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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of: _____ **In removal proceedings**	**File No.: A _____**

INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LGBTQ INDIVIDUALS IN PANAMA

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	GOVERNMENTAL SOURCES
1.	**U.S. Dep't of State, *2019 Country Reports on Human Rights Practices: Panama,* (Mar. 11, 2020) *available at*:** https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/panama/ LGBT Discrimination • "The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities." **(p. 17)** • "The PNP's internal regulations describe consensual same-sex sexual conduct by its employees as against policy and potentially grounds for dismissal. Lesbian, gay, bisexual, transgender, intersex (LGBTI) human rights organizations reported harassment of LGBTI persons by security forces as a source of serious concern. On July 5, the new PNP director general stated in a national news interview that members of the LGBTI community can be members of the police force as long as

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	they do not conduct actions that could damage the image of the institution. According to LGBTI NGOs, no changes had been made to internal police policies prohibiting LGBTI persons from serving in the force." **(p. 17)** • "LGBTI NGOs reported hospital personnel refused to provide medical services to a transgender individual in a public hospital in Changuinola, province of Bocas del Toro, early in the year. In June, after attending the Pride Parade, a young man was raped by two men after they saw a rainbow flag in his backpack. The victim sought support from a local NGO and filed a criminal complaint with the Public Ministry. As of November there had been no progress in the case." **(p. 17-18)** • "As of September the 2016 class-action lawsuit before the Supreme Court of Justice requesting Article 26 of the Family Code, which refers to marriage as "the union of a man and a woman" and thus forbids same-sex legal unions, be declared unconstitutional, was still unresolved." **(p. 18)**
2.	**U.S. Dep't of State, *2018 Country Reports on Human Rights Practices: Panama,* (Mar. 13, 2019) *available at*:** https://www.state.gov/wp-content/uploads/2019/03/PANAMA-2018.pdf LGBT Discrimination • "The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities." **(p. 21)** • **"**The PNP's internal regulations describe consensual same-sex sexual conduct by its employees as against policy and potentially grounds for dismissal. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) human rights organizations reported harassment of LGBTI persons by security forces as a source of serious concern." **(p. 21)** • "LGBTI individuals reported mistreatment by health-care workers, including unnecessary quarantines." **(p. 21)**
3.	**U.S. Dep't of State, *2017 Country Reports on Human Rights Practices: Panama,* (Apr. 20, 2018) *available at*: https://www.state.gov/wp-content/uploads/2019/01/Panama.pdf** LGBT Discrimination • **"**The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities." **(p. 19)** • **"**The PNP's internal regulations describe homosexual conduct by its employees as against policy and potentially grounds for dismissal. Harassment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons by security forces was a major complaint of LGBTI rights organizations." **(p. 19)**

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	• "LGBTI individuals reported mistreatment by health-care workers, including unnecessary quarantines." **(p. 20)**
4.	**Canada: Immigration and Refugee Board of Canada, *Panama: Situation of sexual minorities, including treatment by society and authorities; implementation of legislation related to the treatment of sexual minorities; state protection and support services* (Jul. 8, 2013) *available at*:** https://www.refworld.org/docid/5429347a4.html LGBT Discrimination • "Gay couples [in Panama] have no official rights and same-sex relationships, marriages or unions are not recognized, which means that they are not entitled to the same protections and civil rights that heterosexual couples have." **(p. 1)** • "[T]he presence of discrimination and homophobia in everyday life is [translation] 'so ingrained and accepted that some [people] do not even notice [it]'". **(p. 2)** • "[S]ome people were transferred to other jobs because of their sexual orientation." **(p. 2)** • "Harassment of lesbian, gay, bisexual, and transgender (LGBT) persons by security forces was a major complaint of the [AHMNP], ... but formal complaints were rare due to the perception that the reports were not taken seriously or that complaints could be used against claimants in the absence of non-discrimination legislation." **(p. 3)** • "In addition, 'regular incidents in which security forces refused to accept complaints of harassment of transgender individuals' were reported by the Panamanian Association of Transgender People in 2010." **(p. 3)** • "An article published by La Estrella de Panamá indicates that [translation] 'there are, in Panama, pseudo-doctors who offer treatments to "revert" from homosexuality [such as] hypnosis therapies to change the [sexual] orientation' of a person (La Estrella de Panamá 2 June 2013). There are also centers that 'admit patients until they are 'cured' from what they consider a disease' (ibid.). Cited in this same article, a psychologist indicated that [translation] 'hormones, hypnosis, psychotherapy and even less orthodox methods such as the electroshock have been and are used in Panama, and touted as a panacea to reverse homosexuality and cause a "change in the patient's sexual orientation"'". **(p. 4)**
	INTER-GOVERNMENTAL SOURCES
5.	**Excerpt of Inter-American Commission on Human Rights Report, *Recognition of the Rights of LGBTI Persons*, (Dec. 2018), *available at*:** http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf LGBT Discrimination • "The State of Panama reported that Article 35 of the Code of Private International Law (Law No. 61 of October 7, 2015), expressly prohibited marriage between individuals of the same sex." **(p. 122)**

TAB	SUMMARY
6.	**Excerpt of Inter-American Commission on Human Rights Report, *Violence Against LGBTI Persons*, (Nov. 2015), *available at:*** https://www.oas.org/en/iachr/reports/pdfs/violencelgbtipersons.pdf LGBT Discrimination • "In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the region. The IACHR closely monitored killings and other acts of violence during a fifteen-month period (between January 2013 and March 2014). The findings of the Registry of Violence indicate that there were at least 770 acts of violence committed against LGBT persons during this period, across 25 OAS Member States [including Panama]." **(p. 73)**
	NON-GOVERNMENTAL SOURCES
7.	**Human Rights Watch, *Letter to the President of Panama Calling for the Deposition of Transgender People During the Quarantine*, (Apr. 23, 2020), *available at:*** https://www.hrw.org/node/341250/printable/print • "Because the quarantine measures implemented by the Ministry of Health on April 1 require women and men to remain quarantined on alternating days, transgender people are being singled out for profiling by both police and private security guards, and have in some cases been arrested and fined or prevented from buying essential goods." **(p. 1)** • "In the majority of cases, we found that discrimination occurred even though individuals left their homes for essential needs on the day that accorded to the sex marker in their national identification card, in compliance with the rules established by the Ministry of Health. These people opted not to go out on the day that accorded to their gender identity to avoid conflicts with authorities." **(p. 1)** • "Human Rights Watch has also documented three cases of transgender people who suffered discrimination when they left their homes on days in accordance with their gender identity (rather than with the gender marker on their national identity card)." **(p. 2-3)** • "Contrary to international human rights norms, in Panama, modifying legal gender on official documents requires sex reassignment surgery, placing transgender people in Panama in a particularly precarious and vulnerable situation." **(p. 3)**
8.	**Freedom House, *Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities?*, (2019), *available at:*** https://freedomhouse.org/country/panama/freedom-world/2020#CL LGBT Discrimination

TAB	SUMMARY
	• The country's racial minorities and LGBT+ community continue to face obstacles to the full exercise of their political rights. In 2017, activists created a new progressive party, Creemos, with a platform that included legalization of same-sex marriage, but it failed to gain traction and earned no seats in 2019. **(p. 5)**
	ACADEMIC SOURCES
9.	**Hakre S, Arteaga GB, Núñez AE, et al. *Prevalence of HIV, syphilis, and other sexually transmitted infections among MSM from three cities in Panama*, U.S. National Library of Medicine: National Institute of Health, J Urban Health, (Jun. 14, 2014) *available at*:** https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4134449/ LGBT Discrimination • "In Panama and Central America, a situation analysis of stigma and discrimination related to homophobia, transphobia (prejudice expressed against transgender people), the sex trade, and people living with HIV, reported that health centers are still places of discrimination. A group of experts from the Americas who met in 2009 to address the health promotion and health care needs of men who have sex with men (MSM) reported that the MSM population postponed clinical attention for extensive periods of time or chose not to disclose their sexual orientation in previous visits to health care facilities. Such barriers to care make categorizing the type of transmission that affects the country difficult." **(p. 794)** • "Homophobia has been recognized as a driver of the HIV epidemic among MSM in that it prevents men from accessing HIV prevention programs such as HIV and STI testing, counseling, and free condom, mental health, and education services." **(p. 805)**
	MEDIA SOURCES
10.	**Gay Star News, *Panama Under Pressure to Make Same-Sex Marriage Legal After Four Years of Delays*, (Jun. 3 2020), *available at*:** https://www.gaystarnews.com/article/panama-under-pressure-to-make-same-sex-marriage-legal-after-four-years-of-delays/ LGBT Discrimination • "Meanwhile a decision by the Inter-American Court of Human Rights said all the court's member nations should allow same-sex marriage. However, Panama has still failed to act." **(p. 2)** • "In 2004, the Asociacion Hombres y Mujeres Nuevos de Panama, proposed civil unions to give basic rights to same-sex couples in the country. However, the Roman Catholic Church mounted a vicious campaign against the proposal. The church claimed the idea was 'against God's plan' and 'detrimental to the family'. As a result, the proposal never went ahead." **(p. 2)**

TAB	SUMMARY
	• "Then, five out of seven candidates in the 2014 presidential election signed a document promising to protect the 'traditional family'. It stated 'the country should guarantee freedom of religion' and change the law to ensure marriage is 'defined as the union of a man and a woman'. In May that year, Panama banned same-sex marriage and said it wouldn't recognize such marriages from other countries. Moreover, the National Assembly voted in 2019 to put a constitutional ban on marriage equality. It will have to vote on the issue again this year before putting it to a referendum." **(p. 2)** • "But while the Supreme Court has indicated it will bear in mind the Inter-American court's decision, it has still not acted. The court's unwillingness to rule on the case may be because Panama's people remain opposed to marriage equality." **(p. 3)** • "But a 2017 poll showed 78% of Panamanians opposed same-sex marriage and only 22% support it. That's a figure that hasn't shifted since at least 2013." **(p. 3)**
11.	**Pink News, *Transgender People in Panama Alarmed by Gender-based Coronavirus Quarantine Rules*, (April 6, 2020), *available at*:** https://www.pinknews.co.uk/2020/04/06/panama-trans-community-gender-quarantine-rules-coronavirus/ LGBT Discrimination • "Under the new rules, implemented on April 1, men and women are only allowed out of the house on specific, separate days – and police are checking the gender on the ID cards of people on the streets." **(p. 1)** • "There are still police patrols who use the argument that God only created Adam and Eve," association president Ricardo Beteta told *AFP*." **(p. 2)** • "[O]n the first day of the new gendered social-distancing rules – a trans woman called Bárbara Delgado was stopped by police on her way to work. Police saw the male gender marker on her ID card and took her to the police station, where she was accused of not being a woman, held for three "humiliating" hours and then released with a fine, according to Human Rights Watch." **(p. 2)**
12.	**The Advocate, *How Panama Sits at World's Crossroads of LGBTQ Rights*, (Nov. 1, 2019), *available at*:** https://www.advocate.com/commentary/2019/11/01/how-panama-sits-worlds-crossroad-lgbtq-rights LGBT Discrimination • "It is a diverse, vibrant country. It also has an extreme prejudice against LGBTQ people, especially transgender people. They are, in effect, second class citizens. Worse, the law supports this discrimination." **(p. 2)** • "Panama, one of the most thriving economies in Central America, currently has some of the most backward legislation on LGBTQ rights in the continent.

