient's (client's) vulnerability to HIV and other STIs. Evidence suggests that GBV is associated with increased chances of acquiring HIV. GBV may also affect a person's ability to access and adhere to care, treatment and support, as well as their overall health status and ability to live positively.

By identifying clients who have experienced GBV, providers may be able to better identify a client's healthcare needs and factors affecting their health; help break the silence and stigma a client may experience related to GBV; and to connect clients with other sources of support.

This screening tool is a pilot project designed to develop a simple, effective method for providers to identify GBV among their clients. The pilot is being carried out in collaboration between _____ (insert name of partner organizations) and the Health Policy Initiative of Constella Futures in Mexico and Thailand. The results of your experience piloting this tool will be used to improve this tool and contribute to an intervention designed to help reduce HIV vulnerability. Many thanks for your important collaboration in this effort.

Who and when to screen?

The tool is for use with men who have sex with men and transgenders, including male sex workers within both groups. The screening should be carried out with all new patients; it should also be carried out with existing patients (initially as part of introducing the new screening tool and then on a regular basis, to be determined with the staff [suggested time: every year]).

The following questions are designed to be integrated into already existing, routine interview and counseling processes within the clinic. The specific place to insert these questions into these existing, routine processes will be determined in each clinic in consultation with staff. These questions about violence will most likely follow questions already asked about sexual history.

Based on discussions in your clinic, these questions will be inserted into:

Clinical history

[Form: _____ ; Place in format: _____]

Mental health history

[Form: _____ ; Place in format: _____]

Counseling for VCT

[Form: _____ ; Place in format: _____]

For existing clients, these questions are best asked:

[Insert response based on consultation with clinic staff]

Step I (Ask all patients)

Because of the fact that mistreatment and violence are often common and can have an effect on people's health, we have begun to ask patients about it. The information will be kept confidential. If you do not mind, I would like to ask you questions about any mistreatment or violence you may have or currently experience. *(If patient indicates it is ok, proceed with the following questions.)*

1. In the past year, has anyone forced or coerced you to have sexual relations against your will? Anyone includes: your partner, a client, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

2. In the past year, has anyone slapped you, punched you, hit you, or caused you any other type of fiscal harm? Anyone includes: your partner, a client, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

3. In the past year, has anyone insulted you, threatened you, made you feel inadequate or yelled at you? Anyone includes: your partner, a client, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

4. In the past year, has anyone made you feel threatened, fearful, or in danger? Anyone includes: your partner, a client, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

Step 2 (If patient responds yes to any of the above)

If the patient responds positively to any of the above, it is important to express that violence is never deserved. Suggested phrase to express this:

“Mistreatment and abuse are often more common than thought. Yet, no one deserves to be abused. I am now going to ask you a few questions so that we can evaluate possible effects on your health and outline some alternatives if necessary.”

1. **Can you tell me about the experiences of violence you have had in the past year?**
(Please note that this is an open question. You do not need to ask each of these questions. Let the client recount their experiences – and use the following questions as follow-up probes if the client does not directly state these details in their account. Afterwards, fill in the chart according to the details obtained for each act of violence).

For each act of violence the patient has experienced in the past year, please fill out columns A, B, and C.

A. Who?	B1. When?	B2. Where?	B3. How?	C1.* What were the physical consequences?	C2.* What were the emotional consequences?	C3.* Other consequences?
Romantic/sexual partner()						
Pimp ()						
Client/friend ()						
Family member ()						

Friend ()						
Neighbor ()						
Unknown people ()						
Police ()						
Health Worker () Type:						
Others () Specify:						

(*C1) Bruises, scratches, wound, superficial or serious injuries, injuries from a type of weapon, being disfigured, being incapacitated in some way, loss of consciousness, acquiring an STI or HIV.

(*C2) Depression, loss of confidence, loss of self-esteem, feeling dirty, feeling guilty or fear, anxiety.

(*C3) Loss of authority, loss of respect, loss of material goods, loss of family, loss of supportive relations, etc,

2. Did you seek any support or services when you experienced this violence?

Yes () No () No Response ()

If the answer is yes, ask: **Can you tell me about what help or services you sought?** Please remember that this is an open question. Let the client tell his or her experience, and afterwards mark the information obtained for help or services sought. For each, then ask 'how much' Note: The information obtained may help to decide what types of references to make in Step 3.

Type of help	How much did the support or services help you?			
Support from a family member ()	Much	Some	Little	None
Support from friends ()	Much	Some	Little	None
Psychologist ()	Much	Some	Little	None
Monk or priest or faith leader ()	Much	Some	Little	None
NGO offering services for violence ()	Much	Some	Little	None
Human rights commission ()	Much	Some	Little	None
Public Hospital ()	Much	Some	Little	None
Specific medical service ()	Much	Some	Little	None
Red Cross ()	Much	Some	Little	None
Other () _____	Much	Some	Little	None

3. Are you still in contact with the person(s) who committed this violence?

Yes () No () No Response ()

4. At this time do you feel safe, without threats, in returning to your daily life and routine?

Yes () No () No Response ()

5. At this time, have you thought of hurting yourself due to the violence that has happened to you?

Yes () No () No response ()

Step 3: Referrals

From the information obtained, as a health provider you need to decide: do you consider that this person could be in immediate danger?

YES () NO ()

There are groups and institutions that could offer you help. I would like to mention some of the groups and institutions, so that you know about them and can decide if they might be able to offer help that is useful to you.

1A. NO, the person is not in immediate danger:
Make the appropriate reference. (See the directory of referrals).

Type of Referral?	Referral Made? (Mark with an X if you made the reference)
List options once directory is developed	

1B. Did the client accept the referrals?

YES () NO ()

1C. If the person is in immediate danger, and there are specialized services for MSM, trans, or sex workers, call or consult with the available service to identify the best action to assure the immediate safety of the person. Elaborate a security plan when:

1. No specialized services exist
2. Existing services are not available.
3. Services exist and are available, but the person does not accept a referral

(See sheet X “Security Planning”)

Summary of Results:

Complete the summary with the information obtained from the patient.

Date: ___/___/___

Has the client experienced violence?:

- | | | |
|------------|------------------------------|-----------------------------|
| Physical? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Sexual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Emotional? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| _____ | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If the client has experienced violence, what type of help did they seek before?

If you referred the patient, to what service or support: _____

Did the client accept the referral? Yes No

If you made a security plan with the client, explain it briefly here

Estimated time for using the screening tool: _____

ANNEX II. SCREENING TOOL PILOTED IN THAILAND

No. _____

Screening Tool for MSM and Transgenders Experiencing Gender-Based Violence

Date.....Time..... Place.....

Instruction: Fill the information in the blanks and put ✓ in the box in front of the answer

General Information

Nickname.....Age.....Years old

Mode of access to service By self
 Referred by (name of person or organization).....
 Recommended by (name of person or organization).....

This form is utilized together with another form identified as

Have you been asked by another organization in the last 2 months questions about your experiences related to gender-based violence?

Yes (End of interview) No

Step 1. Informed consent, questioning, and identifying of sex

The following questions relate to your personal characteristics. In case you are uncomfortable with or not willing to answer any questions, you may choose to refuse to answer those questions. Your refusal will not affect the service you are receiving.

1.1 Our hospital/clinic/organization is currently providing special services for men who have sex with men and transgenders. The service is providing support for such individuals who have been affected by violence. Are you interested in such special services?

Yes No (End of interview)

1.2 We would like to first ask information about your sex. We ensure that this information will be kept confidential and will be used only as a basis to determine services that respond to your needs. So, if you don't mind, could you please indicate if you are: (Multiple answers allowed)

Male Female TG

1.3 Can you please describe the sex of your sexual partner/s? That is, are they (Multiple answers allowed)

Male Female TG Do not have sexual partner

1.4 Now we would like to request your consent to ask you information about any experiences of violence that may have affected your physical or psychological well-being. This includes physical

harm, being insulted, offended, teased, etc. All that you are going to share with us will be kept confidential. So, would you agree to talk with us about these matters?

- Agree Not agree (End the interview)

Step 2. History of violent experiences

During the past year, have you ever faced any of the following by any person, including your boy/girlfriend, sexual partner, client, colleague, supervisor, unknown people, policemen, soldier, government officer, friends, father, mother, brother, sister, uncle, aunty, or else?

Violence incidences	Answer
2.1 Anyone insulted, humiliated, yelled at, said bad things about, teased, and made you feel uncomfortable.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No answer
2.2 Anyone violated your rights, or made you feel threatened, fearful, or in danger.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No answer
2.3 Anyone did any physical harm to you, including slapped, punched, hit, or something else.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No answer
2.4 Anyone unreasonably discriminated against you when you have sought health services.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No answer
2.5 Anyone forced or coerced you to have sexual relation against your will.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No answer

****End the interview.** In the case that the patient never experienced any of the above violence, provide the patient with the list of supporting organizations to which they can refer if they or their peers suffer from violence or abuse in the future.

2.6 If the patient responds positively to any of the above, it is important to express that violence is never deserved. Suggested phrase to express this: “Mistreatment and abuse are often more common than thought. Yet, no one deserves to be abused.”

According to your experiences of violence you mentioned earlier, do you want or are you ready to tell me more detail about the incidences?

- Yes, I would like to talk provide more details about my experience. (Instruction: Continue with question 2.7, and allow the patient to describe all the incidences mentioned or select only the event which s/he feel it most severe.)
- No, I would not like to talk about this. But I can come back to this conversation again on (Date) at (Time), (Place). (Skip to Question 4.1)
- No, I would not like to talk about this right now, but I need you to refer me to support services. (Skip to Question 4.1)
- I totally don't want to talk about this. (End of interview and provide the patients the list of supporting organization.)

2.7 Description of the violence incidences mentioned in 2.1-2.5 (Please fill in the below table only the most severe incidences)

Incidences of Violence	No. of times/frequencies	Actors/Offenders (boy/girlfriend, sexual partner, client, colleague, supervisor, unknown people, policemen, soldier, government officer, friends, father, mother, brother, sister, uncle, aunty, or someone else)	When	Where	How (What offender said or did with you?)	Do you think this happened to you only because you are MSM or TG?

2.8 May we talk about your experiences **during your childhood**? When you stayed with your family, had you ever been abused or assaulted **physically**, e.g. being beaten, slapped, kicked, punched, hurt, etc., and/or **emotionally**, e.g. insulted, affronted, yelled at, condemned, teased, or felt uncomfortable, etc., and/or **psychologically**, e.g. threatened, feared, felt in danger, etc., and/or **sexually**, e.g. touched, forced to have sex or raped, etc.?

Yes. Could you please describe the events? Who was the offender?

Do you think that the violence incidence happened to you mainly because you are men having sex with men or transgendered?

Yes No Not Sure

No

Cannot remember

Step 3: Help or assistance ever received

3.1 After the events you mentioned in 2.7, have you ever received or asked for help or support from any organization?

Yes, I got help.

Who or What organization provided help or support for you?

What type of help or support did you receive?

Yes, I asked for help.

From whom or what organization did you asked for help or support?

What type of help or support did you ask for?

Have you ever been refused by any person or organization you asked for help?

No

Yes. Do you know why you didn't get the help or support?

No, I never received any help.

No, I never asked or sought any help.

Step 4: Assessing the need for and deciding on appropriate referral and help

From all information you had talked about today, do you think you are now in a safe or unsafe situation due they violence you have or are facing?

I'm feeling unsafe. I'm still feeling fearful, and afraid of being attacked again. And/or I have thought of hurting myself due to the violence I have faced. Please specify reason for feeling unsafe: _____

What kind of help/support do you think you are in need? (Multiple answers allowed)

- Medical care
- Psychological counseling support
- Living place/sheltering
- Legal help
- Other (specify).....
- No need for other help or support (End of interview and provide the patients the list of supporting organization.)

I'm feeling safe, confident, and have nothing to fear anymore.

For the interviewer: Make the decision to identify the suitable help/support to be arranged within the setting, or to refer the case to another organization, in response to the need of the case.

Arrange help/support at the setting, specify.....(End of the interview)

Arrange help/support at the setting, specify.....

And arrange the referral to external services

- Arrange the referral to external services. A list of support services is available.