TAB	SUMMARY
	LGBTQ people have little protection against discrimination under the law, and the police consider their existence a grave offense." **(p. 2)** • "It all starts with the Constitution. Panama's magna carta doesn't contemplate any specific protection for citizens with different sexual identities or orientation. The Family Code, a legal text that dictates family issues, specifically stipulates that marriage is the union between a man and a woman. So same sex marriage is illegal." **(p. 3)** • "Indi Lucia is a 3D animator and graphic designer working for La Cascara, a comedy tv show made up of skits about popular Panamanian tropes. Homophobic slurs are played for laughs. There are even sound effects to mock someone for being effeminate. When she started working there, Indi Lucia used her birthname and hadn't started socially transitioning yet. 'Locker room talk' was common, and it was not rare to hear jabs at her about some piece of clothing she was wearing, or the time she put on makeup to go to the office. Finally, she told her boss, one of the biggest 'jokers,' that she was a woman and wanted to come to the office dressed as such. The laughs stopped. Surprisingly, for all the poor taste jokes, her boss was supportive. But not everyone in the office was. Female coworkers complained to Human Resources about her using the bathroom, sneers and mocking laughs could be heard behind her back. Sometimes, when she entered a room, silence ensued, followed by the buzz of gossip. There is barely any legal protection for Indi Lucia." **(p. 3-4)** • "According to the official internal manual of the National Police, being homosexual is a "grave offense" that merits immediate employment termination. So, if Indi Lucia or any LGBTQ person in Panama feels unsafe, there is no guarantee they'd get help from the police. In fact, they may end up being sent arbitrarily to jail for temporary custody." **(p. 4)** • "The first question President Laurentino Cortizo was asked when he received the election results was whether he would stand by traditional families. He looked up, opened his arms toward his wife and daughters and replied: 'Look at me. Laurentino Cortizo is a family man.'" **(p. 4)**
13.	**Savannah Morning News, *Homosexuality in Central America (Part One)*, (Jul. 2018), *available at:*** https://www.savannahnow.com/news/20180731/homosexuality-in-central-america-part-one LGBT Discrimination • "CNN reports that an estimated 600 people died across Central America from anti-LGBT violence in the 15 months between January 2013 and March 2014." **(p. 1)** • "Central America is composed of seven countries- Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Guatemala, and Belize. This region has some of the world's highest rates of violence against the LGBT community." **(p. 2)** • "…gays do not have official rights, which means that same-sex relationships, marriages, and civil unions are not recognized by the government. This makes homosexual couples ineligible for certain protections and civil rights enjoyed by

TAB	SUMMARY
	heterosexual couples. Only about 12 percent of Panamanians support the legalization of same-sex marriage according to blogger, Omar Fuentes, who runs the blog, Casa de Montana." **(p. 2)** • "Born and raised in Panama City, Panama, Ricardo Beteta Bond, 59, has experienced a lifetime of discrimination and violence because of his sexuality. For the last fourteen years, Bond has been a Human Rights Activist in Panama fighting for equality and social justice." **(p. 2)** • "'When I was a child, I was very subjective (about gender),' said Bond. 'When I was a teenager, I used to dance in ballet. This created a lot of issues in my family, at school, and even my neighborhood. I was bullied several times and raped twice.'" Along with the physical threats, Bond has also been exposed to verbal abuse via social media." **(p. 2-3)** • "The national authorities do not recognize our population," Bond said. "We have problems with the national police where they enact social cleansing. You cannot even walk around the street holding hands or kissing in public." **(p. 4)** • "The Panamanian National police force, who act as the official law enforcement arm of the government, has a chapter in its bylaws prohibiting members of the GLBT community from joining their ranks." **(p. 4)** • "According to Bond, politicians in Panama seek to inhibit gender ideology by promoting the idea that the LGBT community wants to harm the country and erode 'family moral values.'" **(p. 4)**

Dated: [DATE]
[CITY, STATE]

Respectfully submitted,

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Tab 1

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2019 Country Reports on Human Rights Practices: Panama

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Executive Summary

Panama is a multiparty constitutional democracy. In May voters chose Laurentino Cortizo Cohen as president in national elections that international and domestic observers considered generally free and fair.

The country has no military forces. The Panama National Police (PNP) is principally responsible for internal law enforcement and public order, while additional security forces are responsible for border control and aero naval security. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included: harsh prison conditions; restrictions on free expression, the press, and the internet, including through censorship and criminal libel lawsuits; and forced child labor.

The law provides criminal penalties for corruption by officials, but the government general not implement the law effectively.

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A. ARBITRARY DEPRIVATION OF LIFE AND OTHER UNLAWFUL OR POLITICALLY MOTIVATED KILLINGS

There were no reports the government or its agents committed arbitrary or unlawful killings.

B. DISAPPEARANCE

There were no reports of disappearances by or on behalf of government authorities.

C. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

The constitution prohibits such practices, and there were no reports that government officials employed them.

PRISON AND DETENTION CENTER CONDITIONS

Prison conditions remained harsh, primarily due to overcrowding, a shortage of prison guards, and inadequate medical services and sanitary conditions.

Physical Conditions: As of September the prison system, with an intended capacity of 14,946 inmates, held 17,360 prisoners. Pretrial detainees shared cells with convicted prisoners due to space constraints. Prison conditions for women were generally better than for men, but conditions for both populations remained poor, with some overcrowded facilities, poor inmate security and medical care, and a lack of basic supplies for personal hygiene. Authorities acknowledged that staff shortages limited exercise time for inmates on certain days. Female inmates participated more in rehabilitation programs than male inmates.

The Ministry of Health conducted two vaccination campaigns in prisons during the year. HIV/AIDS and tuberculosis treatments were available once a month, but high-blood-pressure medication and insulin were scarce. Inmates with tuberculosis were detained in one prison in order to facilitate access to medications and a special diet.

year and provided monthly HIV/AIDS and tuberculosis treatments. Approximately 60 percent of complaints received by the Ombudsman's Office from January through October were related to the lack of access to medical attention and medications for prisoners. Authorities permitted relatives of inmates to bring medicine, although there were reports that some relatives paid bribes to prison personnel, including police agents, to bypass the required clearances. Authorities transferred patients with serious illnesses to public clinics, but there were constant difficulties in arranging inmate transportation, so that inmates often missed medical appointments with specialized physicians. Because the Ministry of Government's National Directorate of the Penitentiary System (DGSP) did not have ambulances, inmates were transported in police vehicles or in emergency services ambulances when available. Emergency services ambulance staff were reluctant to service the prisons due to societal stigma. A lack of prison guards also affected the transfers.

As of December, 17 male inmates had died in custody, 16 due to inmate-on-inmate violence.

Administration: Authorities conducted investigations of credible allegations of mistreatment.

Independent Monitoring: The government permitted prison monitoring by independent nongovernmental observers. During the year the Ombudsman's Office and the director and deputy director of the National Mechanism to Prevent Torture conducted unannounced visits to the prisons without restrictions. Human rights nongovernmental organizations (NGOs) seeking access to prisons during visiting hours were required to send a written request to the DGSP 15 days in advance.

D. ARBITRARY ARREST OR DETENTION

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government generally observed these prohibitions.

ARREST PROCEDURES AND TREATMENT OF DETAINEES

The law requires arresting officers to inform detainees immediately of the reasons for arr detention and of the right to immediate legal counsel. Detainees gained prompt access to legal

opened prior to the transition continued to be processed under the previous inquisitorial system. Both systems demonstrated vulnerabilities to corruption, inefficiencies, and bureaucratic obstacles, although SPA brought improvements, such as a reduction in pretrial detentions, and an 85 percent reduction in the duration of case resolution. Time limits were also implemented to prevent lengthy delays as occurred under the inquisitorial system, in some cases for years.

Under the SPA, bail exists but was rarely granted because of the implementation of a less costly provisional release system. Under the inquisitorial system, a functioning bail procedure existed for a limited number of crimes but remained largely unused. Most bail proceedings were at the discretion of the Prosecutor's Office and could not be initiated by detainees or their legal counsel. Bail was granted in high-profile corruption cases, which prompted complaints by civil society about the Public Ministry's administering "selective" justice.

The law prohibits police from detaining adult suspects for more than 48 hours but allows authorities to detain minor suspects for 72 hours. In the accusatorial system, arrests and detention decisions were made on a probable cause basis.

Pretrial Detention: According to DGSP statistics, 43 percent of inmates had not been convicted (a decrease of 52 percent from the previous year) and 38 percent of those had been in pretrial detention for more than a year. The pretrial detention rate reflected the fact that cases begun under the inquisitorial system must still be processed under that system, while the country continued to fully transition to the SPA.

E. DENIAL OF FAIR PUBLIC TRIAL

While the law provides for an independent judiciary, the judicial system was inefficient and susceptible to corruption as well as internal and external influence, and it faced allegations of manipulation by the executive branch. In August a superior court confirmed a 2018 lower criminal court judge's decision to dismiss embezzlement charges for eight million balboas (eight million dollars) against 22 government officials and businesspersons, many of whom were influential in the community.

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proceedings did not have access to these proceedings until a verdict was reached. Under the inquisitorial system, judges could decide to hold private hearings and did so in high-profile cases. Consequently, the judiciary sometimes faced accusations, particularly in high-profile cases, of procedural irregularities. Since most of these cases had not reached conclusion, however, the records remained under seal. Interested parties generally did not face gag orders, but because of this mechanism, it was difficult to verify facts.

TRIAL PROCEDURES

The law provides for the right to a fair and public trial, and the judiciary generally enforced this right. The law provides that all citizens charged with crimes enjoy the right to a presumption of innocence. They have the right to be informed promptly and in detail of the charges (with free interpretation as necessary for non-Spanish speaking inmates), to have a trial without undue delay, to have counsel of their choice and adequate time and facilities to prepare a defense, to refrain from incriminating themselves or close relatives, and to be tried only once for a given offense. The accused may be present with counsel during the investigative phase of proceedings.

During the year all new criminal cases were tried under the SPA, and trials were open to the public. The SPA stipulates that trials must be completed in less than 18 months. Judges may order the presence of pretrial detainees for providing or expanding upon statements or for confronting witnesses. Trials are conducted based on evidence presented by the public prosecutor. Defendants have the right to be present at trial and to consult with an attorney in a timely manner, along with the right to enter into a plea deal. Defendants may confront or question adverse witnesses and present their own witnesses and evidence. Defendants have a right of appeal. The judiciary generally enforced these rights.

Public defenders failed to enact orders for early release of inmates in a timely fashion, despite written instructions from the judicial branch. Failure to enforce judicial branch instructions in the penitentiary system was common during the year. In one case a government official said that the Public Defenders' Office did not process a written release order in a timely manner. As a result, the inmate (who had already completed two-thirds of his sentence and was eligible for early release in August 2018) contracted tuberculosis in January while still imprisoned. The judge reportedly allowed for immediate release of this inmate in November.

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CIVIL JUDICIAL PROCEDURES AND REMEDIES

Citizens have access to the courts to bring lawsuits seeking damages for, or cessation of, human rights violations, although most do not pursue such lawsuits due to the length of the process. There are administrative and judicial remedies for alleged wrongs, and authorities often granted them to citizens who followed through with the process. The court can order civil remedies, including fair compensation to the individual injured. Individuals or organizations who have exhausted domestic remedies may initiate cases involving violations of an individual's human rights by submitting petitions to the Inter-American Commission on Human Rights.

F. ARBITRARY OR UNLAWFUL INTERFERENCE WITH PRIVACY, FAMILY, HOME, OR CORRESPONDENCE

The law prohibits arbitrary interference with privacy, family, home, or correspondence, and the government generally respected these prohibitions.

On August 9, a three-judge panel under the accusatory system found former president Ricardo Martinelli not guilty of any of the four criminal charges he faced: violation of secrecy laws and privacy, unlawful surveillance, embezzlement, and abuse of authority. The panel's ruling indicated that the Public Ministry had made procedural mistakes and therefore would not allow hard evidence and witness testimonies. On August 26, the ruling was formalized, and all restrictions on Martinelli, including travel, were lifted. The prosecutor was appealing the ruling before the Supreme Court as of October.

Section 2. Respect for Civil Liberties, Including:

A. FREEDOM OF EXPRESSION, INCLUDING FOR THE PRESS

The constitution provides for freedom of expression, including for the press. The government generally respected this right, but journalists and media outlets noted an increase in criminal and civil libel/slander lawsuits, which they considered a threat to freedom of expression and fr of the press.

Assembly media balcony to prevent her from covering a migration bill. Two days later the National Assembly budget committee met behind closed doors to avoid press coverage, which was not standard practice. Both actions resulted in complaints from opposition deputies and civil society leaders.

Libel/Slander Laws: According to local media, former president Ricardo Martinelli submitted 50 libel/slander lawsuits against local media, 26 of which were issued after he was declared not guilty on August 9 of illegal wiretapping. Reports stated Martinelli's civil lawsuits against daily newspapers *El Siglo*, *La Prensa*, and *Mi Diario* included media employees whose work was not related to judicial or political reporting (editorial cartoonists and graphic designers).

In May Corprensa (which owns *La Prensa* and *Mi Diario*) was found guilty in a libel/slander lawsuit filed by former first lady Marta de Martinelli. The corporation was sentenced to pay $25,000 balboas ($25,000) in damages and 6,000 balboas ($6,000) to cover legal expenses.

On September 2, Martinelli filed a civil lawsuit against TVN Information vice president and television host Sabrina Bacal, seeking one million balboas (one million dollars) in damages for calling him a thief during a public interview.

Following these legal actions, on September 3, media associations Journalism National Council and the Journalists Forum for Freedom of Expression and Information issued a joint statement requesting the Judicial Branch and Public Ministry keep "vigilant" regarding the "growing trend to abuse the justice system, using it as a censorship, intimidation, and persecution tool against journalists and media."

Media organizations and media leaders claimed these lawsuits hindered reporting on specific cases and individuals and were likely intended to financially damage media corporations.

INTERNET FREEDOM

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communicat without appropriate legal authority.