List of organization	Help/support in response to needs
<input type="checkbox"/> Banglamung Hospital	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Pattaya Rak Centre	<input type="checkbox"/> STI treatment <input type="checkbox"/> VCT <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Service Workers In Group (SWING)	<input type="checkbox"/> Psychological counseling support groups <input type="checkbox"/> Drop in centre <input type="checkbox"/> Peer Education <input type="checkbox"/> Other specify_____
<input type="checkbox"/> SISTERS	<input type="checkbox"/> Psychological counseling support groups <input type="checkbox"/> Drop in centre <input type="checkbox"/> Peer Education <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Social welfare centre of Pattaya government	<input type="checkbox"/> Social work support <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Social welfare centre of Nhongprue municipal government	<input type="checkbox"/> Social work support <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Children and family housing, Chonburi	<input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Psychological counseling support groups <input type="checkbox"/> Other specify_____
<input type="checkbox"/> The Fountain of Life Women's Center, Pattaya	<input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Peer Education <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Centre for welfare and children development	<input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal helps <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Pattaya Primary Health Care	<input type="checkbox"/> General Medical care <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Camillian Social Centre, Rayong	<input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Peer Education <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Chonburi Hospital	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Other.....	<input type="checkbox"/> Medical care <input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal help <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Other.....	<input type="checkbox"/> Medical care <input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal help <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Other.....	<input type="checkbox"/> Medical care <input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal help <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Other.....	<input type="checkbox"/> Medical care <input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal help <input type="checkbox"/> Other specify_____
<input type="checkbox"/> Other.....	<input type="checkbox"/> Medical care <input type="checkbox"/> Psychological counseling support <input type="checkbox"/> Living place/sheltering <input type="checkbox"/> Legal help <input type="checkbox"/> Other specify_____

For the interviewer: Describe means of help/support offered in case of the unavailability of MSM/TG organizations or organization working on violence issues, lack of service in the community that the patient needs, or in case that the patient refuses the referral.

Summary Sheet (To be filled in by the interviewer)

Date of interview _____

Sexual identity of the client Heterosexual man Heterosexual woman Gay/MSM
 TG Do not have sexual partner

Informed consent Yes No

Client over 18? Yes No

Has this patient ever experienced violence?

Physically Yes No No answer

Sexually Yes No No answer

Psychologically/emotionally Yes No No answer

Physically, psychologically/emotionally, or sexually during childhood
 Yes No No answer

Other (specify) _____ Yes No Not answer

After the most severe event, did the patient receive or ask for any help or support from anybody or any organization? And, what were help or support s/he received or asked for?

Self-assessment for his/her own safety: Feeling safe Feeling unsafe

What is/are the internal service(s) provided for the patient _____

If a referral was made, what organization was the patient referred to?

What are the services the patient will receive?

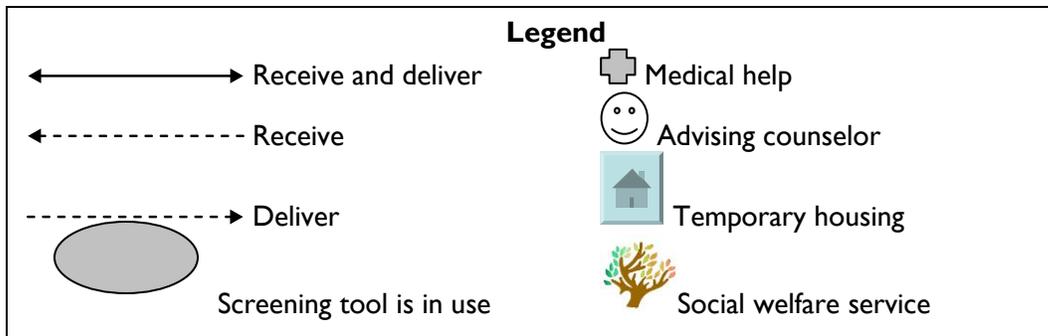
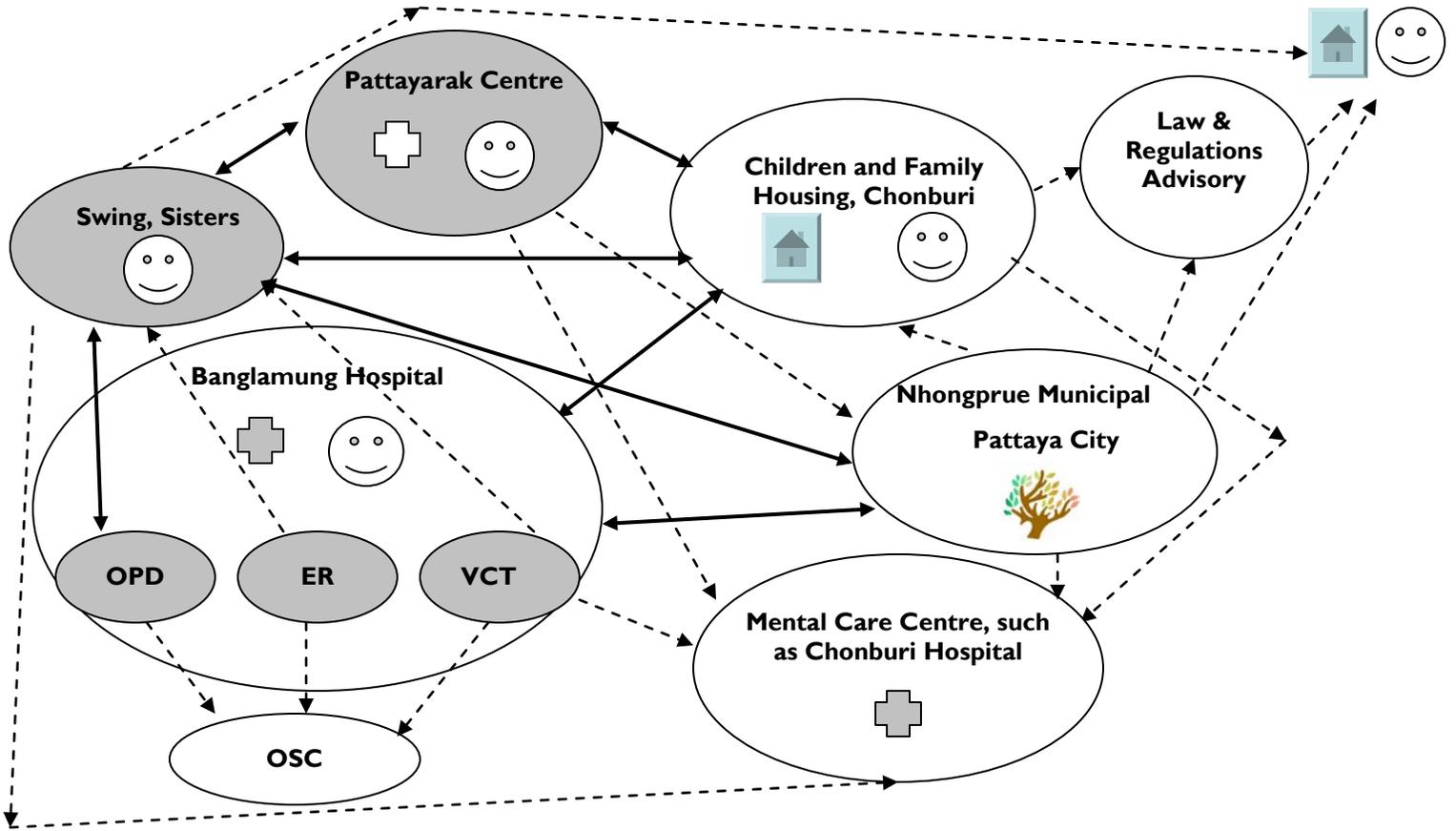
If you have identified other help or support for the patient, please give a brief description. _____

Estimated time spent with this screening tool _____ (Minutes/Hours)

Organization/division/type of service employing this screening tool:

- | | |
|---|--|
| <input type="checkbox"/> Sanitary at Banglamung Hospital | <input type="checkbox"/> ER at Banglamung Hospital |
| <input type="checkbox"/> OPD at Banglamung Hospital | <input type="checkbox"/> Pattaya Rak Centre |
| <input type="checkbox"/> Service Workers in Group (SWING) | <input type="checkbox"/> SISTERS |

ANNEX III. FLOW CHART OF HEALTH AND SOCIAL SERVICES FOR MSM AND TRANSGENDERS



ANNEX IV. THAILAND REFERRAL LIST: Agencies Providing Medical Care, Legal Services, and Temporary Shelter that Form Projects

Institute	Service offered	Contact details
Banglamung Hospital	- Medical treatment and advisory - Service Hours ER : Mon-Sun 24 hours OPD Mon-Fri 08.00 – 20.00 Hrs Sat-Sun 08.00 – 16.00 Hrs Sanitation : Mon-Fri 08.00 – 16.00 Hrs	Tel : 038-411551-2 ER : extension109 Sanitation : ext 212, 228 OPD : ext. 416 Sanitation: Kh Pitak 080 – 5510223 OPD: Kh Tuhsaranporn 081-6418099 ER : Kh Prayong 089 - 5443241
Pattaya Rak Centre	- Sexual Contagious Disease - Service hours Mon-Fri 08.30 – 16.00 Hrs	Tel : 038-221708 Fax : 038-221707 Kh Supharp : 081 – 2943032 Kh Anong : 081-9883801
SWING (Friend of Male Sex Workers)	- Information and Advisory Centre for AIDS/Sexual Contagious Disease - Service hours Mon-Fri 10.30 – 20.00 Hrs	Tel : 038-713055 Fax : 038-713432 Hot line : 087-6076730 Kh Preecha : 085-3966518 Khun Manop : 086-8966463 (BKK) Kh Jamrong : 081-0392583 (BKK)
SISTERS (Advisory Centre for Transgender)	- Advisory and Health Centre for AIDS/Sexual Contagious Disease - Service hours Mon-Fri 11.00 – 20.00 Hrs	Tel : 038-423382 Fax : 038-420513 Kh Nachanon : 081 – 6026025 Kh Thanawat : 081-2775701
Social Service Division Nhongprue Municipal	- Social and Welfare Service - Service hours Mon-Fri 08.00 – 16.00 Hrs	Tel : 038-249820 ต่อ 118, 119 Fax : 038-249820 ต่อ 115 Kh Puongpech : 081-8614240 Kh Pattaya : 086-8244974
Social Service Division Pattaya City Municipal	- Social and Welfare Service - Service hours Mon-Fri 08.00 – 16.00 Hrs	Tel : 038-253261 Fax : 038-253257 Kh Aroonrasamee : 081-7158285 Kh Pailin : 083-2258243
Children and Family Housing	- Temporary Housing and Advisory on Family problems - Service hours Mon-Sun 24 hrs	Tel : 038-240220 , 038-240135 Kh Kanokwan : 080-5663881
Child Security Centre	- Assist in Lawsuits involved with influential person - Service hours Mon-Sun 24 hrs	Tel : 038-422749 Fax : 038-374475 Kh Supakorn : 081 – 9499349 Kh Narongsak : 084-8737661
The Fountain of Life Women's Centre	- Occupation Training Centre / AIDS Info Centre - Service hours Mon-Sun 24 hrs	Tel : 038-361720 Kh Khemtiyatam : 0895219907
Camilian Social Centre, Rayong	- Basic Housing Assistance and Advisory for HIV	Tel : 038-685480

Institute	Service offered	Contact details
	patients - Service hours Mon-Sun 24 hrs	Fax : 038-687480 Kh Saowanee : 089-9360080 Kh Supaporn : 081-5885430
Pattaya Public Health Service, Soi Buakhao	- Medical Help - Service hours Mon-Fri 08.00 – 16.00 u.	Tel : 038-420562 Fax : 038-420526 Kh Naaunya : 089-2514028

Agencies Providing Other Social Welfare Services

Institute	Service offered	Contact details
Children and Women Security by Provincial Police District 2		Tel : 038-223815
Chonburi Hospital	Medical assistance for general and mental patient	Tel : 038-931040
Women Foundation	Rights protection for women in domestic violence crisis	Tel : 02-5131001 02-5132708
Father Ray's Foundation	Homeless children's rights protection	Tel : 038-716628 Kh Suthichart 089-7480557 Kh Chanokkorn 086-3555380
Life improvement for Homeless Children, Pattaya City (Supnimitr Foundation)		Tel : 038-374521
Community Development and Human Security, Chonburi	Social and welfare general services	Tel : 038-282586 038-277877 Fax : 038-285208
Occupation Centre under Patronage of HRN Princess Chakri Sirindhorn	Occupation Centre	Tel : 038-241072 038-241766
Foster Home for Children, Banglamung	Children Support for children living in poverty	Tel : 038-241373 038-241-492
Foster Home for Elderly, Banglamung	Home support for abandoned and elderly	Tel : 038-241121 038-241759
KAROONWEST Social and Welfare Disable	Services for female adolescents over 18 years old	Tel : 038-241741-2

ANNEX V. THAILAND REFERRAL REGISTRATION FORM

Health and Social Services for Homosexuals, Male Sex Workers, and Male Transgenders Affected by Violence, Stigma, and Discrimination

Name of institute.....