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B. FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

C. FREEDOM OF RELIGION

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

D. FREEDOM OF MOVEMENT

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

E. INTERNALLY DISPLACED PERSONS

Not applicable.

F. 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. The Panamanian National Office for Refugees (ONPAR) had a backlog of more than 15,000 cases and usually approved only 1 percent of asylum requests. ONPAR processed asylum applications and then referred applications to the National Commission for Refugees, an interagency committee that decides the final status of every case. The process of obtaining refugee status currently takes two to three years, during which only asylum seekers admitted into the process had the right to work. The current asylum application process can take up to one year for applicants to even be admitted into the system, which was not a guarantee of asylum approval.

The government approved and implemented the protocol for identification, referral, and attention for minors requiring international protection; however, the institutional protocol

medical assistance to migrants. At least one camp in the Darien did not have regular access to potable water and at times presented unsanitary conditions, especially when dealing with high volumes of migrants. The government reported continued migrations of persons from Cuba, Haiti, South Asia, India, and Africa.

According to the UN High Commissioner for Refugees (UNHCR) and its NGO implementing partners, thousands of persons living in the country were possibly in need of international protection. These included persons in the refugee process, persons denied refugee status, and persons who did not apply for refugee status due to lack of knowledge or fear of deportation.

Employment: Refugees recognized by authorities have the right to work, but recognized refugees complained that they faced discriminatory hiring practices. In an effort to prevent this discriminatory practice, ONPAR removed the word “refugee” from recognized refugees’ identification cards. By law individuals in the process of applying for asylum do not have the right to work; however, beginning in May those who had been formally admitted into the asylum process could request a one-year work permit that could be renewed as many times as needed.

Access to Basic Services: Education authorities sometimes denied refugees access to education and refused to issue diplomas to others if they could not present school records from their country of origin. The Ministry of Education continued to enforce the government’s 2015 decree requiring schools to accept students in the asylum process at the grade level commensurate with the applicants’ prior studies. As a result of the long wait times to be entered into the asylum system, many applicants encountered difficulties accessing basic services such as health care, financial services, and appropriate housing.

Durable Solutions: The law allows persons legally recognized as refugees or with asylum status who have lived in the country for more than three years to seek permanent residency.

G. STATELESS PERSONS

The government continued to work with Colombia to recognize approximately 200 stateles persons on the border. The governments of Panama and Costa Rica, with the cooperatio UNHCR, continued to use a mobile registry office on their common border to register indigenous

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Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot based on universal and equal suffrage. Naturalized citizens may not hold specified categories of elective office, such as the presidency.

ELECTIONS AND POLITICAL PARTICIPATION

Recent Elections: In May voters chose Laurentino Cortizo Cohen as president in national elections that independent observers considered generally free and fair. Elected at the same time were 71 national legislators, 81 mayors, 679 local representatives, and nine council members. A group of international observers from the Organization of American States, the EU, electoral NGOs, regional electoral authorities, and members of the diplomatic corps considered the elections fair and transparent.

Political Parties and Political Participation: The law requires new political parties to meet strict membership and organizational standards to gain official recognition and participate in national campaigns. Political parties must obtain the equivalent of 2 percent of the total votes cast to maintain legal standing.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government generally did not implement the law effectively. The government used anticorruption mechanisms such as asset forfeiture, whistleblower and witness protection, plea bargaining, and professional conflict-of-interest rules to address corrupt practices among government employees and security forces. Nevertheless, corruption remained a problem in the executive, judicial and legislative branches as well as in the security forces.

order denied requests for extensions of the legal timelines for more investigations. In a March hearing, an anticorruption prosecutor asked a criminal judge to convict six penitentiary system employees for corruption and six individuals are under fraud charges. Corruption and a lack of accountability among police continued to be a problem. The new administration that took office in July made personnel changes in all public forces agencies. Agents were dismissed on grounds of corruption and were under investigation by the Public Ministry. Mechanisms to investigate and punish abuse and corruption in the security forces remain centralized and opaque. The government rarely made cases of police abuse or corruption public, and the National Criminal Statistics Directorate was unable to provide strong data on police internal affairs.

As of September the Public Ministry continued the investigations of the Comptroller General's Office's 2018 audits of transactions between 2009 and 2014 by elected local representatives. The comptroller alleged a misuse of public funds through irregular contracts carried out by the Martinelli administration's National Assistance Program. No charges were filed during the year.

The 2018 corruption cases filed by the Comptroller General's Office before the Supreme Court against deputies from all political parties represented in the National Assembly were still under investigation by the court as of September.

The case continued against former minister of the presidency Demetrio "Jimmy" Papadimitriu and former minister of public works Jaime Ford, both in the Martinelli administration, detained in 2018 for alleged links to bribes paid by Brazilian multinational construction company Odebrecht. Both individuals faced money laundering and corruption charges. They were released on bail but could not leave the country without a court order. The cases remained under the inquisitorial system. Papadimitriu's mother, Maria Bagatelas, a private citizen also involved in the Odebrecht case, was under house arrest, but in August the Supreme Court changed the measure and issued an order forbidding her from departing the country without a court's approval.

Financial Disclosure: The law requires certain executive and judiciary officials to submit a financial disclosure statement to the Comptroller General's Office. The information is not made public unless the official explicitly gives permission.

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Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

Government Human Rights Bodies: The ombudsman, elected by the National Assembly, has moral but not legal authority. The Ombudsman's Office received government cooperation and operated without government or party interference; it referred cases to the proper investigating authorities.

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

WOMEN

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, with prison terms of five to 10 years. Rapes continued to constitute the majority of sexual crimes investigated by the National Police Directorate of Judicial Investigation. Eighty percent of the victims were women and 63 percent of those were younger than 17.

The law against gender violence stipulates stiff penalties for harassment and both physical and emotional abuse. The law states that sentencing for femicide is a mandatory 25 to 30 years in prison. Officials and civil society organizations agreed that domestic violence continued to be a serious crime. The PNP Specialized Unit for Domestic and Gender Violence created in 2018 continued to have 190 agents trained to work these cases. In June, Roberto Moreno Grajales was convicted and sentenced to 30 years prison for the 2016 killing of his former girlfriend, Diosila Martinez. He had originally fled to Costa Rica after the killing but was extradited in 2018 to Panama.

The Ombudsman's Office continued its program *Mujer Conoce tus Derechos* (Woman, Know Your Rights), which included a wide distribution of flyers. In May the National Institute for Wom Affairs (INAMU) established 24/7 hotline 182 to give legal guidance to victims of domestic

Sexual Harassment: The law prohibits sexual harassment in cases of employer-employee relations in the public and private sectors and in teacher-student relations. Violators face a maximum three-year prison sentence. The extent of the problem was difficult to determine, because convictions for sexual harassment were rare, pre-employment sexual harassment was not actionable, and there was a lack of formal reports. During the year the Ministry of Labor, UN Development Program, and NGO SUMARSE began to develop a protocol for private sector employers on how to investigate and deal with labor and sexual harassment within companies.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The law prohibits discrimination based on gender, and women enjoyed the same legal status and rights as men. The law recognizes joint property in marriages. The law mandates equal pay for men and women in equivalent jobs. Although an illegal hiring practice, some employers continued to request pregnancy tests. There were two cases reported in the countryside of temporary workers who terminated their pregnancies once the condition became obvious, presumably due to fear of being fired.

CHILDREN

Birth Registration: The law provides citizenship for all persons born in the country, but parents of children born in remote areas sometimes had difficulty obtaining birth registration certificates.

Child Abuse: Child abuse is illegal. The law has several articles pertaining to child abuse and its penalties, which depend on the type of abuse and range from six months to 20 years' imprisonment if the abuse falls under a crime that carries a higher penalty. Public Ministry statistics as of August reported that 2,090 children were victims of different types of abuse; the Public Ministry believed this figure was underreported. The Ministry of Social Development maintained a free hotline for children and adults to report child abuse and advertised it widely. The ministry provided funding to children's shelters operated by NGOs and continued a program that used pamphlets in schools to sensitize teachers, children, and parents about mistreat and sexual abuse of children.

Sexual Exploitation of Children: The law prohibits the commercial sexual exploitation, sale, and offering for prostitution of children, in addition to child pornography. Officials from the Ministry for Public Security continued to prosecute cases of sexual abuse of children, including within indigenous communities. Ministry officials believed that commercial sexual exploitation of children occurred, including in tourist areas in Panama City and in beach communities, although they did not keep separate statistics. In September, seven Panamanians were detained for their connections to an international child pornography ring based in Brazil. For two and one-half months, Panama and Brazil worked together with authorities in El Salvador, Paraguay, Chile, Ecuador, and other foreign countries to capture and imprison the individuals responsible for this child pornography ring as part of Operation *Luz de la Infancia*.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Child Abduction* at **https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html**.

ANTI-SEMITISM

Jewish community leaders estimated there were 15,000 Jews in the country. There were no known reports of anti-Semitic acts.

TRAFFICKING IN PERSONS

See the Department of State's *Trafficking in Persons Report* at **https://www.state.gov/trafficking-in-persons-report/**.

PERSONS WITH DISABILITIES

The law prohibits discrimination based on physical, sensory, intellectual, or mental disabilities; however, the constitution permits the denial of naturalization to persons with mental or physical disabilities. The law mandates access to new or remodeled public buildings for persons with disabilities and requires that schools integrate children with disabilities. Despite provision law, persons with disabilities experienced discrimination in a number of these areas.

limited access to the old stations, although the newly inaugurated Metro Line 2 had ramp access. Most businesses had wheelchair ramps and accessible parking spaces to avoid fines, but in many cases they did not meet the government's size specifications.

In September the National Secretariat for People with Disabilities began a free shuttle service from the city's largest bus terminal for individuals with disabilities that needed to visit their offices, which were located in a residential neighborhood with limited public transportation.

Some public schools admitted children with mental and physical disabilities, but most did not have adequate facilities for children with disabilities. Few private schools admitted children with disabilities, as they are not legally required to do so. The high cost of hiring professional tutors to accompany children to private schools–a requirement of all private schools–precluded many students with disabilities from attending.

The government-sponsored Guardian Angel program continued to provide a monthly subsidy of 80 balboas ($80) for children with significant physical disabilities living in poor conditions.

As of September, 1,440 individuals with disabilities were hired by local companies per Ministry of Labor statistics. This was an increase from the yearly average number of individuals with disabilities hired between 2014 and 2018. The law stipulates that employers who hire individuals with disabilities receive tax breaks at the end of the fiscal year.

NATIONAL/RACIAL/ETHNIC MINORITIES

Minority groups were generally integrated into mainstream society. Prejudice was directed, however, at recent legal immigrants, the Afro-Panamanian community, and indigenous Panamanians. Cultural and language differences and immigration status hindered the integration of immigrant and first-generation individuals from China, India, and the Middle East into mainstream society. Additionally, some members of these communities were reluctant to integrate.

The Afro-Panamanian community was underrepresented in positions of political and econ
power. Areas where they lived lagged in terms of government services and social investm
The government's National Secretariat for the Development of Afro-Panamanians focused on the

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Panamanian population in the upcoming 2020 census.

The law prohibits discrimination in access to public accommodations such as restaurants, stores, and other privately owned establishments; no complaints were filed. The Ombudsman's Office intervened in several cases before students with Rastafarian braids were permitted entry into public school classrooms.

There were reports of racial discrimination against various ethnic groups in the workplace. Lighter-skinned persons continued to be overrepresented in management positions and jobs that required dealing with the public, such as bank tellers and receptionists. A July report by the UN Development Program and the National Institute on Women stated that Afro-Panamanian women were 10 times more susceptible to discrimination in the workplace than women from other races.

INDIGENOUS PEOPLE

The law affords indigenous persons the same political and legal rights as other citizens, protects their ethnic identity and native languages, and requires the government to provide bilingual literacy programs in indigenous communities. Indigenous individuals have the legal right to take part in decisions affecting their lands, cultures, traditions, and the allocation and exploitation of natural resources. Nevertheless, they continued to be marginalized in mainstream society. Traditional community leaders governed *comarcas* (legally designated semiautonomous areas) for five of the country's seven indigenous groups. The government also unofficially recognized eight other traditional indigenous government authorities. Government institutions recognized these eight regions were traditionally organized indigenous settlements and territories not included when the original comarcas were created.

Government officers continued to meet with traditional organized authorities from the indigenous community, and many requested recognition of their land via collective titles. No collective land titles were granted during the year, however, and land conflicts continued to arise. In March the bill for Naso Comarca was sent to the Supreme Court of Justice to decide if it is constitutional after a veto by the president in December.

Bugle and the government continued to negotiate details of the dam's operation.

Although the law is the ultimate authority in indigenous comarcas, many indigenous persons had not received sufficient information to understand their rights and, due to the inadequate system of education available in the comarcas, failed to use available legal channels.