Network registration number	Delivery date	By	Deliver to which institute	Service needed

ANNEX VI. RECEIVING REGISTRATION FORM

Health and Social Services for Homosexuals, Male Sex Workers, and Male-to-Female Transgenders Affected by Sexual Violence, Stigma, and Discrimination

Name of institute.....

Network registration number	Received date	By	Receive from which institute	Service needed

ANNEX VII. PROVIDERS INTERVIEWED IN THAILAND

SWING Foundation (1)

Sisters (2)

Department of Sanitation, Banglamung Hospital (2)

Outpatient Department, Banglamung Hospital (2)

Emergency Department, Banglamung Hospital (2)

Pattaya Rak Center (1)

ANNEX VIII. AVERAGE MINUTES TO APPLY SCREENING TOOL AT MEXICAN SITES

Site	Mean			Mode		
	Overall	Yes (Violence)	No (Violence)	Overall	Yes (Violence)	No (Violence)
Puerto Vallarta	8.29	9.36	5	5	5	5
Ecatepec	19.49	22.22	13.33	30	30	10
Cuautitlan	15	15	15	15	15	15
Tlalnepantla	9.30	9.90	9.86	10	10	10
Nuacalpan	9.47	11.43	9.09	10	10	10
All sites	11.93	13.40	10.30	10	10	10

ANNEX IX. MEXICO STAKEHOLDERS' MEETING TO DISCUSS NEXT STEPS AND SCALE-UP OF SCREENING FOR VIOLENCE AGAINST MSM AND TRANSGENDERS

December 11, 2008

Participant List

Dr. Jorge A. Saavedra Lopez
Director General del Centro Nacional para la prevención y el control de SIDA (CENSIDA)

Dr. Javier Cabral
Director de Prevención y Participación Social
CENSIDA

Hazel Davenport
Encargada del Programa de Personas Transgéneros
CENSIDA

Nancy Alvey
USAID/México

Dra. Marcela Ruiz
Coordinadora del CAPASITS
Vallarta, Jalisco

Dra. Beatriz Ramírez Amador
Jefa del Programa de VIH/SIDA
Estando de México

Mariana Perez
CAPASITS Toluca

Dra. Aurora de Rio
Directora General Adjunta
Dirección General Adjunta de Equidad de Género
Centro Nacional de Equidad de Género y Salud Reproductiva

Georgina Aquino
Dirección General Adjunta de Equidad de Género
Centro Nacional de Equidad de Género y Salud Reproductiva

Lic. Carmen Miranda
Dirección General de Igualdad y Diversidad Social
Coordinadora del Sistema de Atención de Violencia Familiar
Gobierno del Distrito Federal

Norma Angelica Lopez Mendez
Dirección General de Igualdad y Diversidad Social
Coordinadora Programa de Diversidad Sexual

Dra. Juana Arredondo Fuentes
Coordinadora
CAPASITS Naucalpan

T.S. Sara Jiménez González
CAPASITS Naucalpan

Enc. Farm. Brenda Tablas Gutiérrez
CAPASITS Naucalpan

Dr. Jose Luis Centeno Pedroza
Coordinador
CAPASITS Ecatepec

T.S. Rocio Loza Bonilla
CAPASITS Ecatepec

Dra. Margarita Rosas Dossetti
Coordinadora
Sai Cuautitlan

Enf. Rufina Costa Martinez
Sai Cuautitlan

Cynthia Navarrete
APROASE, A.C.

ANNEX X. FINAL SCREENING TOOL

Screening Tool to Identify Violence against Men Who Have Sex with Men and Transgenders

Instructions to Health Providers

Why screen?

Gender-based violence—violence “based on socially ascribed differences between males and females”—that is perpetrated against men who have sex with men (MSM) and transgenders (TG), can increase their vulnerability to HIV and other STIs. Evidence suggests that violence against MSM and TG and related stigma and discrimination (S&D) is associated with increased risk of acquiring HIV. Violence against MSM and TG may also affect their ability to access and adhere to care, treatment, and support, as well as affecting their overall health status and ability to live positively.

By identifying patients who have experienced GBV, providers may be able to better identify a patient’s healthcare needs and factors affecting their health, help break the silence and stigma a patient may experience related to GBV, and connect patients with other sources of support.

Who and when to screen?

The tool was developed for use with MSM and transgenders—including male sex workers within both groups—in HIV service settings that specialize in services for these populations. Ideally, one will determine whether the patient belongs to one of these populations through demographic information collected in the patient in-take form (for new patients) or the clinical history for returning patients.

This tool was designed with MSM and TG patients in mind but could be adapted to be used with persons from other vulnerable communities, provided that your clinic has instituted proper training and sensitization for staff and has implemented referral systems.

What is gender-based violence? Gender-based violence is “any harmful act that is perpetrated against a person’s will and that is based on socially-ascribed (gender) differences between males and females” (IASC, 2005). The former has the objective of using violence as a way to maintain power and control over the victim (PAHO, 2002). The perpetrator’s sense of entitlement to greater power and control is based on the perception that his/her gender holds a higher social status than that of the victim.

Who is considered MSM (men who have sex with men)? Any man who has sexual relations with other men. Some, but not all MSM identify as gay. MSM can include a broad range of individuals, including but not limited to sexually-active gay males who identify as such, bisexuals who are sexually active with other males, men who are married to or have sex with a woman but also with men, “closeted” homosexuals having sex with other men, anonymous or faceless sexual encounters between males, and male sex workers with patients (CDC, 2007).

Who is considered transgender? Transgendered persons (also referred to simply as trans) are people who were assigned a gender, usually at birth, based on their genitals, but who feel that this is a false or incomplete description of themselves. Transgender people may identify as heterosexual, homosexual, bisexual, pansexual, polysexual or asexual. Beyond sexuality, transgender identities also include many categories that may overlap, including transvestite or cross-dresser; androgynies (those who are non-gendered or between genders); people who live cross-gender; drag kings and drag queens (those who cross-dress for special occasions); and, frequently, transsexuals (those who undergo sex reassignment therapy to physically change their bodies to live and be accepted as a member of the sex opposite to that assigned at birth).

It is recommended that you as the health provider screen all new and existing patients, initially, as part of introducing the new screening tool and then on a regular basis. (The times should be determined by the health service providers—the suggested time is once a year.) Both the administration and staff of your clinic should develop and agree on these protocols.

Key Steps to Take Before Screening

Develop institutional values and commitment regarding care for victims of gender-based violence

The values, mission, and overall commitment of an institution can have an enormous influence on the professional culture of frontline providers in any organization. Heise (1999) and others have argued that the most effective way for health services to respond to gender-based violence is for the whole institution to make a commitment to the issue (a systems approach), rather than simply letting the responsibility fall on the shoulders of individual providers. Ideally, senior managers should be aware of gender-based violence as a public health problem and human rights violation and should voice their support for efforts to improve the health service response to violence.

Ensure privacy and confidentiality

Privacy and confidentiality are essential for a victim’s safety in any healthcare setting, given that providers can put the patient at risk if they share sensitive information with partners, family members, or friends without consent. Moreover, those who have experienced gender-based violence need privacy to be able to disclose those experiences to providers without fear of retaliation from a perpetrator. To protect confidentiality and privacy, health programs need adequate infrastructure and patient flow, as well as clear policies outlining when and where providers are allowed to discuss sensitive information.

Provide ongoing sensitization and training for providers

Providers' attitudes, knowledge, and skills regarding gender-based violence can have a major impact on quality of care. Even without routine screening, patients may disclose experiences of physical or sexual violence, and providers who respond poorly can inflict emotional harm of different magnitudes. Moreover, providers who fail to consider the possibility of violence while counseling victims about STIs and HIV prevention or other health issues may be ineffective. Ignorance about links between health and violence may lead health workers to misdiagnose certain conditions and overlook the risks that some people face, such as internal stigma, isolation, and self-harm. Each institution must decide how much sensitization and training it can afford to provide. At a minimum, staff should be aware of the epidemiological evidence about violence, a human rights framework for understanding violence, and a basic understanding of local legislation. They should be able to respond to victims in a compassionate way.

Set up alliances and referral networks

Before encouraging staff to discuss violence with patients, health programs have an obligation to investigate what referral services exist in the local community and to compile this information into a format that healthcare providers can use. Networks and alliances with other organizations are important for other reasons as well. For example, they allow the health sector to play a role in the broader policy debate by raising awareness of gender-based violence as a public health problem. Informal or formal referral protocols should be developed with key partners.

Understand local and national legislation

Educating providers about laws related to gender-based violence and stigma and discrimination can prepare them to inform victims about their rights and can alleviate their concerns about getting involved in legal proceedings when a patient discloses violence. Both managers and service providers need to be familiar with local and national laws about gender-based violence, discrimination, and sexuality, including what constitutes a crime, how to preserve forensic evidence, what rights patients have with regard to bringing charges against a perpetrator and protecting themselves from future violence, and what steps people need to take to separate from a violent spouse. Healthcare providers also need to understand their obligations under the law, including legal reporting requirements (for example, in cases of child sexual abuse), as well as regulations governing who has access to medical records (for example, whether parents have the right to access the medical records of adolescents).

Set up medical records and information systems

Information systems play an important role in the response to violence in several ways. For example, health organizations have an obligation to ensure that providers know how to record sensitive information about cases of gender-based violence. Documenting information about violence in medical records may be important for completing a patient's medical record and in some cases, may provide evidence for future legal proceedings and advocacy. To protect clients' safety and well-being, medical records need to be stored securely. Information systems are also important for monitoring a health organizations' work in the area of gender-based violence. For example, healthcare organizations can gather service statistics on the number of patients identified as victims of violence, information that can help them determine the level of demand for other services.

Adapted from: Bott et al., 2004, pp. 40–41.

The following questions are designed to be integrated into already existing, routine interview and counseling processes within the clinic. These questions about violence ideally should follow questions you already ask about sexual history. The specific place to insert these questions into these existing processes and how often to screen should be determined in each clinic in consultation with staff.

Based on discussions in your clinic, insert these GBV-related questions into one of the following:

- New patient in-take
 - [Form:_____ ; Place in format:_____]
- Mental health history
 - [Form:_____ ; Place in format:_____]
- Counseling for VCT
 - [Form:_____ ; Place in format: _____]
- For existing patients, these questions are best asked during
 - Clinical history
 - [Insert response based on consultation with clinic staff]

Step 1: Informed Consent and Sexual Identity (ASK ALL PATIENTS)

1.1 We would like to first ask information regarding your sex and sexual identity. The clinic ensures that this information will be kept confidential and will be used only as a basis for providing you services that will best respond to your needs. So, if you don't mind, could you please indicate whether you are

- Male Female TG (Multiple answers allowed)

1.2 Please indicate the sex of your sexual partner:

- Male Female TG Do not have sexual partner (Multiple answers allowed)

Note for the Healthcare Provider

To determine whether one is MSM or transgender, it is important to consider 1) sexual identity—the sex the person considers him/herself to be or has adopted; 2) sexual orientation—as defined by the sex or sexes of the person's sexual partner/s; and 3) gender expression—the preferences and behavior that communicates one's sex/gender; for example, clothing, hair styles, mannerisms, way of speaking, roles in interactions, as defined by traditional social and gender norms. Questions 1.1 and 1.2 pertain to sexual identity and sexual orientation. Based on this information, is the patient

- MSM TG Other, specify: _____

Introduction of Tool to Patients

Because mistreatment and violence are common and can have an effect on people's health, health providers have begun to ask patients about them. In particular, our clinic seeks to address the needs of different vulnerable communities such as MSM and transgenders who may be experiencing violence. The information will be kept confidential. If you do not mind, I would like to ask you questions about any mistreatment or violence you may have experienced in the past or currently.

Understand that if you are uncomfortable or not willing to answer any questions, you can refuse to answer. Your refusal will not affect the service you are receiving. *(If the patient indicates that it is okay, proceed with the following questions.)*

- Agree Not agree (**End the interview**)

Step 2: History of Violent Experiences

- 2.1** In the past year, has anyone forced or coerced you to have sexual relations against your will? This includes your partner, a patient, supervisor, colleague, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

- 2.2** In the past year, has anyone slapped you, punched you, hit you, or caused you any other type of physical harm? This includes your partner, a patient, supervisor, colleague, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

- 2.3** In the past year, has anyone insulted you, humiliated you, made you feel inadequate, or yelled at you? This includes your partner, a patient, supervisor, colleague, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

- 2.4** In the past year, has anyone made you feel threatened, fearful, or in danger? This includes your partner, a patient, supervisor, colleague, someone in your family, a friend, neighbor, police, or other persons.

YES () NO () NO RESPONSE ()

IF PATIENT RESPONDS ‘NO’ TO QUESTIONS 2.1 –2.4

*If the patient has never experienced any of the above violence, **end the interview**, and provide the patient with a list of organizations that provide specialized services from which he/she can seek support if experiencing violence or abuse in the future.*

IF PATIENT RESPONDS ‘YES’ TO ANY OF THE ABOVE

If the patient responds positively to any of the above, it is important to tell them that violence is never deserved. The following is a suggested way to phrase this thought:

“Mistreatment and abuse are often more common than thought. Yet, no one deserves to be abused. I am now going to ask you a few questions so that the clinic can evaluate possible effects on your health and outline some alternatives, if necessary.”

2.5 Do you want or are you ready to tell me more detail about the incidences of violence you mentioned earlier?

- Yes, I would like to talk about the detail. (Instruction: Continue with question and allow the patient to describe all of the incidences mentioned or select only the event s/he feel was most severe.)
- No, I would not like to talk about this. But I can come back to this conversation again on _____(Date) at _____(Time)_____ (Place). (Skip to Question 3.1)
- No, I would not like to talk about this right now, but I would like more information on possible support services. (Skip to Question 3.1)
- I totally don't want to talk about this. (**End the interview** and provide the patient the list of referral organizations.)

Tell me about the last time you experienced violence. *Note to providers: this is an open question. You do not need to ask each of these questions. Let the patient recount their experiences—and use the following questions as follow-up probes if the patient does not directly state these details in their account. Afterward, fill in the chart according to the details obtained for each act of violence.*

For each act of violence the patient has experienced in the past year, please fill out columns A, B, and C.

A. Who?	B1. When?	B2. Where?	B3. How?	Do you think this happened to you because you are MSM/TG? Explain.	C1.* What were the physical consequences?	C2.* What were the emotional consequences?	C3.* Other consequences?
Romantic/sexual partner ()							
Pimp ()							
Patient/sexual friend ()							
Family member ()							
Friend ()							
Neighbor ()							
Stranger ()							
Police ()							
Health							

Worker () Specify:							
Others () Specify:							

(*C1) Bruises, scratches, superficial or serious wounds, injuries from a type of weapon, disfigurement, disability, loss of consciousness, acquiring an STI or HIV.

(*C2) Depression, loss of trust, loss of self-esteem, feeling dirty, feeling guilty, fear, anxiety.

(*C3) Loss of the following: work, authority, respect (from others or self-respect), material goods, family, supportive relationships, etc.

2.6 Did you seek any support or services when you experienced this violence?

Yes () No () No Response ()

2.7 *If the answer to 2.6 is 'yes,' providers should ask: **Can you tell me about what help or services you sought?** Note: Please remember that this is an open question. Let the patient tell his or her experience, and afterward fill in the appropriate information below. For each type of help the patient mentions, follow up with "how much?" Also note that this information may help you decide what types of references to make in Step 3.*

Type of help	How much did the support or services help you?			
Support from a family member ()	Much	Some	Little	None
Support from friends ()	Much	Some	Little	None
Psychologist ()	Much	Some	Little	None
Monk, priest, or faith leader ()	Much	Some	Little	None
NGO offering services for violence ()	Much	Some	Little	None
Human rights commission ()	Much	Some	Little	None
Public hospital ()	Much	Some	Little	None
Specific medical service ()	Much	Some	Little	None
Red Cross ()	Much	Some	Little	None
Other () _____	Much	Some	Little	None

Step 3: Assessment of patient's safety

3.1 Are you still in contact with the person(s) who committed this violence?

Yes () No () No Response ()

3.2 At present do you feel safe and without threats, and able to return safely to your daily life and routine?

Yes () No () Specify reason for feeling unsafe: _____

No Response ()

3.3 At this time, have you thought of hurting yourself or committing suicide due to the violence that has happened to you?

Yes () No () No response ()

From the information obtained, as a health provider you need to decide: do you consider that this person could be in immediate danger?

Yes () No ()

Step 4: Referrals

4.1.A. NO, the person is not in immediate danger. Make the appropriate reference:

What kind of help/support do you think you need? (Multiple answers allowed)

- Medical care Psychological counseling support Living place/sheltering Legal help Other (specify)_____
- No need for other help or support (**End interview** and provide the patients the list of referral organizations.)

There are groups and institutions that could offer you help. I would like to mention some of these so that you know about them and can decide if they might be able to offer help that would be useful to you.

Name of Organization	Type of Referral	Referral Made? (Mark with an X if referral made.)
List service organization	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Shelter <input type="checkbox"/> Social Service <input type="checkbox"/> Drop-in center <input type="checkbox"/> Other specify_____	
	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Shelter <input type="checkbox"/> Social Service <input type="checkbox"/> Drop-in center <input type="checkbox"/> Other specify_____	
	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Shelter <input type="checkbox"/> Social Service <input type="checkbox"/> Drop-in center <input type="checkbox"/> Other specify_____	
	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Shelter <input type="checkbox"/> Social Service <input type="checkbox"/> Drop-in center <input type="checkbox"/> Other specify_____	
	<input type="checkbox"/> General Medical care <input type="checkbox"/> VCT <input type="checkbox"/> Psychological support groups <input type="checkbox"/> Shelter <input type="checkbox"/> Social Service <input type="checkbox"/> Drop-in center <input type="checkbox"/> Other specify_____	

4.1.B. Did the patient accept the referral?

Yes () No ()

- 4.1.C.** If the person is in immediate danger, and there are specialized services for MSM, transgenders, or sex workers, consult with the available service to identify the best action for ensuring the immediate safety of the person. Elaborate a safety plan (such as described below) when 1) no specialized services exist; 2) existing services are not available; or 3) services exist and are available, but the person does not accept a referral.

For the interviewer: Describe the help/support you can offer when there are no special services for MSM/TG or adequate services addressing violence issues.

Developing a Safety Plan

A safety plan is a combination of suggestions, plans, and responses created to help victims reduce their risk of harm. To address situations in which someone is in imminent danger of harm from an abuser, survivors of gender-based violence can develop a safety plan. A safety plan can involve thinking about the best way to leave a home quickly in case violence begins to escalate. It can involve alerting trusted neighbors or friends about the situation and enlisting their help or perhaps planning ways to leave an abusive spouse/partner to prevent the type of violence that is common at the time of separation. (Adapted from Bott et al., 2004)

One of the most important actions that a health provider can take when a patient discloses that s/he is living with a violent partner or otherwise regularly in contact with his/her perpetrator, is to work with the patient to assess her risk and help him/her develop a safety plan. A healthcare provider can facilitate this planning process by helping the patient identify the measures she can take when needing to make quick decisions that could save her life. During this process, it is important that the provider help his/her patient identify the real risk in which she finds herself. Safety planning can include a wide range of details, but at the very minimum, providers should help their patients think through the following points:

- Identify possible escape routes (from common places where violence occurs) and a place to go (e.g., the home of a family member or friend) if s/he needs to leave her home;
- Know phone number(s) for organizations that provide help, including drop-in centers or rape hotlines;
- Notify one or more trusted friends to watch for signs of violence;
- Decide what s/he needs to have ready if she needs to leave her home in a hurry (e.g. clothes, money, documents, keys);
- Pack a bag with these items and store it somewhere in her home or with a friend or relative; and
- If an argument or confrontation cannot be avoided, try to deal with it in a room or location with an easy exit. Stay away from any room where weapons might be available.

Adapted from: Skye et al., 2001, p. 9.

Citations from Final Screening Tool

Bott, S., A. Guedes, M.C. Claramunt, and A. Guezmes. 2004. *Improving the Health Sector Response to Gender-based Violence: A Resource Manual for Health Care Professionals in Developing Countries*. New York, New York: International Planned Parenthood Federation [IPPF], Western Hemisphere Region [WHR].

Centers for Disease Control and Prevention. June 28, 2007. *HIV/AIDS and Men Who Have Sex with Men*. Retrieved May 15, 2009 from <http://www.cdc.gov/hiv/topics/msm/>.

Heise, Lori, Mary Ellsberg, and Megan Gottemoeller. 1999. "Ending Violence against Women." *Population Reports XXVII*, Number 4, Series L, Number 11.

Inter-Agency Steering Committee (IASC). 2005. *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention and Response to Sexual Violence in Emergencies. (Field Test Version)*. Geneva, Switzerland: IASC.

Pan-American Health Organization (PAHO). 2002 Programa Mujer, Salud y Desarrollo. Serie Género y Salud Pública.-Violencia Sexual Basada en Género. San José, Costa Rica.

Skye, Donald, Alessandra Guedes, and Zhenja La Rosa, eds. Winter 2001. *Incorporating Personal Experiences and Perceptions into GBV Sensitization and Training*. New York: IPPF/WHR.

REFERENCES

Armbrecht, Jason. 2008. “*Transsexuals and Thai Law*.” Thailand Law Forum. Retrieved March 27, 2009, from <http://www.thailawforum.com/Transsexuals-and-Thai-Law.html>.

Betron, M., E. Gonzalez, A. Eckman, and K. Morrison. 2008. “Screening for Gender-based Violence and Other Forms of Stigma and Discrimination among MSM and Transgendered Persons: A Synthesis and Review of Relevant Literature.” Paper presented at the International AIDS Conference, Mexico City, Mexico.

Betron, Myra, and Evelyn Gonzalez-Figueroa. 2009. *Gender Identity and Violence in MSM and Transgenders: Policy Implication for HIV Services*. Washington, DC: USAID | Health Policy Initiative, Task Order 1.

Bott, S., A. Guedes, M.C. Claramunt, and A. Guezmes. 2004. *Improving the Health Sector Response to Gender-based Violence: A Resource Manual for Health Care Professionals in Developing Countries*. New York: International Planned Parenthood Federation, Western Hemisphere Region.

Centers for Disease Control and Prevention (CDC). 2007. “HIV/AIDS and Men Who Have Sex with Men (MSM).” Last accessed: September 9, 2009, from <http://www.cdc.gov/hiv/topics/msm/index.htm>. Atlanta: CDC.

CDC TUC, Thailand Ministry of Public Health, Thai Red Cross Society, and The Rainbow Sky Association of Thailand. 2005. “The Prevalence of HIV and Associated Risks among Men Who Have Sex with Men (MSM) in Bangkok, Chiang Mai and Phuket.” Presentation at the Meeting at USAID Bangkok 21 October 2005.

Chakrapani, Venkatesan, Peter A. Newman, Murali Shunmugam, Alan McLuckie, and Fredrick Melwin. 2007. “Structural Violence against Kothi-identified Men Who Have Sex with Men in Chennai, India: A Qualitative Investigation.” *AIDS Education and Prevention* 19(4): 346–364.