In February the government established the Governing Committee for the National Indigenous Peoples Development Plan, with three representatives of the indigenous groups and government entities to ensure the implementation of the plan.

Societal and employment discrimination against indigenous persons was widespread. Employers frequently denied indigenous workers basic rights provided by law, such as a minimum wage, social security benefits, termination pay, and job security. Laborers on the country's agricultural plantations (the majority of whom were indigenous persons) continued to work in overcrowded and unsanitary conditions. The Ministry of Labor conducted limited oversight of working conditions in remote areas.

Deficiencies in the educational system continued in the comarcas, especially beyond the primary grades. There were not enough teachers in these remote and inaccessible areas, with many schools poorly constructed and lacking running water. Teachers and students in remote areas of the comarcas continued to sporadically protest poor road and school conditions. Access to health care was a significant problem in the indigenous comarcas, despite government investment in more health infrastructure and staff. This was reflected in high rates of maternal and infant mortality, malnutrition, and an increase in HIV rates. The government continued to execute the Indigenous Development Plan jointly developed with indigenous leaders in 2013.

ACTS OF VIOLENCE, DISCRIMINATION, AND OTHER ABUSES BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities.

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(LGBTI) human rights organizations reported harassment of LGBTI persons by security forces as a source of serious concern. On July 5, the new PNP director general stated in a national news interview that members of the LGBTI community can be members of the police force as long as they do not conduct actions that could damage the image of the institution. According to LGBTI NGOs, no changes had been made to internal police policies prohibiting LGBTI persons from serving in the force.

LGBTI NGOs reported hospital personnel refused to provide medical services to a transgender individual in a public hospital in Changuinola, province of Bocas del Toro, early in the year. In June, after attending the Pride Parade, a young man was raped by two men after they saw a rainbow flag in his backpack. The victim sought support from a local NGO and filed a criminal complaint with the Public Ministry. As of November there had been no progress in the case.

As of September the 2016 class-action lawsuit before the Supreme Court of Justice requesting Article 26 of the Family Code, which refers to marriage as “the union of a man and a woman” and thus forbids same-sex legal unions, be declared unconstitutional, was still unresolved.

HIV AND AIDS SOCIAL STIGMA

The law prohibits discrimination against persons with HIV/AIDS in employment and education. Discrimination, however, continued to be common due to ignorance of the law and a lack of mechanisms for ensuring compliance. LGBTI individuals reported mistreatment by health-care workers, including unnecessary quarantines.

Human rights NGOs reported receiving complaints of labor discrimination when employers found out employees were HIV positive, despite the fact that the law prohibits discrimination against persons with sexually transmitted diseases, as well as their immediate relatives. Employees are not obligated to disclose their condition to the employer, but if they do so, the employer must keep the information confidential. LGBTI NGOs reported at least one employer who allegedly sought ways to dismiss an HIV-positive employee who had 15 years of service at the company. Health Ministry representatives made a public call to employers to follow the law and asked laid-off employees to reach out to them for legal advice. Employers can be fined not keeping an employee’s medical condition confidential.

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of interest from administrative offices at the Ministry of Health and the Social Security clinics led to late purchase orders and late payment of providers, implying systematic prejudice against HIV-positive individuals within the health-care system.

Section 7. Worker Rights

A. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

The legal framework of labor laws is based upon the Labor Code of 1971, which provides for private-sector workers to form and join independent unions, bargain collectively, and conduct strikes. By law the majority of public-sector employees can strike but may not organize unions. Instead, those public-sector employees may organize professional associations that would bargain collectively on behalf of its members, although the public entity is not legally obligated to bargain with the association. Under the previous Varela administration, the Ministry of Labor registered more than 10 public-sector unions within a few ministries, such as the Ministry of Public Works, Ministry of Economy and Finance, Maritime Authority, among others. As a result the government is not obligated to engage in negotiations with the professional associations within these entities. The National Federation of Public Servants (FENASEP), an umbrella federation of 25 public-sector worker associations, traditionally fought for the establishment of rights similar to those of private-sector unions. The law prohibits antiunion discrimination and requires reinstatement of workers terminated for union activity but does not provide adequate means of protecting from rights violations.

Unions and associations are required to register with the Ministry of Labor. If the ministry does not respond to a private-sector union registration application within 15 calendar days, the union automatically gains legal recognition, provided the request is submitted directly with supported documentation established by law. In the public sector, professional associations gain legal recognition automatically if the General Directorate for Administrative Public Sector Careers does not respond to registration applications within 30 days. From January to September, the General Directorate approved seven public and 10 private union formation applications.

The Ministry of Labor Board of Appeals and Conciliation has the authority to resolve certa disagreements, such as internal union disputes, enforcement of the minimum wage, and s

either party to appeal if arbitration is mandated during a collective dispute in a public service company. The Ministry of Labor Board of Appeals and Conciliation has sole competency for disputes related to domestic employees, some dismissal issues, and claims of less than $1,500. The Minister of Labor initiated biennial minimum wage negotiations in August and was to act as a moderator between union and private-sector stakeholders.

Government-regulated union membership policies place some restrictions on freedom of association. The constitution mandates that only citizens may serve on a union's executive board. In addition, the law requires a minimum of 40 persons to form a private-sector union (either by a company across trades or by trade across companies) and allows only one union per business establishment. The International Labor Organization criticized the 40-person minimum as too large for workers wanting to form a union within a company. Many domestic labor unions, as well as the public and private sectors, reiterated their support for keeping the figure at 40 individuals.

In the public sector, professional associations represent the majority of workers. The law stipulates only one association may exist per public-sector institution and permits no more than one chapter per province. At least 50 public servants are required to form a professional association. No law protects the jobs of public-sector workers in the event of a strike. FENASEP contended there was no political will to allow all public servants within ministries to form unions, because this could eliminate positions for political appointees.

The law prohibits federations and confederations from calling strikes, as well as strikes against the government's economic and social policy. Individual professional associations under FENASEP may negotiate on behalf of their members, but the Ministry of Labor can order compulsory arbitration. FENASEP leaders noted that collective bargaining claims were heard and recognized by employers but did not result in tangible results or changes, particularly in cases of dismissals without cause.

According to the labor code, the majority of private-sector employees must support a strike, and strikes are permitted only if they are related to the improvement of working conditions, a collective bargaining agreement, for repeated violations of legal rights, or in support of ar strike of workers on the same project (solidarity strike). In the event of a strike, at least 20 u

telecommunications, and public availability of essential food.

Strikes in essential transportation services are limited to those involving public passenger services. The law prohibits strikes for Panama Canal Authority (ACP) employees but allows professional associations to organize and bargain collectively on issues such as schedules and safety, and it provides arbitration to resolve disputes. (The ACP is an autonomous entity, with independence from the central government).

The Ministry of the Presidency Conciliation Board hears and resolves public-sector worker complaints. The board refers complaints it cannot resolve to an arbitration panel, which consists of representatives from the employer, the professional association, and a third member chosen by the first two. If the dispute cannot be resolved, it is referred to a tribunal under the board. Observers, however, noted that the Ministry of the Presidency had not designated the tribunal judges. The alternative to the board is the civil court system.

Cases presented in the courts tend to favor employers. FENASEP noted that one public-sector institution had appealed more than 100 complaints to the Supreme Court, only two of which resulted in rulings in favor of the public-sector employee. While Supreme Court decisions are final, labor organizations may appeal their case results in international human rights courts.

One labor strike and labor protest occurred during the year. Workers at the Balboa port conducted a July 17-28 strike against Panama Ports' decision to appeal collective agreement negotiations in the Supreme Court. (Note: Panama Ports was previously owned by the state but was privatized, and a Hong Kong-based company won the concession. End note). According to reports, these appeals subsequently delayed salary increases and working condition improvements. The strike ended on July 29, after the Ministry of Labor mediated an agreement between port workers and employers that promoted worker safety regulations and business economic welfare.

The Allied Association of Transport Port Ex-Employees' (ASOTRAP) hosted an August labor walk to the Panamanian Presidency to pressure both the Inter-American Commission of Human Rights and the Cortizo Administration to address claims that terminated Balboa and Cristobal pc workers did not receive severance pay guaranteed by law when those ports were privatize

wages annually (one-third paid April 15, one-third paid August 15, and the last third on December 15). ASOTRAP also contended that the Inter-American Commission of Human Rights had not made a ruling on the case. Although the commission sent ASOTRAP a letter acknowledging receipt of the case in 2015, ASOTRAP contended that the commission had not made a final case ruling.

B. PROHIBITION OF FORCED OR COMPULSORY LABOR

The law prohibits all forms of forced labor of adults or children, as well as modern-day slavery and human trafficking. The law establishes penalties sufficiently stringent to deter violations. The government effectively enforced the law. There continued to be reports of Central and South American and Chinese men exploited in forced labor in construction, agriculture, mining, restaurants, door-to-door peddling, and other sectors; traffickers reported using debt bondage, false promises, lack of knowledge of the refugee process and irregular status, restrictions on movement, and other means. There also were reports of forced child labor (see section 7.c.).

Also, see the Department of State's *Trafficking in Persons Report* at **https://www.state.gov/trafficking-in-persons-report/**.

C. PROHIBITION OF CHILD LABOR AND MINIMUM AGE FOR EMPLOYMENT

The law prohibits all of the worst forms of child labor. The law prohibits the employment of children younger than 14, although children who have not completed primary school may not begin work until 15. The family code permits children ages 12 to 14 to perform domestic and agricultural work with regard to schedule, salary, contract, and type. The law allows children ages 12 to 15 to perform light work in agriculture if the work is outside regular school hours. The law also allows a child older than 12 to perform light domestic work and stipulates employers must ensure the child attends school through primary school. The law neither defines the type of light work children may perform nor limits the total number of light domestic work hours these children may perform. The law prohibits children younger than 18 from engaging in hazardous work but allows children as young as 14 to perform hazardous tasks in a training facility, in violation of international standards.

Children younger than 18 may not work between 6 p.m. and 8 a.m. The government effectively enforced the law, and penalties were sufficient to deter violations.

The National Commission for the Prevention of Sexual Exploitation of Children and Adolescents conducted 59 awareness meetings in vulnerable communities, with the participation of the Ministry of Education and the Ministry of Social Development. Its actions focused on regions sensitive to sexual exploitation of minors in tourism locations, including Panama City, Bocas del Toro, Cocle, and Chiriqui. Criminal enforcement agencies investigated 398 reports of commercial sexual exploitation of children during 2018, compared with 920 in the previous year. The country is a source, transit point, and destination for men and women exploited in forced labor. Children were exploited in forced labor, particularly domestic servitude, and sex trafficking. The law includes punishment of up to 12 years' imprisonment for anyone who recruits children younger than 18 or uses them to participate actively in armed hostilities.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at **https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings** and the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at **https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods**.

D. DISCRIMINATION WITH RESPECT TO EMPLOYMENT AND OCCUPATION

The law prohibits discrimination regarding race, gender, religion, political opinion, citizenship, disability, social status, and HIV status. The law does not prohibit discrimination based on sexual orientation or gender identity. Although the country is a member of the International Equal Pay Coalition, which promotes pay equality between women and men, a gender wage gap continued to exist.

Despite legal protections, discrimination in employment and occupation occurred with respect to race, sex, gender, disability, sexual orientation or gender identity, and HIV-positive status. During the job interview process, applicants, both citizens and migrants, must complete medical examinations, including HIV/AIDS testing. The law requires all laboratories to inform applicants an HIV test will be administered, but private-sector laboratories often did not comply. It w common practice for private-sector human resources offices to terminate applications of

deportation procedures specifically based on a migrant's HIV status. NGOs noted that during job interviews, women were often asked if they were married, pregnant, or planned to have children in the future. It was common practice for human resources offices to terminate the applications of women who indicated a possibility of pregnancy in the near future (see section 6).

E. ACCEPTABLE CONDITIONS OF WORK

The law provides for a national minimum wage only for private sector workers. The wage was above the poverty line. Public servants received lower minimum wages than their private-sector counterparts. Most workers formally employed in urban areas earned the minimum wage or more. As of August 2018, approximately 43 percent of the working population worked in the informal sector, and some earned well below the minimum wage. The agricultural sector, as well as the maritime and aviation sectors, received the lowest and highest minimum wages, respectively. The Ministry of Labor was less likely to enforce labor laws in most rural areas (see section 6, Indigenous People).

The law establishes a standard workweek of 48 hours, provides for at least one 24-hour rest period weekly, limits the number of hours worked per week, provides for premium pay for overtime, and prohibits compulsory overtime. There is no annual limit on the total number of overtime hours allowed. If employees work more than three hours of overtime in one day or more than nine overtime hours in a week, excess overtime hours must be paid at an additional 75 percent above the normal wage. Workers have the right to 30 days' paid vacation for every 11 months of continuous work, including those who do not work full time.