Egremy, G., M. Betron, and A. Eckman. 2009. *Identifying Violence against Most-at-Risk Populations: A Focus on MSM and Transgenders. Training Manual for Health Providers*. Washington, DC: Futures Group, USAID | Health Policy Initiative, Task Order 1.

Eckman, A., K. Morrison, M. Betron, G. Egremy, A. Luna, W. Phoolcharoen, S. Sriplienchan, and P. Sakhunthaksin. 2008. “HIV-service-based Screening for Violence (GBV and Discrimination) in Marginalized Vulnerable Populations (MSM/TG).” Paper presented at the International AIDS Conference, Mexico City, Mexico.

Egremy Mendivi, G.A., A. Eckman, K. Morrison, and A. Luna. 2008. “Building the Capacity of HIV Providers in Health and Community Settings to Respond to GBV among MSM/TG.” Paper presented at the International AIDS Conference, Mexico City, Mexico.

Egremy, Guillermo. Unpublished report. *Entendiendo las manifestaciones de Estigma y Discriminación, incluyendo a la Violencia Basada en Género, en Poblaciones con Mayor Prácticas de Riesgo (MARPs): Estudio en México y Tailandia: Informe del Diagnóstico Situacional sobre Violencia Basada en Género en HSH/TS y TG con Personal de Salud y Poblaciones MARPs*. USAID | Health Policy Initiative, Task Order 1.

Gayet, C., C. Magis, D. Sacknoff, and L. Guli. 2007. *Prácticas Sexuales de las Poblaciones Vulnerables a la Epidemia de VIH/SIDA en México*. Mexico: CENSIDA, Facultad Latinoamericana de Ciencias Sociales, Sede México.

Goffman, Erving. 1963. *Stigma: Notes on the Management of Spoiled Identity*. New York: Touchstone.

Grisurapong, S. 2002. "Establishing a One-stop Crisis Center for Women Suffering Violence in Khonkaen Hospital, Thailand." *International Journal of Gynecology and Obstetrics* 78 Suppl. 1 (2002) S27–S38.

Guadamuz, T.E., S. Naorat, A. Varangrat, P. Phanuphak, R. Jommaroeng, P.A. Mock, J.W. Tappero, F. van Griensven, and T. Siraprasiri. 2006. "Thailand MSM Study Group. Correlations of Sexual Coercion among Populations of Men who have sex with Men in Thailand." Paper presented at the International Conference on AIDS, Toronto, Canada.

Heise, Lori, Mary Ellsberg, and Megan Gottemoeller. 1999. "Ending Violence against Women." *Population Reports XXVII*, Number 4, Series L, Number 11.

Inter-Agency Steering Committee (IASC). 2005. *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention and Response to Sexual Violence in Emergencies. (Field Test Version)*. Geneva, Switzerland: IASC.

International Gay and Lesbian Human Rights Commission, 2003. "Mexico Protects Its Gay and Lesbian Citizens with New Law." Retrieved March 27, 2009, from <http://www.thefreelibrary.com/Mexico+protects+its+gay+and+lesbian+citizens+with+new+law.-a0108149079>.

International Planned Parenthood Federation/Western Hemisphere Region. 2008. *Sexual Diversity Toolkit*. New York.

Jenkins, Carol. 2006. *Violence and Exposure to HIV among Sex Workers in Phnom Penh, Cambodia*. Washington, DC: USAID Policy Project.

Joint United Nations Programme on HIV/AIDS (UNAIDS). 2005. *Fact Sheet: HIV/AIDS, Gender and Sex Work*. Retrieved June 8, 2008, from <http://www.genderaids.org/downloads/events/Fact%20Sheets.pdf>.

Khan, S., A. Bondyopadhyay, and K. Mulji. 2005. *From the Front Line: The Impact of Social, Legal and Judicial Impediments to Sexual Health Promotion, and HIV and AIDS Related Care and Support for Males Who Have Sex with Males in Bangladesh and India*. Naz Foundation International.

La Jornada. April 6, 2006. "Letra: Salud, Sexualidad, SIDA." Number 117. Mexico City.

Leung, S.J., J.M. Tesoriero, S.J. Klein, K.K. Heavner, H.B. Battles, C. Nemeth, and G.S. Birkhead. 2005. "Intimate Partner Violence and HIV Testing History among High Risk Individuals." Presented at the National HIV Prevention Conference.

Medina, E.J., J. Toro-Alfonso, and Baños. 2006. "No Más en el Tintero: Hombres Gay: Nuestras Vidas y el VIH en Centro America y el Caribe." Los Angeles: Coalición de Organizaciones Gay en Centro América.

Morrison, Ken. 2006. *Breaking the Cycle: Stigma, Discrimination, Internal Stigma and HIV*. Washington, DC: Futures Group, POLICY Project.

Onyango-Ouma, W., Harriet Birungi, and Scott Geibel. 2006. *Understanding the HIV/STI Prevention Needs of Men Who Have Sex with Men in Kenya*. Washington, DC: Population Council, Horizons Program.

Pan-American Health Organization (PAHO). 2002. *Programa Mujer, Salud y Desarrollo. Serie Género y Salud Pública. Violencia Sexual Basada en Género*. San José, Costa Rica.

Sakhunthaksin, Phongsak. Unpublished report. *Understanding and Developing and Assessment Tool for Manifestations of Stigma and Discrimination and Gender-based Violence in Men who Have Sex with Men and Transgenders in Pattaya, Thailand*. Final report. Bangkok: Population Research Institute Foundation.

Sakhunthaksin, Phongsak. Unpublished report. *Understanding and Developing and Assessment Tool for Manifestations of Stigma and Discrimination and Gender-Based Violence in Men who Have Sex with Men and Transgenders in Pattaya, Thailand*. Situation Assessment Report. Bangkok: Population Research Institute Foundation.

Sakhunthaksin, P., N. Chaiphet, W. Phoolcharoen, S. Sriplienchan, A. Eckman, K. Morrison, and M. Betron. 2008. "NGOs and Health Service Provider Collaboration to Tackle Stigma and Discrimination (S&D), Including Gender-based violence (GBV) among Transgender Sex Workers and Male Sex Workers in Pattaya, Chonburi, Thailand." Paper presented at the International AIDS Conference, Mexico City, Mexico.

Skye, Donald, Alessandra Guedes, and Zhenja La Rosa (eds). Winter 2001. *Incorporating Personal Experiences and Perceptions into GBV Sensitization and Training*. New York: IPPF/WHO.

T-VOX. Retrieved June 12, 2009 from <http://www.t-vox.org/index.php?title=Transgender>.

UNAIDS. 2009. "HIV Prevention Hampered by Homophobia." Retrieved March 27, 2009 from http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2009/20090113_MSMLA_TAM.asp.

UNAIDS. 2008. *Report on the Global AIDS Epidemic*. Geneva: UNAIDS.

Health Policy Initiative, Task Order I
Futures Group
One Thomas Circle, NW, Suite 200
Washington, DC 20005 USA
Tel: (202) 775-9680
Fax: (202) 775-9694
Email: policyinfo@futuresgroup.com
<http://ghiqc.usaid.gov>
<http://www.healthpolicyinitiative.com>

Sexuality and Gender Law Clinic at Columbia Law School Secures Asylum for Transgender Mexican Woman

GRANT OF ASYLUM HIGHLIGHTS DANGERS TRANSGENDER PEOPLE FACE FOR EXPRESSING TRUE GENDER IDENTITY

Media Contact: Nancy Goldfarb, 212-854-1584, nancy.goldfarb@law.columbia.edu

Public Affairs Office: 212-854-2650, publicaffairs@law.columbia.edu

NEW YORK, June 25, 2009 – The Sexuality and Gender Law Clinic at Columbia Law School has secured asylum for a woman who fled her native Mexico after suffering severe police abuse and gang violence because she is transgender.

The grant of asylum issued by the U.S. Department of Homeland Security for Ana Frutos (born Jose Antonio Frutos Rosas), a 25-year-old from Guadalajara, highlights the dangers many transgender people face simply for expressing their true gender identity, said Sadie Holzman '09, one of the students who worked on the case.

“We are thrilled with the decision,” Holzman said. Professor Suzanne B. Goldberg, who directs the Clinic, added that “this case is part of a very small but growing number of cases in which the U.S. government has recognized that transgender individuals who have fled persecution are entitled to protection under American asylum law.”

Frutos has long believed she was born with the wrong anatomical sex, said Crystal Scialla, another student who worked on the case. Growing up, Frutos endured ostracism and abuse, including sexual abuse, in the community and at school because of her apparent “effeminacy.” Once she began dressing and living outwardly as a woman, she was constantly harassed, physically abused, and subjected to demands by the police for money and sexual favors.

Fearing for her life, Frutos fled Mexico and crossed into the U.S. about a year ago. To prove she deserved asylum, Frutos had to demonstrate to an asylum officer that she suffered persecution because of her membership in a “particular social group,” Holzman said.

“This meant she had to show that her gender identity is so fundamental to who she is as a person that she cannot and should not be required to change merely to avoid persecution,” Scialla said.

Testifying before the asylum officer, Frutos explained, “Even though I knew I would be an easy target for police and gang abuse, I made my transition to womanhood because my identity as a woman is what defines me. For me, hiding my true gender identity is impossible.”

Julie Glasser '09, another student who worked on the case, noted that cases like this highlight the serious persecution and discrimination transgender people face, both here and abroad. “Even after escaping devastating persecution abroad, transgender individuals face a situation here in the U.S. where much work remains to be done to

address employment discrimination, identity documents, relationship recognition, and countless other barriers to equality for transgender men and women,” she said. Frutos was referred to the Sexuality and Gender Law Clinic by Immigration Equality, a national organization focused on immigration rights for GLBT individuals, which provided critical assistance in the case.

In 2008, five students from the Clinic—Holzman, Glasser, Scialla, Keren Zwick '09, and Jennifer Stark '09—provided legal assistance in preparing Frutos' asylum application. The students conducted interviews, drafted affidavits, researched country conditions, completed application forms, and accompanied Frutos for her interview with an asylum officer.

Columbia Law School's Sexuality and Gender Law Clinic was founded in 2006. Under the direction of Professor Suzanne B. Goldberg, students have worked on a wide range of projects, from constitutional litigation to legislative advocacy to immigration cases.

For more information, visit the Clinic website

at <http://www.law.columbia.edu/focusareas/clinics/sexuality>.

[Columbia Law School](http://www.law.columbia.edu), founded in 1858, stands at the forefront of legal education and of the law in a global society. Columbia Law School joins traditional strengths in international and comparative law, constitutional law, administrative law, business law and human rights law with pioneering work in the areas of intellectual property, digital technology, sexuality and gender, criminal, and environmental law.

Visit us at www.law.columbia.edu.

Available at: https://www.law.columbia.edu/media_inquiries/news_events/2009/june2009/AsylTransMexi



[WORLD NEWS](#) | Mon Aug 22, 2016 | 1:11pm EDT

Mexican police turn blind eye to murders of transgender women, say activists

By [Stephen Woodman](#)

MEXICO CITY, August 22 (Thomson Reuters Foundation) - Betzy Ballesteros' brush with death came on a windy night in December, when a man in a black Chevy Suburban pulled up to the street corner in the Mexican city of Guadalajara where the sex worker was plying her trade.

After agreeing on a price, she opened the car door and sat in the passenger seat. But the client turned to the 25-year-old transgender woman, said he preferred her friend and asked if she would switch places.

"He was very polite," Ballesteros told the Thomson Reuters Foundation. "So I said 'no problem' and called my friend over."

Flower Gonzalez, another transgender sex worker, slid into the vehicle, and the pair drove away.

Gonzalez was found dead in an alley three hours later, in the early hours of Christmas Eve. She had been stabbed with an ice pick.

Ballesteros keeps a faded photo of her late friend amid the candy and candles in a shrine at her home.

Five friends have been killed on the job since she left home in Tlaquepaque, in the western state of Jalisco, after arguing with her mother about her gender identity at the age of 14, she said. To survive, she took to the streets of nearby Zapopan as a sex worker.

POLICE RESPONSE

Ballesteros said she believes police do little to protect the transgender community and that no one has been arrested in connection to any of her friends' deaths.

"They don't help us at all," she said.

The Jalisco Attorney General's office did not respond to a request for comment.

Zapopan Police Commissioner Juan Pablo Hernandez said his department aims to protect all citizens.

"We have been providing sensitivity training to promote police empathy towards different vulnerable communities, including the transgender community," Hernandez said.

In recent years, legislators have passed a series of anti-discrimination laws to protect gay rights in Mexico.

In May, President Enrique Peña Nieto proposed a constitutional reform to legalize same-sex marriage nationwide.

But advances in LGBT rights have not been accompanied by a decline in homophobic and transphobic attacks.

Mexico has one of the highest rates of transphobic violence in the world, according to a recent report by the Cornell University Law School in New York and the Transgender Law Center, a California-based civil rights organization.

The number of documented murders of transgender people rose to 46 in 2012 from

four in 2008, with actual figures likely to be significantly higher, said the report in May.

The report also said transgender women in particular have suffered from a fierce backlash against same-sex marriage and other advances.

A U.S. immigration judge warned last year of "an epidemic of unsolved violent crimes" against transgender people in Mexico.

Although gender identity is not the same as sexual orientation, many transgender women in Mexico are persecuted on the assumption they are gay, experts said.

"Transgender women have become a focal point for hatred because they are often easier to detect," said Maria Martha Collignon, a sociologist at Guadalajara's Western Institute of Technology and Higher Education.

In addition, laws protecting gay rights in Mexico do not extend to gender identity discrimination.

Transgender activist Ari Vera Morales said she had been studying for a degree in special education when she was derailed by discrimination.

"The school asked me to leave because I was going to influence the children and encourage them to be homosexual or transgender," she said.

Morales now directs Captive Souls, a non-profit group dedicated to defending rights of transgender prisoners in Mexico City.

Most transgender women find their appearance prevents them from working in regular jobs, said Cymene Howe, professor of anthropology at Rice University in Houston, Texas.

"It may be difficult to find work in a bank or in a retail establishment or as a food server," Howe said.

Many turn to sex work for money.

"You are afraid every time you go out onto the street, but you need to do it to survive, to eat," Ballesteros said. "You need to leave the fear to one side."

Street-based sex workers often develop substance and alcohol abuse problems and typically lack strong family networks for support, Howe said.

The Transgender Law Center report said roughly a third of Latin American transgender women are infected with HIV.

The life expectancy for Latin American transgender women is 35, according to the Inter-American Commission on Human Rights.

Due to the illicit nature of their work, street-based sex workers who may be victimized are unlikely to contact police for fear of harassment or extortion, Ballesteros said.

Hernandez said Zapopan police were cracking down on extortion, dismissing officers for misconduct and improving training.

"We are trying to prevent public servants from behaving this way," he said.

Ballesteros said transgender women are also at risk from the drug cartels that demand money from sex workers on the streets.

"They started charging us every week, then every night. I didn't want to pay twice so I was attacked," she said.

The violence has helped unify and mobilize the transgender community, and campaigners such as Morales are helping lead an emerging

activist movement. In March, Rubi Araujo, a prominent LGBT campaigner, became Mexico's first transgender city council member in the traditionally conservative state of Guanajuato. In May, Morales met the Mexican president when he signed a reform initiative to allow transgender people to change their gender legally without a court order.

(Reporting by Stephen Woodman, Editing by Ellen Wulforth and Jo Griffin. Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women's rights, trafficking, property rights and climate change. Visit [news.trust.org](https://www.news.trust.org))

Transgender beauty queen's burned body found dumped in Mexico a month after she disappeared

- Investigators are looking into whether Paulett Gonzalez died in a hate crime
- Her body was found in the city of Celaya after she went missing in June
- She was crowned the winner of the 2015 Gay Beauty Queen pageant

By [CHRIS KITCHING FOR DAILYMAIL.COM](#)

PUBLISHED: 07:06 EST, 25 July 2016 | UPDATED: 08:13 EST, 25 July 2016

Authorities have found the burned body of a transgender beauty queen who was reported missing in Mexico a month ago.

Investigators are now looking into whether Paulett Gonzalez, who was born Luis Jean Gonzalez Virgen, was killed in a hate crime.

The 24-year-old was crowned the winner of the Gay Beauty Queen pageant in the western Mexican state of Nayarit last year.



Authorities have found the burned body of transgender beauty queen Paulett Gonzalez, who had been missing



Investigators are now looking into whether Gonzalez, 24, was the victim of a hate crime



The 24-year-old was crowned the winner of the Gay Beauty Queen pageant in the state of Nayarit last year

Gonzalez was found dead in the city of Celaya, in the state of Guanajuato, north-west of the capital Mexico City, last week.

She disappeared in June when she visited the nearby city of Irapuato with a friend.

She reportedly left her friend and said she has to attend to some personal business, but she wasn't heard from again.

Her friend reported her missing when she did not return.



Gonzalez was found dead in the city of Celaya, north-west of Mexico City, a month after she disappeared

Gonzalez's family and friends launched a campaign on social media, asking people for help to find her.

Their search came to a tragic end with the discovery of her body in Celaya.

DNA tests were carried out to confirm her identity because the body was severely burned.

Jorge Luis Zamora Cabrera, the state secretary of sexual diversity, told Mexican media that one of the lines of investigation in the case is transphobia.

Friends expressed disbelief at Gonzalez's death and paid tribute to her on her Facebook page.

'I'll always remember you as a person who was happy and not afraid of anything,' one friend wrote.

Transgender Latinas faced a 'legion of stigmas'

Transgender Hispanic women face 'legion of stigmas'; studies show risk for suicide, harassment

By Olivia P. Tallet

June 25, 2016 Updated: June 25, 2016 7:11pm



Photo: Karen Warren, Staff

IMAGE 1 OF 7

Andrea Molina, director and coordinator of Latino Organization of Trans in Texas (Organizacion Latina de Trans en Texas or OLTT), Wednesday, June 15, 2016, in Houston. They are the only organization in Houston ... more

She crossed the Rio Grande as an undocumented, transgender woman, fleeing after a serial sexual assault left her in shame and fearing for her life.

Now, 15 years later, Andrea Molina is director of the Organización Latina de Trans de Texas (Latin Organization of Texas Trans), which she founded after being expelled from the bathroom of a Latino organization in Houston. She and her co-founders, all trans women, decided that if they didn't take control of their destiny, no one was going to do it for them, she said.

The organization is the only one in Texas dedicated to empower, educate and develop leadership for transgender Hispanics, among the most stigmatized individuals in the LGBT community.

Being a transgender woman, a Latina and an undocumented immigrant is "like having a legion of stigmas against you," Molina said.

"I remember when I was a boy," Molina said. "I loved to be alone in the bathroom playing with a towel on my head and feeling like I had long hair. My cousins mocked me when we were together, and I would cover myself, wrapping a towel around my chest - instead of from the waistline as they used to do."

She vividly remembers the horror of being sexually assaulted by four male students she thought were her friends.

It was during one of those Fridays that she used to go party after finishing a hectic week of engineering studies at the Technical University of Matamoros, Mexico.

Molina had confided to them that she was going through her hormonal treatment to become the woman she felt she was since her childhood. They decided to teach her a lesson about what it means to be a woman.

"Ah, you think you are a woman? Then we have to teach you how to make sex like a woman," she remembers them saying.

"Two of them forced me down on my knees. I resisted. I cried and said, 'No. ... You are my friends.' "

They put a pistol to her head and demanded oral sex.

"I thought it was going to be my last day," she said.

She never returned to school. Instead, feeling ashamed, unworthy and guilty, without understanding why, she headed for the border a few months later.

"The interception of being a Latina, a trans and an undocumented person is a combination that could be triple times more grave in terms of stigmatization," said Janet Quezada, spokesperson for a national gay and lesbian advocacy group that goes by the acronym GLAAD.

While the stigmatization exists everywhere, Quezada said, it's "more prevalent in states like Texas because of their closeness to the border and their larger population of trans escaping from abuses they face in countries like Mexico and from Central America."

Mexico, for example, has laws protecting LGBT people. Still, transgender people suffer atrocities and abuses, including by law enforcement officers, as documented by the Transgender Law Center and the Cornell University Law School LGBT Clinic in a study released this year.

'Beaten down'

Several cases of slaying and dismembering of transgender women have been reported in Mexico, and the murder rate has increased since 2008. High-profile cases include the murder of a trans woman who headed the Special Unit for Attention to Members of the LGBT Community of the Attorney General Office in Mexico City.

That's what drove Jessica Trolinger to Houston. She described the terror she felt after four of her transgender friends, who were roommates, suddenly disappeared without a trace after being threatened by men in their neighborhood in Reynosa, Tamaulipas.

"Nobody knows still today what happened to them, not even their families," Trolinger said. "And families in Mexico are afraid to report cases because we are also abused by officers; I was once beaten down to the floor and mocked by an officer while others watched and laughed."

Trolinger admits that she's worked as a prostitute.

"But you have to be in my shoes to understand what it means to be a trans woman, trying to work a decent job to put food on the table, and being rejected by everyone," she said. "Employers don't like trans workers. And that is true in Mexico and here."

The Rev. Michel Díaz, former director of Connections at Houston's Resurrection Metropolitan Community Church, agrees that being transgender and Latina is difficult.

"Transgender women who are Latinas face a lot of challenges," said Díaz, who is finishing an MBA program. "They are probably the most vulnerable community among the vulnerables."

Several studies report their challenges. Many Hispanic transgender people suffer severe poverty with five times higher likelihood of living with an income of \$10,000 or less per year than the overall Latino average.

As many as 47 percent of them have attempted suicide, as opposed to 1.6 percent of the U.S. population, reported the National Center for Transgender Equality and the National Gay and Lesbian Task.

More than half of Hispanic trans people who are employed in the U.S. report being harassed at work, and between 14 and 16 percent have reported sexual and physical assaults.

'We are human beings'

For those who came as undocumented immigrants fleeing from their countries, they confront enormous obstacles in obtaining legal refuge in the U.S., said Frances Valdez, an immigration lawyer in Houston.

Unable to legalize their immigrant status, and scared to return to the threat of death in their countries of origin, these immigrants get entangled with a detention system where they account for only 1 of every 500 detainees but represent 1 out of every 5 of the confirmed cases of sexual assaults that occur in detention, according to GLADD.

After the mass shooting earlier this month at a gay dance club in Orlando, Fla., in which 49 people were killed, Díaz said, "There is an increased sense in the community of losing the already scarce places they have to feel safe and sheltered from being stigmatized and abused."

And there are only a handful of groups like the Latin Organization of Texas Trans in the country targeting the challenges and needs in the intersection of transgender and Latino issues, Quezada said.

Most days, the organization's offices are a blur of activity. They invite experts to talk about their health, legal, psychological and family issues. They organize workshops on leadership and self-esteem development. Every Wednesday, they watch and discuss films related to LGBT themes.

One of the accomplishments of the organization, Quezada said, is that it is developing a model of self-sufficiency.

"We struggle to finance our organization with our membership and fundraising," Molina said. "We welcome support for the society, but we are not waiting for others to educate and empower ourselves."

All Molina is hoping for is acceptance.

"We are human beings. We have value," she said. "We only ask from others to understand that we have the right to

define ourselves and that they are privileged just by the fact that they don't have to face our struggles.

"Do you really think that being a transgender person is something that we chose? No, nobody chose to be the most discriminated and misunderstood people that exist."

Olivia P. Tallet

Reporter, Houston Chronicle

Mexico is Hell for the transgender women

by Angelica Basile - 2016.06.17



■ **TRANSGENDER LAW CENTER AND THE CORNELL LAW SCHOOL LGBT, REPORT ON HUMAN RIGHTS CONDITIONS OF TRANSGENDER WOMEN IN MEXICO, 2016**

Discrimination, violence, abuse, rape, violent deaths, torture. This is daily life for the majority of transgender women in Mexico . Suffice it to say that 45 % of them have suffered at least one abuse in the family and 70 % are forced to leave the country to escape these many dangers. The first destination of choice is the neighbouring United States, where, however, it is not certain they will find a better life. As West has already revealed, in fact, the US centres of identification become real traps, wherein much of the violence they suffered at home , is repeated. This disturbing picture which was revealed by a recent report has also raised the alarm on the unthinkably worsening situation of the Mexican transgender, despite the approval of same sex marriages in 2010.