The Ministry of Labor is responsible for setting health and safety standards. Standards were generally current and appropriate for some of the industries in the country. The law requires employers to provide a safe workplace environment, including the provision of protective clothing and equipment for workers.

The Ministry of Labor generally enforced these standards in the formal sector. The inspection office consists of two groups: The Panama City-based headquarters group and the regional group. The number of inspectors and safety officers was insufficient to enforce labor laws adequately. As of July the Ministry of Labor had conducted 9,397 safety inspections natior

fines.

Reports of violations relating to hours of work were frequent, especially in the maritime sector, where unions reported shifts of 14 to 24 hours. There were allegations indicating that neither the Panamanian Maritime Authority nor the Ministry of Labor conducted inspections of working conditions in the maritime sector. The ACP unions and workers experienced difficulties accessing the justice system to adjudicate complaints due to delays and other deficiencies of the Labor Relations Board, which is the court of first instance on labor matters for the autonomous ACP. Reports also indicated violations relating to hours of work for coffee harvest workers, who often lacked formal contracts and were vulnerable to coercion from employers.

Employers often hired employees under short-term contracts to avoid paying benefits that accrue to long-term employees. Employers in the maritime sector also commonly hired workers continuously on short-term contracts but did not convert them to permanent employees as required by law. The law states that employers have the right to dismiss any employee without justifiable cause before the two-year tenure term. As a result, employers frequently hired workers for one year and 11 months and subsequently dismissed them to circumvent laws that make firing employees more difficult after two years of employment. This practice is illegal if the same employee is rehired as a temporary worker after being dismissed, although employees rarely reported the practice.

Inspectors from the Ministry of Labor and the occupational health section of the Social Security Administration reported conducting periodic inspections of hazardous employment sites. The law requires the resident engineer and a ministry safety officer to remain on construction sites, establish fines for noncompliance, and identify a tripartite group composed of the Chamber of Construction, the construction union SUNTRACS, and the ministry to regulate adherence.

Some construction workers and their employers were occasionally lax about basic safety measures, frequently due to their perception that it reduced productivity. Equipment was often outdated, broken, or lacking safety devices, due in large part to a fear that the replacement cost would be prohibitive. In August a construction worker died in the city of David after falling 39 feet off a beam while working on a shopping center construction project. After his death, the U Construction Workers announced a temporary work stoppage on the project.

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Tab 2

PANAMA 2018 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Panama is a multiparty constitutional democracy. In 2014 voters chose Juan Carlos Varela Rodriguez as president in national elections that international and domestic observers considered generally free and fair.

Civilian authorities maintained effective control over the security forces.

Human rights issues included undue restrictions on free expression, the press, and the internet, including censorship, site blocking, and criminal libel; and widespread corruption.

The Varela administration and the Public Ministry continued investigations into allegations of corruption against public officials.

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

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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

The constitution prohibits such practices, and there were no reports that government officials employed them.

In 2017 civilian correctional officers used batons and tear gas to control inmates who refused to be transported. Penitentiary System authorities investigated the incident and dismissed the case, citing evidence that showed standard procedures were enforced due to serious misconduct by the inmates. In May the

Ombudsman's Office decried the possible use of excessive force and the conclusion of the penitentiary authorities.

Prison and Detention Center Conditions

Prison conditions remained harsh, due primarily to overcrowding, a shortage of prison guards, and inadequate medical services and sanitary conditions.

Physical Conditions: As of August the prison system, with an intended capacity of 14,842 inmates, held 16,069 prisoners. Pretrial detainees shared cells with convicted prisoners due to space constraints. Prison conditions for women were generally better than for men, but conditions for both populations remained poor, with some overcrowded facilities, poor inmate security and medical care, and a lack of basic supplies for personal hygiene. Female inmates had access to more rehabilitation programs than male inmates.

There were 1,170 prison guards nationwide, including 60 new guards hired during the year. Officials estimated, however, the system required 2,870 guards to staff the prisons adequately, according to international standards. Authorities acknowledged that staff shortages limited exercise time for inmates on certain days. Juvenile pretrial and custodial detention centers also suffered from a lack of prison officials. Authorities acknowledged that staff shortages limited exercise time for inmates on certain days. Juvenile pretrial and custodial detention centers also suffered from an insufficient number of prison officials.

One prison, Punta Coco, falls under the control of the Ministry of Public Security rather than the Ministry of Government's National Directorate of the Penitentiary System (DGSP). In March the Inter-American Commission on Human Rights (IACHR) reiterated its request to close Punta Coco due to the lack of appropriate medical attention for inmates. Lawyers and relatives of the inmates had to travel 66 miles by boat to reach the prison, located on an island. In August authorities transferred 12 inmates temporarily from the Punta Coco facility to a Panama City prison while they upgraded it to international prison standards by orders of the Supreme Court of Justice. It was reopened on December 6, and the 12 prisoners were transferred back to the facility.

The Ministry of Health conducted fewer vaccination campaigns in prisons, compared with previous years. HIV/AIDS treatment was available, but insulin was scarce throughout the country, which affected provisions for inmates.

Prison medical care overall was inadequate due to the lack of personnel, transportation, and medical resources. Sixty percent of complaints received by the Ombudsman's Office from January through August related to the lack of access to medical attention and medications. Authorities permitted relatives of inmates to bring medicine, although there were reports that some relatives paid bribes to prison personnel, including police agents, to bypass the required clearances. Authorities transferred patients with serious illnesses to public clinics, but there were constant difficulties arranging inmate transportation. Inmates often missed medical appointments with specialized physicians. Because the DGSP did not have ambulances, inmates were transported in police vehicles or in emergency services ambulances when available. Emergency services ambulances staff were reluctant to service the prisons. Lack of prison guards also affected the transfers.

As of August, 17 male inmates had died in custody, most from natural causes or disease. One inmate died due to inmate-on-inmate violence.

Administration: Authorities conducted proper investigations of credible allegations of mistreatment.

Independent Monitoring: The government permitted prison monitoring by independent nongovernmental observers. The Ombudsman's Office conducted unannounced visits to the prisons without restrictions. Human rights nongovernmental organizations (NGOs) seeking access to prisons during visiting hours were required to send a written request to the DGSP 15 days in advance.

Improvements: During the year a new centrally based system for better tracking of prisoners and statistics was implemented, and the data was published on a public website.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The country has no military forces. The Panama National Police (PNP) is principally responsible for internal law enforcement and public order. Civilian authorities in the Ministry of Public Security and the Ministry of the Presidency

maintained effective control over all police, investigative, border, air, maritime, and migration services in the country. The government has mechanisms to investigate and punish abuse and corruption, but information on the process and results of investigations were rarely made public. Penitentiary authorities remained concerned over internal corruption, since unannounced inspections during the year resulted in findings of larger than usual amounts of drugs and illegal items in inmates' possession. Due to the insufficient number of prison guards, the PNP was sometimes responsible for security both outside and inside the prisons. PNP leadership expressed concern over insufficient training and equipment.

Arrest Procedures and Treatment of Detainees

The law requires arresting officers to inform detainees immediately of the reasons for arrest or detention and of the right to immediate legal counsel. Detainees gained prompt access to legal counsel and family members, and the government provided indigent defendants with a lawyer.

The country completed its transition to an accusatory justice system in 2016, but cases opened prior to the transition continued to be processed under the previous inquisitorial system, known for its vulnerability to corruption, inefficiencies, and bureaucratic hurdles.

Under the accusatorial system, bail exists but was rarely granted because of the implementation of a less costly provisional release system. Under the inquisitorial system, a functioning bail procedure existed for a limited number of crimes but was largely unused. Most bail proceedings were at the discretion of the Prosecutor's Office and could not be independently initiated by detainees or their legal counsel. Bail was granted in high-profile corruption cases, which prompted complaints by civil society about the Public Ministry's administering "selective" justice.

The law prohibits police from detaining adult suspects for more than 48 hours but allows authorities to detain minor suspects for 72 hours. In the accusatorial system, arrests and detention decisions were made on a probable cause basis.

Pretrial Detention: Under the inquisitorial system, the government regularly imprisoned inmates for more than one year before a pretrial hearing, and in some cases pretrial detention exceeded the minimum sentence for the alleged crime.

According to the DGSP director, 52 percent of inmates were pretrial detainees as of July.

Some observers criticized the judiciary for applying unequal pretrial restrictive measures for individuals facing substantially similar charges. Prosecutors also reported internal pressure from the Public Ministry to prevent release of those accused of crimes pending trial.

e. Denial of Fair Public Trial

While the law provides for an independent judiciary, the judicial system was inefficient and susceptible to corruption as well as internal and external influence, and it faced allegations of manipulation by the executive branch. In August a judge dismissed corruption charges against 22 government officials. Among the accused were individuals who had considerable influence in the community.

Court proceedings for cases in process under the inquisitorial system were not publicly available, while accusatory system cases were. As a result nonparties to the inquisitorial case proceedings did not have access to these proceedings until a verdict was reached. Under the inquisitorial system, judges could decide to hold private hearings and did so in high-profile cases. Consequently the judiciary sometimes faced accusations, particularly in high-profile cases, of procedural irregularities. Since most of these cases had not reached conclusion, however, the records remained under seal. Interested parties generally did not face gag orders, but because of this mechanism, it was difficult to verify facts.

Trial Procedures

The law provides for the right to a fair and public trial, and the judiciary generally enforced this right. The law provides that all citizens charged with crimes enjoy the right to a presumption of innocence. They have the right to be informed promptly and in detail of the charges (with free interpretation as necessary for non-Spanish speaking inmates), to have a trial without undue delay, to have counsel of their choice and adequate time and facilities to prepare a defense, to refrain from incriminating themselves or close relatives, and to be tried only once for a given offense. The accused may be present with counsel during the investigative phase of proceedings.

During the year new criminal cases were tried under the accusatory system. Under this system, trials were open to the public. All trials must be completed in less

than 18 months. Judges may order the presence of pretrial detainees for providing or expanding upon statements or for confronting witnesses. Trials are conducted based on evidence presented by the public prosecutor. Defendants have the right to be present at trial and to consult with an attorney in a timely manner, along with the right to enter into a plea deal. Defendants may confront or question adverse witnesses and present their own witnesses and evidence. Defendants have a right of appeal. The judiciary generally enforced these rights.

The judiciary complained that many hearings were canceled due to inmates' failure to appear, especially those involving inmates processed under the old inquisitorial system. This was usually due to administrative shortcomings, such as a dearth of PNP agents to transfer the inmates to the courts. Authorities were also aware that available correctional officers and PNP agents focused more on inmates tried under the new accusatory system because the law fines police and correctional officers 100 balboas (one balboa is equal to one U.S. dollar) for failing to deliver an inmate to a hearing.

The judiciary continued to promote videoconference hearings. Judges were receptive to using this tool, and during the year the government continued to add video conference and hearing rooms to prison facilities.

Political Prisoners and Detainees

There were no credible reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens have access to the courts to bring lawsuits seeking damages for, or cessation of, human rights violations, although most do not pursue such lawsuits due to the length of the process. There are administrative and judicial remedies for alleged wrongs, and authorities often granted them to citizens who followed through with the process. The court can order civil remedies, including fair compensation to the individual injured. Individuals or organizations may initiate cases involving violations of an individual's human rights by submitting petitions to the IACHR.

The 2016 Community Justice System, which provides another path for citizens to seek redress for human rights violations, entered into effect in January. Although peace judges were appointed, lack of municipal funds throughout the country prevented the assignment of professional-level salaries for the judges as well as the

relocation of the facilities for administrative or community justice to be served. The peace judges replaced the 679 corregidores under the 77 mayors nationwide. The corregidor system, a leftover of the military regime, was considered for years an unfair process that violated human rights through unjustified imprisonment imposed by unqualified, politically influenced "judges." Training for National Police agents and Judicial Investigative agents on the new system was also insufficient.

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

The law prohibits arbitrary interference with privacy, family, home, or correspondence, and the government generally respected these prohibitions. The law also sets forth requirements for conducting wiretap surveillance. It denies prosecutors authority to order wiretaps on their own and requires judicial oversight.

The investigation of the 2015 illegal wiretapping case against former president Ricardo Martinelli as well as against Alejandro Garuz and Gustavo Perez, two former intelligence directors in his administration, continued during the year. Hearings under the accusatorial system against Martinelli began in June upon his extradition from the United States. Hearings under the inquisitorial system against Garuz and Perez took place on September 3-14.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of expression, including for the press, and the government generally respected this right. Nevertheless, journalists and media outlets noted an increase in criminal and civil libel/slander lawsuits, which they considered a threat to freedom of expression and freedom of the press.