West is an online newspaper aimed at providing the latest breaking news on welfare policies.

Available at: <http://www.west-info.eu/mexico-is-hell-for-the-transgender-women/>



World | Thu Sep 3, 2015 7:43pm EDT
Related: [U.S.](#), [UNITED NATIONS](#), [MIGRANT CRISIS](#)

U.S. court: Transgender illegal immigrant cannot be deported to Mexico

LOS ANGELES | BY [DAN WHITCOMB](#)

A transgender illegal immigrant who suffered years of sexual and physical abuse in Mexico cannot be deported despite a felony conviction because she is protected under international anti-torture conventions, a U.S. appeals court ruled on Thursday.

In granting Edin Carey Avendano-Hernandez the right to remain in the United States, a three-member 9th U.S. Circuit Court of Appeals panel found that a federal immigration board that ordered her deported had mixed sexual orientation with gender identity.

The justices also disagreed with a finding by the Board of Immigration Appeals that recent anti-discrimination laws in Mexico had made it safer for transgender individuals to live there.

"Country conditions evidence shows that police specifically target the transgender community for extortion and sexual favors and that Mexico suffers from an epidemic of unsolved violent crimes against transgender persons," Judge Jacqueline Nguyen wrote for the 9th Circuit panel.

"Avendano-Hernandez, who takes female hormones and dresses as a woman, is therefore a conspicuous target for harassment and abuse," Nguyen wrote in the 20-page ruling.

According to the ruling, Avendano-Hernandez was born male but grew up in Oaxaca, Mexico, believing that she was female and suffered years of abuse over her gender identity, including beatings, sexual assaults and rape.

That abuse continued into her adulthood and she suffered at the hands of the Mexican police and military before seeking refuge in the United States.

While in the United States, Avendano-Hernandez was twice convicted of driving under the influence in 2006 and was deported following the second offense, a felony because she and the other driver both sustained injuries.

Back in Mexico, Avendano-Hernandez suffered more abuse and assaults, including beatings and rape at the hands of police officers and she returned to the United States in 2008.

Three years later she was arrested for probation violation and, facing deportation, applied for relief under the United Nations Convention Against Torture.

(Reporting by Dan Whitcomb; Editing by Sandra Maler)



Why a Transgender Mexican Woman Was Just Granted Asylum in U.S. Despite DUI Conviction

Sep. 3, 2015 7:03pm

[Dave Urbanski](#)

Editor's Note:

Story by the Associated Press; curated by Dave Urbanski

SAN FRANCISCO (AP) — Transgender people can be especially vulnerable to harassment and attacks and shouldn't be equated with gays and lesbians by U.S. immigration officials determining whether to grant asylum, a federal appeals court said Thursday.

The San Francisco-based 9th U.S. Circuit Court of Appeals issued the ruling in the case of a transgender Mexican woman who sought shelter in the U.S. on the grounds that she would likely be tortured if returned to Mexico.

Edin Avendano-Hernandez said she had been sexually assaulted by uniformed Mexican police and a military official for being transgender.

The Board of Immigration Appeals wrongly relied on Mexican laws protecting gays and lesbians to reject Avendano-Hernandez's asylum request, the ruling states.

The 9th Circuit said transgender people face a unique level of danger and are specifically targeted in Mexico by police for extortion and sexual favors.

"While the relationship between gender identity and sexual orientation is complex, and sometimes overlapping, the two identities are distinct," Circuit Judge Jacqueline Nguyen wrote. "Significant evidence suggests that transgender persons are often especially visible, and vulnerable, to harassment and persecution due to their often public nonconformance with normative gender roles."

Avendano-Hernandez dresses like a woman and takes female hormones, the 9th Circuit said.

An email to immigration officials for comment on the ruling was not immediately returned.

The 9th Circuit sent the case back to the Board of Immigration Appeals with instructions to grant Avendano-Hernandez's application for relief under the Convention Against Torture.

"She's ecstatic," Avendano-Hernandez's attorney, Munmeeth Soni, said. "The fear was constantly hanging over her head that she might have to one day turn herself in to return to Mexico. She no longer lives under that fear."

Avendano-Hernandez was born male and grew up in a rural town in the Mexican state of Oaxaca, suffering homophobic slurs and abuse at the hands of her family, according to the 9th Circuit ruling.

She first came to the U.S. illegally in 2000 and began taking female hormones five years later.

She was convicted of driving under the influence of alcohol and deported in 2007. In Mexico, she said, she was raped by police officers and sexually assaulted by a member of the military while trying to flee to the U.S., according to the 9th Circuit.

August 26, 2013

UNCATEGORIZED

Mexican Transgender Women Deported to Life of Peril

By: Amy Lieberman



Bocanos Flores in Puebla, Mexico. Credit: Amy Lieberman

MEXICO CITY (WOMENSENEWS)--The second time Deborah Alvarez was deported from the United States in 2005, after she was detained for prostitution solicitation tickets, she knew she would have to stay in Ciudad Juarez for a while.

Alvarez wanted to go back to the country where she felt she could freely walk down the streets wearing a dress or a skirt without anyone hassling her, as her family once did.

But the possibility of crossing the Texas border and winding up getting detained, trapped in an immigration confinement facility and housed with hundreds of men, was unthinkable for Alvarez, a transgender woman.

Alvarez hadn't lived in the Mexican border city since 1984, when she headed to neighboring El Paso, Texas, at the age of 13. But even after all those years, she knew life for her wouldn't be any different in Mexico.

In 2007, rubber bullet wounds to the thigh landed Alvarez in the hospital after she was shot in a violent raid in her home by a now defunct police unit called Milipol, which targeted transgender sex workers for dressing like women, then illegal. Local media reported on the incident at the time.

These days such violent run-ins between transgender women -- who have mostly abandoned the notoriously violent Juarez for other Mexican cities -- and the police are not as common.

Still, Alvarez, who is now the head of a local organization for transgender women's health, regularly receives letters with slurs and threats. She only goes outside when accompanied by a friend.

In 2000 Alvarez and her partner returned briefly to El Paso from Los Angeles, where they had been living. Outstanding tickets for solicitation for prostitution in El Paso caught up with her and landed her first in a city jail for 12 months, and then in an immigration detention facility in Eden, Texas.

She said she spent the entire time of that year in jail isolated in a small cell with minimal contact with other people. In the detention center, she and six other transgender women stayed in a room with 300 men. The women buffered each other from the taunts and leers from some male detainees and guards.

After Alvarez was deported to Mexico, she immediately turned around and re-crossed the U.S. border, only to eventually wind up back at the same detention center.

Even though Alvarez's time in Eden was the opposite of paradise, she was happy for many of her years living in Los Angeles and still wants to find a way back to the United States, her home for 17 years.

"My only goal when I first left was to flee, flee, flee from my family," said Alvarez, who now has a good relationship with her parents and siblings. "Until now I still have a fear of being in Juarez and of being in Mexico."

Recurring Story

Alvarez's story opens a window on the fate of Mexican transgender women who return to the country they once fled.

Deported transgender nationals are not specifically identified in the annual roster of deported undocumented immigrants to Mexico, which in 2010 totaled 636,985, according to Mexican government figures.

Nor is there any tracking of transgender women who choose to leave the United States after a period of detention, preferring the danger of their home country to U.S. confinement facilities that typically house transgender women with men or in isolation.

The majority of detained transgender women are asylum seekers, and most of these cases-- represented by a handful of pro-bono attorneys from private law firms, national organizations or attorneys they meet from basic, free legal education "Know Your Rights" presentations --result in victories, attorneys say.

But the problem is legal representation.

Eighty-five percent of detained immigrants in the United States did not have legal representation while in detention, according to the Heartland Alliance's National Immigrant Justice Center in Chicago. That was true for Alvarez and many other transgender women.

"Many transgender folks in ICE [U.S. Immigration and Customs Enforcement] custody don't get access to the information they need to make informed decisions," said Cara Jobson, an asylum attorney in San Francisco who regularly represents transgender clients. "On the contrary, ICE will encourage them to sign their own deportation stating that they'll just sit in jail for months to gain if

they don't sign. If the person relents, gets deported and then comes back to the U.S. then they are no longer eligible for asylum."

Meanwhile, 10 immigration attorneys across the United States, in interviews with Women's eNews, said it's getting harder for Mexican transgender immigrants to gain asylum, or some other form of legal protection, that allows them to remain in the country, perhaps with fewer benefits and without the possibility of full citizenship.

Only 1.37 percent of the total 9,206 Mexican asylum seekers -- the second largest population of any nationality represented -- were permitted to stay in the United States in 2012, according to the [U.S. Department of Justice](#). In 2008, 2 percent of the 3,650 Mexican asylum seekers were rewarded asylum.

Mexico is the most commonly represented nationality of transgender clients, following immigrants from Honduras, Guatemala and El Salvador.

Mexico has varying estimates of the number of hate crimes targeting lesbian, gay, bisexual and transgender and queer (LGBTQ) citizens. But all of them place the country as one of the most dangerous places to be transgender in the region or world.

One monitoring project, Letra S, of the national daily newspaper La Jornada, approximated 1,260 hate-crime killings, mostly of transgender people, between 1995 and 2006. A 2010 International Gay and Lesbian Human Rights Commission report on the violations of LGBT persons in Mexico, often presented by American attorneys as part of their evidence during asylum cases, found that 76.4 percent of LGBT persons had been subjected to physical violence and 53.3 percent had been assaulted in public spaces between 1995 and 2007.



A trans woman in Puebla works as a sex worker and also at a bar. *Credit: Amy Lieberman*

Shifting Legal Picture

The legal picture in Mexico, though, has shifted considerably since 2009.

Mexico City now legally protects transgender people from hate crimes and grants them the right to change their gender and name within a few months. Same-sex marriage is legal in three out of 32 Mexican states, including Mexico City, and is recognized throughout the country. Same-sex couples can also adopt in Mexico City.

"Judges are increasingly seeing this as a signal that gay and transgender individuals enjoy a lot of rights and protections afforded by the Mexican government and that there is no basis for their fear in returning, which is not really true and very problematic," said Munmeeth Soni, an attorney for the Public Law Center, based in Santa Ana, Calif.

Soni is representing three transgender Mexican immigrants fighting deportation at the Ninth Circuit Court of Appeals in southern California.

Attacks against LGBTQ Mexicans are worsening as the laws increasingly recognize their rights in some parts of Mexico, says Mexico City-based civil liberties lawyer Jaime Lopez Vela.

"We are living in a period of homophobic and transphobic reaction to the times," Lopez said in an interview in his Mexico City office. "Each time that we achieve something, each time we get a new law, there is increased aggression toward the LGBTQ community."

Talia Inlender, a staff attorney with the Los Angeles pro-bono law firm Public Counsel, said asylum cases in Mexico can be complicated by legal reforms that aren't yet changing everyday life. "Those changes haven't taken effect on the ground level and there is still a great deal of persecution that transgender people experience by the military and police."

The majority of the LGBTQ hate-crime victims in Mexico are transgender women, says Jorge Mercado Mondragon, a sociology professor at the Universidad Autónoma Metropolitana in Mexico City. He links that trend--documented only in Mexican newspapers and often described as crimes of passion--to transgender women's physical visibility. Murders of transgender people often go unchecked by police, who do not match transgender women's physical appearance and names to their state-issued photo identification cards.

"The violence against trans people is very ugly; people being stripped nude, tortured, mutilated, beheaded," Mercado said. "The people who are doing this are not narcos [drug traffickers], but what they do replicates the way that the narcos will treat people."

Detention Center Risks

But harsh treatment in U.S. detention centers offer little in the way of relief.

[Heartland Alliance's National Immigrant Justice Center filed complaints](#) with the Department of Homeland Security's Office of Civil Rights and Civil Liberties and Office of the Inspector General in April 2011 on behalf of 13 gay and transgender detainees alleging sexual and physical assault, as well as discrimination and misuse of segregation.

Twelve of these complainants are transgender, according to government documents Women's eNews obtained through the Freedom of Information Act. Nine are from Mexico, according to the Heartland Alliance.

Four of the Mexican complainants were granted immigration relief and allowed to stay in the United States. Two were released from detention and either deported or granted withholding of removal, a less secure form of legal protection that allows people to stay in the U.S. legally and work. Two of the Mexican complainants were released from detention, but remain in a legal limbo, with their cases still pending. One complainant was deported back to Mexico.

Rene Leyva, a lead researcher with Mexico's National Institute for Public Health, an independent academic institution based in the city of Cuernavaca, says transgender immigrants rarely suffer the

deported immigrant's shame of arriving home without money or a job. But that's only because few have any family who will take them in.

"People who are gay and transgender may not have a home to go back to," said Leyva. "This [transgender] population moves around and typically permanently keeps going, looking for work where they can find it in hotels in Cancun, in Acapulco, in hair salons, in whatever area of service."

Leyva in 2013 released a study finding that transgender people make up 2 to 3 percent of the migrants passing through Mexico's church-run, scattered migrant shelters. Returned immigrants also use these shelters as stopover resting points.

Daniela Nigeli came to Mexico City from the western state of Jalisco in 2009, shortly after she began her transition as a woman. At the time, she sought a city that was more open minded than her hometown. But she hasn't been able to hold a steady job in the capital, a city with a vibrant gay nightlife scene, though transgender women say gay bars sometimes explicitly prohibit them from partaking.

"The interviews go well, but then at the end someone will realize that my name is not legally my name yet, and then they do not see me as a girl, all of a sudden, and I do not get the job," Nigeli said.

Activists Targeted

In early June, Nigeli suffered a blow that LGBTQ activists in Mexico City now expect to experience about once or twice a month. The body of her friend, a well-known transgender woman named Gary Gomez Bastida, was found mutilated on the side of a road outside Mexico City. Gomez held a top position in sexual diversity and community affairs with the city.

Activists such as Gomez and Alvarez, of Ciudad Juarez, are said to be more vulnerable to threats, attacks and assassinations in Mexico. But this brutal violence-- splashed daily on the tabloids in Mexico--also reaches less-prominent transgender women.

Antonella Bocanos Flores began presenting as a girl when she was 3 years old, after her mother recognized that she, at heart, was not a little boy.

Even with the support of her mother, poverty forced Bocanos to enter sex work full time when she was 18. She has been attacked on the job in Puebla, a city two hours outside of Mexico City, several times. One client robbed her and stabbed her more than 30 times. She says she called the police, but when they arrived they failed to respond to her near-fatal wounds.

The municipal government of Mexico City is now conducting a study on whether transgender sex workers there are also victims of abuse by the police, says Tania Itzel Nieves, a transgender woman and city employee who is helping lead the study. Initial results of interviews with 30 trans women show a distinct pattern of abuse, according to Itzel.

All the same, she noted that the most prominent form of discrimination in Mexico against transgender women is the lack of adequate and safe job opportunities; a dearth that pushes trans women into the risky field of sex work, as it once did for both herself and Alvarez.

"No trans girl can find work in Juarez. If you don't cut hair you do sex work. So I did sex work for many years," said Alvarez. "Now I have my own organization. But it has been very difficult to arrive at where we are now."

Alvarez has applied to legally reenter the United States, but her request was denied, a rejection she attributes to those past prostitution convictions and her illegal entries. She remains hopeful that other options will open to her, like perhaps marrying her American ex-partner who now lives in Washington, D.C., enabling her to relocate to the U.S.

Inlender, of Public Counsel, is among the attorneys who say that she has had transgender clients from Mexico reenter the United States, like Alvarez, following a removal order.

Within the past three years she has had at least two transgender Mexican clients who, once they returned to Mexico, suffered serious physical harm and returned to the United States, seeking protection. One of those women was granted withholding of removal; the other is still fighting her case.

Amy Lieberman is a journalist based in New York City. She reported in June from Mexico as part of a reporting grant from the Fund for Investigative Journalism on the issues affecting transgender women in detention and seeking asylum. Related stories: Transgenderers in Mexico Dream of Escape Transgender Rights Run Into Bathroom Politics.

July 17, 2013

UNCATEGORIZED

Transgenders in Mexico Dream of Escape

By: Amy Lieberman



Familial conflict and rejection once pushed Maricela Moreno Ortega, a hair stylist, to consider fleeing Mexico. *Credit: Amy Lieberman*

PUEBLA, Mexico (WOMENSENEWS)-- Maricela Moreno Ortega hatched a plan to leave her hometown of Puebla nearly 11 years ago. She sold her hair salon and made plans with a friend, also a transgender woman, to meet early one morning and travel together to cross the Texas border.

But her mother intervened the day before Moreno, now 43, was set to depart this colonial capital of the state of Puebla, with a population of about 1.5 million, two hours outside of Mexico City.

"My mom stopped me from going," said Moreno, speaking from her salon, adorned with ceramic frog statues. "There had been all of this conflict in my family and I was feeling very disillusioned. But my mom said that if I left, I was going to abandon the family."

So Moreno wound up back in her salon.

"For trans people who do not have the support of their families, the majority of them want to leave, but it's not so easy, if they don't know how to read and write, or there is the question of English," said Salvador Meta Ortiz, a local LGBT activist who conducts HIV-prevention and treatment outreach through two nonprofit groups. "There is the fear of the migration itself -- the police they could encounter, the other migrants, other risks they could face along the way. It's a lot to consider."

In interviews, 10 transgender women said that if they don't leave, their employment options in Puebla mainly boil down to sex work and bar tending. Only if they are as fortunate as Ortega-- with either money or family support-- can some become hair stylists.

These three occupations--either dangerous or siloed from the rest of society--are understood across Mexico to be acceptable entry points of employment for transgender women.

Employers in factories here -- the production of metals, electrical goods and textiles make up a bulk of the state's economy -- are likely to shy away from hiring a transgender woman, say trans women in Puebla.

Stigma would also apply in other fields, like in education or law. One transgender woman interviewed said she abandoned plans to study law once she decided to transition as a teenager, aware that she could not pursue both paths.

High Murder Rate

Puebla is among 22 of Mexico's 31 states that do not consider sexual orientation or gender identity-based discrimination to be illegal. People who identify as transgender or transsexual do not have the legal right in Puebla to change their gender on ID cards or official documents.

Four homicides of transgender women have been reported in the local news media since June 2012, says Meta.

In March 2012, a well-known transgender activist named [Agnes Torres Sulca was also murdered in Puebla.](#)

Against this backdrop, stories and hopes of migration abound among the transgenders who work in two downtown Puebla bars frequented by older men and in scattered hair salons in the city's outskirts.

Nearly every trans person interviewed reminisced about broken plans to, at some point, leave Mexico, which has the [second highest reported rate](#) of transgender murders in the world.

Some of those who say they have not considered leaving Mexico have already undergone an internal migration, reaching Puebla from nearby smaller towns, the coastal state of Veracruz or the northern state of Sonora, where transgenders can face even worse danger and restrictions.

Yokzana Martinez Balez transitioned at the age of 15. Her family reacted negatively and she was forced to leave her parents' home in Puebla shortly after. She left high school and went north, to Sonora, where she worked as a sex worker.

"I returned because it was very ugly there in the streets," said Martinez, who is 18 now and works at a bar and also some nights still as a sex worker.

Martinez has thought of leaving Puebla again. Without the support of her family, finances are tight, and she has heard that she could earn more working in the United States. Still, she is unlikely to take that step.

"I'd like to go to the U.S. and spend my life there and have a family. My brothers migrated when I was young and are doing well there. But it is much harder for a trans person to migrate. I fear I will get killed if I go," she said, speaking at the bar counter before her evening shift started.



Yokzana Martinez Balez, 18, prepares to start her evening shift at a bar in downtown Puebla, Mexico.

Credit: Amy Lieberman

School on Hold

Gaby Morales Arellano was also kicked out of her parents' house as a teenager, shortly after she began to publicly transition as a woman. That snuffed the idea she'd had, at age 17, of becoming a lawyer. Instead she put school on hold and held random jobs and shared a bare room with friends. Unable to secure a steady job or support from her family, she had also considered leaving Puebla and Mexico.

"There is a lot of discrimination when you come out of the closet and you face all of these critics, first your family and your neighbors who say, 'Why is he like that? He should be normal.' My family thought they could beat me and correct me," said Morales, who now owns her own hair salon.

After a few years, Morales, now 35, improved relations with her family and counts herself among the lucky few transgender people she knows who are not alone.

"I took the same fear I felt and thought, 'I am going to use this emotion and take the situation by the horns and demonstrate that I can stay here and experience life as it comes'," she said.

Allison Castillo Luna, 24, is a native of Veracruz who left an unsupportive family behind in that city to come to Puebla, where she splits her time as a bartender and a sex worker. She does not think about leaving Mexico.

"I say to my friends who have migrated, 'Why are you going? You want work? Here there is work. It's fine here'," said Castillo, sipping a cocktail.

But her insistence faltered at the mention of Torres, the murdered transgender activist who was a licensed psychiatrist, but was working at the time of her death also as a waitress at a bar to supplement her income.

"It's heavy work, there's no question," she said. "When you go with a client you know with maybe 50 percent certainty that something bad is not going to happen to you, that that person is not homophobic or transphobic, that they will not have this instinct to kill you."

Amy Lieberman, the U.N. correspondent for Women's eNews, is a journalist based in New York City. She is reporting from Mexico as part of a reporting grant from the Fund for Investigative Journalism.



News

AGNES TORRES HERNÁNDEZ

"Mi sueño es vivir en una cultura mejor, una donde la hospitalidad y el respeto sean los valores principales. Cada mañana me levanto y hago mucho más que escribir, para que al siguiente día pueda despertar en mi propio sueño. Sólo falta saber ¿Qué harás tú para poder compartirlo?..."



Published on March 13th, 2012 | by *Wild Gender*

Activist Agnes Torres found dead in Puebla, Mexico

TRIGGER ALERT Hate Crime Violence Against Transgender Woman

PUEBLA, MEXICO — Renowned transgender rights advocate, Anges Torres was found dead last Saturday in a ravine in Atlixco, just outside of her home town of Puebla, Mexico. The well known writer and activist for LGBTQ human rights had been missing since last Friday night, March 9.

Today, Torres' murder was confirmed a hate crime. The Gov. of Puebla, Rafael Moreno Valle, said that he and his government are doing everything that's on their hands to bring the killers to justice. This came after the Legislative Assembly of Mexico City urged him to put this as a priority.

According to Milenio, the list of Hate Crimes has been increasing in the past couple of years.

Also today, Mexico City's congressman Juan Pablo Castro (a member of the Conservative Party in Mexico, not an elected official) made headlines for hateful comments, suggesting that "she [Agnes] deserved what happened to her", he wrote on his Twitter account (@jpcastrogamble).

According to reports from the State Attorney's Office, Torres' body was found abandoned in a ditch near an expressway in Atlixco. She had a visible neck wound, burns throughout her body, and visible signs of torture.

"We condemn this crime against a woman, an academic, a psychologist, educator, role model and activist for human rights for women in general and for sexual diversity as a whole," said the Puebla-based LGBTQ organization **No Dejarse Es Incluirse** (NDEI) in a statement released this week.

"We are distraught, pained, enraged and saddened by this crime, and feel powerless over how, yet again, a brave person has succumbed to the most brutal of gender-based violence... in this case, violence against a transgender woman."

No Dejarse Es Incluirse hopes Torres's murder case is treated with respect and that it be solved swiftly. Recently, NDEI called on the Mexican State Congress for sexual and gender identity diversity legislation— in recognition of "femicide" – "a word coined in Mexico to refer to specifically to violence targeted at women that ends in murder, which has reached endemic proportions in the country," according to **2bmag**. "There have been six similar unsolved homicides in the state since the beginning of 2012."

Tags: Agnes Torres, femicide, feminist activist, Juan Pablo Castro, LGBTQ, Rafael Moreno Valle, transgender, transgender woman

About the Author



Wild Gender is an online magazine and creative hub born out of gratitude for the gift of full expression. We are dedicated to creative practices that celebrate gender fluidity, identity and expression. Wild Gender prioritizes visual art, creative writing, and journalistic work by trans/gender-variant individuals who have never before been published in a public venue. Run entirely by volunteers, we are always in search of writers, thinkers, and creators hoping to participate in our growing community.