Libel/Slander Laws: Former and sitting government public figures increased the use of libel/slander lawsuits against journalists and media. According to local media contacts, both criminal and civil lawsuits were filed. The amount of lawsuits and the figures of financial compensation by plaintiffs increased substantially during the year, according to media groups. In September the daily newspaper *La Estrella de Panama* reported that lawsuits against journalists and media outlets for libel/slander reparations reached $12 million. The major media

corporation Corprensa reported lawsuits against its two daily publications, *La Prensa* and *Mi Diario*, totaled $61.7 million. Corprensa representatives added they had been sued 15 times for libel/slander since 2017, once more than the previous 10 years combined (14 lawsuits filed in 2006-16).

On August 21, five journalists from *La Prensa* appeared at a family court hearing in response to former first lady Marta de Martinelli's lawsuit seeking "protection" for "family image." She sought a court order for "media, print, television, radio and social media, and especially the newspaper *La Prensa*," to stop publishing the names and surnames of her family, who were under investigation for alleged corruption.

On August 25, former president Martinelli, in prison and on trial for illegal wiretapping, filed a slander lawsuit for two million dollars against political opinion radio-show hostesses Annette Planells and Mariela Ledezma.

On September 5, journalists, journalism organizations, and students demonstrated against the lawsuits, claiming such lawsuits were attacks against freedom of speech and the press.

Violence and Harassment: In August and September, National Assembly Deputy Sergio Galvez verbally harassed television journalists Alvaro Alvarado, Castalia Pascual, and Icard Reyes, and National Assembly Deputy Carlos Afu publicly threatened to sue *La Prensa* for $20 million. Both deputies made their statements on the National Assembly floor; according to the constitution, deputies may not held liable for these actions.

Press and Media Freedom: With the enactment of the 2017 electoral reforms regulating the 2019 general elections, there was to be a blackout period for the publication of voter polling 20 days before the national elections, scheduled for May 2019. TVN Media, one of the country's largest media groups, challenged the law in the Supreme Court, arguing the blackout would hinder the public's access to information because political parties would continue to carry out private surveys.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

According to the International Telecommunication Union, 58 percent of the population used the internet in 2017.

Academic Freedom and Cultural Events

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

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights. The government provided permits for organized groups to conduct peaceful marches. Police at times used force to disperse demonstrators, especially when highways or streets were blocked. The law provides for six to 24 months' imprisonment for anyone who, through use of violence, impedes the transit of vehicles on public roads or causes damage to public or private property.

c. Freedom of Religion

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

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights. The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, persons under temporary humanitarian protection, asylum seekers, and other persons of concern.

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. In January the Ministry of Government issued an executive decree to regulate the protection of refugees, abolishing the previous decree from 1998. The National Office for the Attention of Refugees (ONPAR) declared the reforms were positive and necessary. The decree increases the frequency of the approval board meetings and reduces wait times for final decisions through improved processing and the

implementation of a computerized application process. International organizations and NGOs criticized the new decree because it did not include the Cartagena Declaration definition of refugee, nor did it provide applicants with work permits. The new decree also stipulates a six-month waiting period after entering the country before applying for refugee status, and it establishes a summary proceeding to deny refugees who have "manifestly unfounded claims" as determined by ONPAR. In August the government issued a resolution detailing which claims will be considered "manifestly unfounded." NGOs believed this would further limit access to refugee status and leave more persons in need of international protection. The process of obtaining refugee status generally took one to two years, during which asylum seekers did not have the right to work and encountered difficulties accessing basic services.

In March the government and UNHCR signed a cooperation agreement to train border personnel in identification and referral of persons needing international protection. The government also signed two protocols for the protection of children who migrate: a protocol for identification, referral, and attention for minors requiring international protection, and an institutional protocol for protecting minors who migrate.

In June the government announced it would deport 70 Cuban migrants sheltered in Darien, on the border with Colombia, and in July the government reported that 37 Cubans were placed in the shelter located on the border with Costa Rica. The government continued to manage camps in the Darien region to provide food, shelter, and medical assistance to the migrants. The government reported continued migrations of persons from South Asia, India, and Africa.

According to UNHCR and its NGO implementing partners, thousands of persons living in the country might be in need of international protection. These included persons in the refugee process, persons denied refugee status, and persons who did not apply for refugee status due to lack of knowledge or fear of deportation.

Employment: Refugees recognized by authorities have the right to work, but recognized refugees complained that they faced discriminatory hiring practices. In an effort to prevent this discriminatory practice, ONPAR removed the word "refugee" from recognized refugees' identification cards. By law individuals in the process of applying for asylum do not have the right to work.

All foreigners seeking a work contract must initiate the process through a lawyer and pay a government fee of 700 balboas to obtain a work permit that expires upon termination of the labor contract or after one year, whichever comes first.

Access to Basic Services: Education authorities sometimes denied refugees access to education and refused to issue diplomas to others if they could not present school records from their country of origin. The Ministry of Education continued to enforce the government's 2015 decree requiring schools to accept students in the asylum process at the grade level commensurate with the applicants' prior studies.

Durable Solutions: The law allows persons legally recognized as refugees or with asylum status who have lived in the country for more than three years to seek permanent residency.

Stateless Persons

The government continued to work with Colombia to recognize approximately 200 stateless persons on the border. The governments of Panama and Costa Rica, with the cooperation of UNHCR, continued to use a mobile registry office on the border with Costa Rica to register indigenous Ngabe and Bugle seasonal workers who travel between Costa Rica and Panama and who had not registered their births in either country.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot based on universal and equal suffrage. Naturalized citizens may not hold specified categories of elective office, such as the presidency.

Elections and Political Participation

Recent Elections: In 2014 voters chose Juan Carlos Varela Rodriguez as president in national elections that independent observers considered generally free and fair. Elected at the same time were 71 national legislators, 77 mayors, 648 local representatives, and seven council members.

Political Parties and Political Participation: The law requires new political parties to meet strict membership and organizational standards to gain official recognition and participate in national campaigns. Electoral reforms passed in May 2017

require that political parties obtain the equivalent of 2 percent of the total votes cast to maintain legal standing, a reduction from 4 percent. The Revolutionary Democratic Party, Panamenista Party, Democratic Change Party, and Popular Party complied with the requirement. During the year the Electoral Tribunal granted legal status to new political groups registered with the Electoral Tribunal, including the Broad Front for Democracy, the Alliance Party (Alianza), and the Independent Social Alternative Party after they demonstrated compliance with electoral requirements. The Electoral Tribunal provided oversight of internal party elections.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

In August the National Secretariat of Science, Technology, and Innovation released a study in coordination with the Catholic University of Santa Maria Antigua. The study, titled *Gender Inequality for Women in Access to Elected Office*, showed that female candidates for elected office had only a 2 percent chance to win election. Research showed that from 1945 to 2014, only 67 women were elected to the National Assembly, compared with 764 men. Researchers concluded that contributing factors included cultural barriers, unequal social opportunities, a lack of mechanisms to equalize effectively internal political opportunity, and unequal access to campaign funds.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively. Corruption remained a serious problem in the executive, judicial, and legislative branches as well as in the security forces. The government took steps to address corrupt practices among government employees and security forces. Anticorruption mechanisms such as asset forfeiture, whistleblower and witness protection, plea bargaining, and professional conflict-of-interest rules were used in the government's efforts to combat corruption.

Corruption: A series of corruption scandals became public from May through August as the Comptroller General's Office filed before the Supreme Court separate cases against deputies from all political parties represented in the National Assembly. Alleged corruption by deputies involved the following: relatives registered in National Assembly payrolls despite their not working there; dozens of workers from the private sector (restaurants, hotels, stores) who appeared on

deputies' payrolls (some without knowing it; some allegedly receiving a percentage of the salary collected monthly and the deputy pocketing the rest); political community leaders working for deputies in their districts and not for the National Assembly but on the assembly's payrolls; salaries of workers from private companies owned by deputies being paid by National Assembly payrolls; and direct contracts awarded to companies owned by some deputies. As of August no charges had been filed against any of the deputies, but civil society outrage prompted the beginning of the "No reelection" movement for the May 2019 general elections.

Corruption and a lack of accountability among police continued to be a problem, although the government took steps to address violations. Agents were dismissed on grounds of corruption and were under investigation by the Public Ministry. After an 18-month investigation, in July the First Penal District Court held a preliminary hearing involving 12 individuals (four current and three former penitentiary system employees, two inmates, and three private individuals) for alleged corruption in the La Joya Prison, La Joyita Prison, and the Women's Rehabilitation Center. According to inmates' relatives, the group charged money for the alteration of documents to reduce sentences, falsify release orders, and improperly transfer inmates among prisons. The prosecutor requested the judge to press charges on 11 of the 12 conspirators.

In February the Comptroller General's Office filed 186 audits before the Public Ministry for transactions between 2009 and 2014 by elected local representatives. The audits allegedly reflected misuse of public funds through irregular contracts carried out by the Martinelli administration's National Assistance Program. As of November prosecutors continued with the investigations but had not filed charges.

In July the First Criminal Court tried Luis Cucalon, former internal revenue director under the Martinelli administration, on embezzlement and corruption charges. In September Cucalon was convicted and sentenced to nine years in prison and forfeiture of six million balboas.

The case continued against former minister of the presidency Demetrio "Jimmy" Papadimitriu and former minister of public works Jaime Ford, both in the Martinelli administration, detained in September for alleged links to bribes paid by Brazilian multinational construction company Odebrecht. In August the Second Superior Tribunal refused to withdraw the charges or dismiss the case as requested by Papadimitriu's lawyers. Both individuals faced money-laundering and

corruption charges. They were released on bail but could not leave the country without a court order. The cases remained under the inquisitorial system.

Financial Disclosure: The law requires certain executive and judiciary officials to submit a financial disclosure statement to the Comptroller General's Office. The information is not made public unless the official grants permission for access to the public.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

Government Human Rights Bodies: The ombudsman, elected by the National Assembly, has moral but not legal authority. The Ombudsman's Office received government cooperation and operated without government or party interference; it referred cases to the proper investigating authorities.

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

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, with prison terms of five to 10 years. The government generally implemented criminal aspects of the law better than protection aspects. Rapes constituted the majority of sexual crimes investigated by the PNP and its Directorate of Judicial Investigation.

The law against gender violence stipulates stiff penalties for harassment and both physical and emotional abuse. The law states that sentencing for femicide is a mandatory 25 to 30 years in prison. Officials and civil society organizations agreed that domestic violence continued to be a serious crime. In August the PNP initiated the Specialized Unit for Domestic and Gender Violence with 190 agents trained to work these cases. As of June there were 7,773 reported cases of domestic violence nationwide.

The Ombudsman's Office continued its program Mujer Conoce tus Derechos (Woman, Know Your Rights), which included a wide distribution of flyers. The government, through the National Institute for Women's Affairs, operated shelters for victims of domestic abuse and offered social, psychological, medical, and legal services. The secretary general of the Ombudsman's Office and the director of the Panamanian Observatory Against Gender Violence claimed the number of shelters was insufficient.

Sexual Harassment: The law prohibits sexual harassment in cases of employer-employee relations in the public and private sectors and in teacher-student relations. Violators face a maximum three-year prison sentence. The extent of the problem was difficult to determine, because convictions for sexual harassment were rare, pre-employment sexual harassment was not actionable, and there was a lack of formal reports.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The law prohibits discrimination based on gender, and women enjoyed the same legal status and rights as men. The law recognizes joint property in marriages. The law mandates equal pay for men and women in equivalent jobs. Although an illegal hiring practice, some employers continued to request pregnancy tests.

The Ministry of Social Development and the National Institute of Women promoted equality of women in the workplace and equal pay for equal work, attempted to reduce sexual harassment, and advocated legal reforms. In February President Varela signed a law prohibiting harassment and racism. The prior law sanctioned sexual harassment but not labor harassment or bullying. The law mandates equal rights for labor and measures to prevent discrimination as well as respect of the norms established in the international human rights conventions signed by the country. It establishes fines for employers or immediate supervisors who fail to follow the law and instructs the Ministries of Education, Social Development, and Labor, in conjunction with the University of Panama, to develop educational programs for the awareness of these rights.

Children

Birth Registration: The law provides citizenship for all persons born in the country, but parents of children born in remote areas sometimes had difficulty

obtaining birth registration certificates. The National Secretariat for Children, Adolescents, and the Family estimated the registration level of births at 92 percent.

Child Abuse: The Ministry of Social Development maintained a free hotline for children and adults to report child abuse and advertised it widely. The ministry provided funding to children's shelters operated by NGOs and continued a program that used pamphlets in schools to sensitize teachers, children, and parents about mistreatment and sexual abuse of children. In March President Varela signed a law amending the penal code to increase sentences for convicted pedophiles. Sentences went from five-10 years to seven-12 years in prison. If the crime is committed by a clergyperson, relative, tutor, or teacher, the penalties increased from eight-12 years to 10-15 years in prison.

Early and Forced Marriage: The minimum legal age for marriage is 18. The government prohibits early marriage even with parental permission.

Sexual Exploitation of Children: Officials continued to prosecute cases of sexual abuse of children in urban and rural areas, as well as within indigenous communities. Officials believed that commercial sexual exploitation of children occurred, including in tourist areas in Panama City and in beach communities, although they did not keep separate statistics.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Child Abduction* at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html.

Anti-Semitism

Jewish community leaders estimated there were 15,000 Jews in the country. 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 based on physical, sensory, intellectual, or mental disabilities; however, the constitution permits the denial of naturalization to persons with mental or physical disabilities. The law mandates access to new or remodeled public buildings for persons with disabilities and requires that schools integrate children with disabilities. Despite provisions of the law, persons with disabilities experienced discrimination in a number of these areas.

Most of Panama City's bus fleet was not wheelchair accessible. Metro elevators were frequently locked and could not be used. A lack of ramps further limited access to the stations. Most businesses had wheelchair ramps and accessible parking spaces as required by law, but in many cases they did not meet the government's size specifications.

Some public schools admitted children with mental and physical disabilities, but most did not have adequate facilities for children with disabilities. Few private schools admitted children with disabilities, as they are not legally required to do so. The high cost of hiring professional tutors to accompany children to private schools--a requirement of all private schools--precluded many students with disabilities from attending.

In January the National Secretariat for Disabilities Issues publicly admitted a shortfall of 2.5 million balboas to conduct the Second National Census on People with Disabilities, which was two years behind schedule. The first census took place in 2006.

The government-sponsored Guardian Angel program continued to provide a monthly subsidy of 80 balboas for children with significant physical disabilities. To qualify, the parents or guardian of a child must be living in poverty and must submit a medical certification specifying the degree of the disability and the child's dependency on another person. Authorities conducted home visits to ensure the beneficiaries' guardians used the funds for the intended purpose.

In June and July the Ministry of Labor hosted weekly job fairs for persons with disabilities.

National/Racial/Ethnic Minorities

Minority groups were generally integrated into mainstream society. Prejudice was directed, however, at recent immigrants, the Afro-Panamanian community, and indigenous Panamanians. Newly arrived Venezuelans noted prejudice in popular

culture and in recent laws passed by the legislature restricting labor participation and length of visa stays. Cultural and language differences and immigration status hindered the integration of immigrant and first-generation individuals from China, India, and the Middle East into mainstream society. Additionally, some members of these communities were reluctant to integrate.

The Afro-Panamanian community was underrepresented in positions of political and economic power. Areas where they lived lagged in terms of government services and social investment. The government's National Secretariat for the Development of Afro-Panamanians focused on the socioeconomic advancement of this community. The secretariat was designed to work with the national census agency to ensure an accurate count in 2020 of Afro-descendant Panamanians.

The law prohibits discrimination in access to public accommodations such as restaurants, stores, and other privately owned establishments; no complaints were filed. The Ombudsman's Office intervened in several cases before students with Rastafarian braids were permitted entry into public school classrooms.

There were reports of racial discrimination against various ethnic groups in the workplace. Lighter-skinned persons continued to be overrepresented in management positions and jobs that required dealing with the public, such as bank tellers and receptionists.

Indigenous People

The law affords indigenous persons the same political and legal rights as other citizens, protects their ethnic identity and native languages, and requires the government to provide bilingual literacy programs in indigenous communities. Indigenous individuals have the legal right to take part in decisions affecting their lands, cultures, traditions, and the allocation and exploitation of natural resources. Nevertheless, they continued to be marginalized in mainstream society. Traditional community leaders governed comarcas (legally designated semiautonomous areas) for five of the country's seven indigenous groups. The government also unofficially recognized eight other traditional indigenous government authorities. Government institutions recognized these eight regions were traditionally organized indigenous settlements and territories not included when the original comarcas were created. Government officers continued to meet with traditional organized authorities from the community, and many requested recognition of their land via collective titles.

In March members of the Embera and Wounaan communities protested for collective land titles in front of the Ministry of Environment. To resolve the issue, the ministry granted eight territories, home to more than 5,000 persons, conditional land titles pending inspections by the National Authority of Land Administration. Several indigenous organizations along with NGOs requested a hearing at the IACHR to analyze the collective land title claims and the protection of indigenous communities. Part of the land of the 17 communities still awaiting titles fell within protected areas, which delayed ministerial approval.

Other land-titling conflicts continued to arise. In April the Embera Wounaan demanded the eviction of nonindigenous settlers occupying their land illegally, in compliance with a ruling from the Supreme Court. In July an incident between the indigenous Guna community from the Wargandi comarca in Darien and local settlers left one person dead and one injured. In October the National Assembly's Indigenous Issues Committee approved a law to create a comarca for the Naso people. In September the Bri submitted a claim to the Supreme Court demanding the protection of their human rights. In 2015 the Bri Bri requested collective title for their lands in Bocas del Toro but as of November had not received a reply. This action was in response to a protest outside the Ministry of Environment's regional office by local farmers, who contended the Bri Bri land claim included land farmed by approximately 300 local farmers and therefore the title should not be granted. The Bri Bri claim was analyzed in the October IACHR hearing, but the government requested more documentation and clarification of the specifics of the land claim.

The Ngabe and Bugle continued to oppose the Barro Blanco dam project, which became operational in April 2017. There were no plans by the government to halt dam operations. The Ngabe-Bugle and the government continued to negotiate details of the dam's operation.

Although the country's law is the ultimate authority in indigenous comarcas, many indigenous persons misunderstood their rights and, due to their inadequate command of the Spanish language, failed to use available legal channels.

In May the Ministry of Government presented its 15-year National Indigenous Peoples Development Plan, backed by a 25-year, $80 million loan from the World Bank. The plan includes goals to increase development investments for indigenous territories and to deliver public services within the comarcas.

In August members of the Guna community protested outside of the Electoral Tribunal against alleged discrimination. According to the group, community members were forced to remove a traditional nose piercing before taking their national identification photograph. After the incident the Electoral Tribunal instructed regional offices that they could not force a citizen to remove the piercing, according to a 2000 law that protects the right to traditional garb.

Societal and employment discrimination against indigenous persons was widespread. Employers frequently denied indigenous workers basic rights provided by law, such as a minimum wage, social security benefits, termination pay, and job security. Laborers on the country's agricultural plantations (the majority of whom were indigenous persons) continued to work in overcrowded and unsanitary conditions. The Ministry of Labor conducted limited oversight of working conditions in remote areas.

Education deficiencies continued in the comarcas, especially beyond the primary grades. There were not enough teachers in these remote and inaccessible areas, with many multigrade schools often poorly constructed and lacking running water. In April teachers and indigenous communities in the Ngabe comarca began periodically protesting the poor roads and education in the comarca by closing the Interamerican Highway as well as other roads. In September a group of Ngabe closed the highway for more than 10 hours to protest the delay in the construction of a road to their communities that would connect the 1,200 inhabitants and 12 schools. Police forcibly removed the protesters from the highway. Nine police officers were injured and 12 Ngabe arrested, some with injuries. This sparked a 60-day strike in 43 of the schools in the comarca as teachers demanded better work conditions, including safety bonuses, better life insurance, and improved roads. Access to health care was a significant problem in the indigenous comarcas, despite government investment in more health infrastructure and staff. This was reflected in high rates of maternal and infant mortality and malnutrition. The government continued to execute the Indigenous Development Plan jointly developed with indigenous leaders in 2013.

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

The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities.

The PNP's internal regulations describe consensual same-sex sexual conduct by its employees as against policy and potentially grounds for dismissal. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) human rights organizations reported harassment of LGBTI persons by security forces as a source of serious concern.

On June 29, LGBTI activists organized the 14th annual Pride Parade without impediment. Unlike in previous years, there was no anti-Pride Parade countermarch.

HIV and AIDS Social Stigma

The law prohibits discrimination against persons with HIV/AIDS in employment and education. Discrimination continued to be common due to ignorance of the law and a lack of mechanisms for ensuring compliance. LGBTI individuals reported mistreatment by health-care workers, including unnecessary quarantines.

In August President Varela signed a law prohibiting labor and other types of discrimination against persons with sexually transmitted diseases and their immediate relatives and mandating employers to follow International Labor Organization (ILO) recommendations on how to manage employees with HIV. Employees are not obligated to disclose their condition to the employer, but if they do so, the employer must keep the information confidential. The law also mandates that persons seeking to wed must submit to the civil court a physician's note certifying they each had an HIV test recently. The test results are not to be made known to the court, but the judge must ask both parties if they know the results of the other's test. Marriage cannot be impeded if the results are positive. Several LGBTI activists complained that forcing the disclosure of the results to the other individual violates privacy rights.

The government's National Network for the Continued Integral Attention of Persons with HIV/AIDS continued during the year. The Ministry of Social Development collaborated with the NGO PROBIDSIDA to conduct HIV/AIDS outreach to students in public junior and high schools.

In a joint effort with LGBTI NGOs, the UN Development Program, and the National Program for HIV/AIDS, the Ministry of Health conducted HIV/AIDS tests within the LBGTI community in several provinces. During the year PROBIDSIDA also worked with the Ministry of Public Security "Barrios Seguros" (Safe Neighborhoods) program to provide HIV/AIDS training and free testing

services to at-risk youth from vulnerable communities. Individuals who tested positive received medical treatment.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for private-sector workers to form and join independent unions, bargain collectively, and conduct strikes. By law public-sector employees may strike but may not organize unions. Instead, they may organize an association that can bargain collectively on behalf of members. The employer, however, is not legally obligated to bargain with the association. The law prohibits antiunion discrimination and requires reinstatement of workers terminated for union activity. Despite some restrictions, public- and private-sector employers generally respected freedom of association.

Unions and associations are required to register with government authorities. If the government does not respond to a private-sector union registration application within 15 days, the union automatically gains legal recognition. In the public sector, associations gain legal recognition automatically if the General Directorate for Administrative Public Sector Careers does not respond to registration applications within 30 days. The Varela administration (2013-18) approved 48 union-formation applications, compared with the previous administration's approval of nine unions during five years.

The Board of Appeals and Conciliation of the Ministry of Labor has the authority to resolve certain labor disagreements, such as internal union disputes, enforcement of the minimum wage, and some dismissal issues. The law allows arbitration by mutual consent, at the request of the employee or the ministry in the case of a collective dispute in a privately held public utility company. It allows either party to appeal if arbitration is mandated during a collective dispute in a public-service company. The board has sole competency for disputes related to domestic employees, some dismissal issues, and claims of less than 1,500 balboas.

Government-regulated union membership policies place some restrictions on freedom of association. The constitution mandates that only citizens may serve on a union's executive board. In addition the law requires a minimum of 40 persons to form a private-sector union (either by a company across trades or by trade across companies) and allows only one union per business establishment. The ILO criticized the 40-person minimum as too large for workers wanting to form a union

within a company. Many domestic labor unions, as well as the public and private sector, reiterated their support for keeping the figure at 40 individuals.

In the public sector, member associations represent workers. The law stipulates only one association may exist per public-sector institution and permits no more than one chapter per province. Forty public servants are required to form an association.

The National Federation of Public Servants (FENASEP), an umbrella federation of 25 public-sector worker associations, advocates for adequate treatment of the public sector as a sector with established rights like that of private-sector unionized groups. FENASEP contended there was no political will to allow public servants within ministries to form unions because this could eliminate space for political appointees. No law protects the jobs of public-sector workers in the event of a strike.

The law prohibits federations and confederations from calling strikes, as well as strikes against the government's economic and social policy. Individual associations under FENASEP may negotiate on behalf of their members. FENASEP leaders noted that collective bargaining claims were heard and recognized, but they reported a lack of change afterwards, particularly regarding dismissals without cause.

A majority of employees must support a strike, and strikes are permitted only if they are related to the improvement of working conditions, a collective bargaining agreement, or in support of another strike of workers on the same project (solidarity strike). In the event of a strike, at least 20 to 30 percent of the workforce must continue to provide minimum services, particularly public services as defined by law, such as transportation, sanitation, mail delivery, hospital care, telecommunications, and public availability of essential food.

Strikes in essential transportation services are limited to those involving public passenger services. The law prohibits strikes for the Panama Canal Authority's employees but allows associations to organize and bargain collectively on issues such as schedules and safety and provides arbitration to resolve disputes. (The Panama Canal Authority is an autonomous government entity, with independence from the central government.).

The Conciliation Board in the Ministry of the Presidency hears and resolves public-sector worker complaints. The board refers complaints it cannot resolve to

arbitration panel, which consists of representatives from the employer, the workers' association, and a third member chosen by the first two. If the dispute cannot be resolved, it is referred to a tribunal under the board. Observers, however, said the Ministry of the Presidency had not designated the tribunal judges. The alternative to the board is the civil court system. Cases presented in the courts tended to favor the employer. FENASEP noted one public-sector institution had appealed more than 100 complaints to the Supreme Court, only two of which were ruled in favor of the public-sector employee. Supreme Court decisions are final.

Two major strikes occurred during the year. The Panama Canal Tugboat Union (UCOC) claimed unsafe work conditions led to three collisions in the Panama Canal. Beginning in August the UCOC periodically went on strike, mostly over safety reasons. UCOC representatives asserted that due to a low minimum crew requirement and poor-quality tugboats, crews were overworked, fatigued, and experiencing anxiety. They suggested the Panama Canal Authority was using disciplinary action against UCOC protesters. In May SUNTRACS, the largest union of construction workers in the country, launched a strike demanding better wages. After one month of strikes, they negotiated a 14 percent increase in their salaries.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced labor of adults or children. It establishes penalties of 15 to 20 years' imprisonment for forced labor involving movement (either cross-border or within the country) and six to 10 years' imprisonment for forced labor not involving movement. Such penalties were sufficiently stringent to deter violations.

There continued to be reports of Central and South American and Chinese men exploited in forced labor in construction, agriculture, mining, restaurants, door-to-door peddling, and other sectors; traffickers reported used debt bondage, false promises, lack of knowledge of the refugee process and irregular status, restrictions on movement, and other means. There also were reports of forced child labor (see section 7.c.).

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 law prohibits the employment of children younger than age 14, although children who have not completed primary school may not begin work until age 15. The family code permits children ages 12 to 14 to perform domestic and agricultural work with regard to schedule, salary, contract, and type. The law allows children ages 12 to 15 to perform light work in agriculture if the work is outside regular school hours. The law also allows a child older than age 12 to perform light domestic work and stipulates employers must ensure the child attends school through primary school. The law neither limits the total number of hours these children may work nor defines the light work children may perform. The law prohibits children younger than age 18 from engaging in hazardous work but allows children as young as 14 to perform hazardous tasks in a training facility, in violation of international standards.

Youths younger than age 16 may work no more than six hours per day or 36 hours per week, while those ages 16 and 17 may work no more than seven hours per day or 42 hours per week. Children younger than 18 may not work between 6 p.m. and 8 a.m.

In 2017 the government strengthened the penalties for child labor, improved agricultural labor inspections, and increased interagency coordination on labor cases. The government increased fines for child labor law violators, who may be fined up to 700 balboas for a first-time violation. Employers who endanger the physical or mental health of a child may also face two to six years' imprisonment.

Sixty personnel from the Childhood and Adolescence Police, the National Secretariat for Childhood Adolescence and Family, and other government agencies received training on investigating and sanctioning the commercial sexual exploitation of children. Criminal enforcement agencies subsequently investigated 920 reports of commercial sexual exploitation of children and prosecuted and sanctioned four individuals. The country is a source, transit, and destination for men and women exploited in forced labor. Children were exploited in forced labor, particularly domestic servitude, and sex trafficking. The law includes punishment of up to 12 years' imprisonment for anyone who recruits children under age 18 or uses them to participate actively in armed hostilities.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination regarding race, gender, religion, political opinion, citizenship, disability, social status, and HIV status but not based on sexual orientation or gender identity. Although the Ministry of Labor adopted the UN Development Program's Gender Equality Seal program, the government had neither developed an implementation strategy nor allocated a national source of funds to promote gender equality in the workplace. In addition, a gender wage gap continued to exist, despite the country being a member of the Equal Pay International Coalition, which promotes pay equality between women and men.

Discrimination in employment and occupation occurred with respect to race, sex, gender, disability, sexual orientation or gender identity, and HIV-positive status. During the job interview process, applicants, both citizens and migrants, must complete medical examinations, including HIV/AIDS testing. The law requires all laboratories to inform applicants an HIV test will be administered, but private-sector laboratories often did not comply. It was common practice for human resources offices in the private sector to terminate the application of a citizen who was HIV positive, usually without informing the applicant. For HIV-positive migrants, private laboratories often informed law enforcement, and the National Immigration Office began deportation procedures. Observers noted that during job interviews, women were often asked if they were married, pregnant, or planned to have children in the future. It was common practice for human resources offices to terminate the applications of women who indicated a possibility of pregnancy in the near future (see section 6).

e. Acceptable Conditions of Work

The law provides for a national minimum wage. Public servants' monthly minimum wage met the official estimate for the poverty income level. Most workers formally employed in urban areas earned the minimum wage or more. Approximately 41 percent of the working population worked in the informal sector, and some earned well below the minimum wage. The agricultural sector, as well as the maritime and aviation sectors, received the lowest and highest minimum wages, respectively. The Ministry of Labor was less likely to enforce labor laws in most rural areas (see section 6, Indigenous People).

The law establishes a standard workweek of 48 hours, provides for at least one 24-hour rest period weekly, limits the number of hours worked per week, provides for premium pay for overtime, and prohibits compulsory overtime. There is no annual limit on the total number of overtime hours allowed. If employees work more than

three hours of overtime in one day or more than nine overtime hours in a week, excess overtime hours must be paid at an additional 75 percent above the normal wage. Workers have the right to 30 days' paid vacation for every 11 months of continuous work, including those who do not work full time.

The Ministry of Labor is responsible for setting health and safety standards. Standards set were generally current and appropriate for the main industries in the country. The law requires employers to provide a safe workplace environment, including the provision of protective clothing and equipment for workers.

The Ministry of Labor generally enforced these standards in the formal sector. The inspection office comprised two groups: the Panama City-based headquarters group and the regional group. As of September there were 47 inspectors reported within the headquarters. The regional branches had 69 general inspectors and 118 safety inspectors for construction sites. The number of inspectors was insufficient to enforce labor laws adequately. As of July the Ministry of Labor had conducted 9,929 safety inspections nationwide. Fines were low and generally insufficient to deter violations. During the year, however, the government levied fines according to the number of workers affected, resulting in larger overall fines.

Reports of violations relating to hours of work were frequent, especially in the maritime sector, where unions reported shifts of 14 to 24 hours. These long shifts reportedly resulted in fatigue-based occupational safety and health risks. Reports also indicated that neither the Maritime Authority nor the Labor Ministry conducted inspections regarding working conditions in the maritime sector. Canal Zone unions and workers experienced difficulties accessing the justice system to adjudicate complaints due to delays and other deficiencies of the Labor Relations Board, which is the court of first instance on labor matters in the Canal Zone. Reports also indicated violations relating to hours of work for coffee harvest workers, who often lacked formal contracts and were vulnerable to coercion from the employer.

Employers often hired employees under short-term contracts to avoid paying benefits that accrue to long-term employees. Employers in the maritime sector also commonly hired workers continuously on short-term contracts but did not convert them to permanent employees as required by law. The law states that employers have the right to dismiss any employee without justifiable cause before the two-year tenure term. As a result, employers frequently hired workers for one year and 11 months and subsequently laid them off to circumvent laws that make firing employees more difficult after two years of employment. This practice is

illegal if the same employee is rehired as a temporary worker after being laid off, although employees rarely reported the practice.

Inspectors from the Ministry of Labor and the occupational health section of the Social Security Administration reported conducting periodic inspections of hazardous employment sites. The law requires the resident engineer and a ministry construction-industry inspector to remain on construction sites, establish fines for noncompliance, and identify a tripartite group composed of the Chamber of Construction, SUNTRACS, and the ministry to regulate adherence.

Some construction workers and their employers were occasionally lax about basic safety measures, frequently due to their perception that it reduced productivity. Equipment was often outdated, broken, or lacking safety devices, due in large part to a fear that the replacement cost would be prohibitive.

Tab 3

PANAMA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Panama is a multiparty constitutional democracy. In May 2014 voters chose Juan Carlos Varela Rodriguez as president in national elections that international and domestic observers considered generally free and fair. Varela assumed the presidency in July 2014.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included an instance of excessive use of force by prison officials; widespread corruption, including in the judiciary; and lethal violence against women.

The Varela administration and the Public Ministry continued investigations into allegations of corruption against public officials.

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

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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

The constitution prohibits such practices. In July media reported the government was investigating the possible use of excessive force after 14 civilian correctional officers used batons and tear gas to control inmates who refused to be transported. The Ombudsman's Office described the event as torture and said it was an uncommon use of force from correctional officers.

In August, four members of the UN Sub-Committee on the Prevention of Torture (SPT) visited for the first time after the country's 2011 ratification of the UN Optional Protocol to the Convention against Torture. After the visit SPT members publicly exhorted the government to implement the National Mechanism for the Prevention of Torture according to international standards. In response the government opened the application process to hire the first National Mechanism director, who was to be embedded in the Ombudsman's Office with an independent budget and staff.

Prison and Detention Center Conditions

Prison conditions remained harsh, due primarily to overcrowding, a shortage of prison guards, a lack of adequate medical services, and inadequate sanitary conditions. There were no private detention facilities.

Physical Conditions: As of August the prison system, with an intended capacity of 14,167 inmates, held 16,114 prisoners, down from approximately 17,000 prisoners in 2016. Pretrial detainees shared cells with convicted prisoners due to space constraints. Prison conditions for women were generally better than for men, but conditions for both populations remained poor, with overcrowded facilities, poor inmate security, poor medical care, and a lack of basic supplies for personal hygiene. Older facilities located in the provinces of Cocle and Veraguas lacked potable water and adequate ventilation and lighting. Women inmates had access to more rehabilitation programs than male inmates.

In adult prisons inmates complained of limited time outside cells and limited access for family members. Authorities acknowledged that staff shortages limited exercise time for inmates on certain days. Juvenile pretrial and custodial detention centers also suffered from a lack of prison officials.

One prison, Punta Coco, falls under the control of the Ministry of Public Security rather than the Ministry of Government's National Directorate of the Penitentiary System (DGSP). In March the Inter-American Commission on Human Rights (IACHR) reiterated its request to close Punta Coco due to the lack of appropriate medical attention for inmates. Lawyers and relatives of the inmates had to travel 66 miles by boat to reach the island. In August authorities transferred 12 inmates temporarily from the Punta Coco facility to a Panama City prison while they upgraded it to international prison standards. The government did not have plans to close down the facility permanently.

During the year the Ministry of Health conducted vaccination campaigns in most prisons. Inmates received vaccines for tetanus, diphtheria, influenza, measles, rubella, and chickenpox. Hypertension, diabetes, dermatitis, HIV/AIDS, tuberculosis, and respiratory illnesses continued to be the most common diseases among the prison population.

Prison medical care overall was inadequate due to the lack of personnel, transportation, and medical resources. As of August there were only 55 medical staff (including physicians, dentists, nurses, and technical staff) assigned to all prisons nationwide. Sixty percent of complaints received by the Ombudsman's Office from January through August related to the lack of access to medical attention and medications. Officials complained that juvenile detention centers lacked medicines even after the Ministry of Government disbursed large sums to the Ministry of Health for their procurement. Authorities permitted relatives of inmates to bring medicine, although some relatives paid bribes to prison personnel, including Panama National Police (PNP) members, to bypass the required clearances. Authorities transferred patients with serious illnesses to public clinics, but there were difficulties arranging inmate transportation. Because the DGSP did not have ambulances, inmates were transported in police vehicles or in emergency services ambulances when available.

As of August, 10 male inmates had died in custody: four of heart attacks, two of HIV, one from cancer, one from tuberculosis, and one from a stroke. One inmate died in prison because of inmate-on-inmate violence. No information about medical care in these cases was available.

Administration: Prisoners could submit complaints to judicial authorities without censorship and request investigation of credible allegations of inhuman conditions, but authorities did not make the results of such investigations public. The Ombudsman's Office negotiated and petitioned on behalf of prisoners and received complaints about prison conditions. The Ombudsman's Office continued to conduct weekly prison visits to prisons in Panama City and Colon and twice a year to prisons elsewhere in the country. The government generally did not monitor its meetings with prisoners.

There were 1,264 prison guards nationwide, including 207 new guards hired during the year. DGSP officials estimated, however, the system required 1,400 guards to staff the prisons adequately. In April all monthly salaries for correctional officers increased from $460 and $690 to $800 (one Panamanian balboa is equal in value to one U.S. dollar).

Independent Monitoring: The government permitted prison monitoring by independent nongovernmental observers. The Roman Catholic nongovernmental organization (NGO) Justice and Peace visited a prison once between January and July. The NGO reported overcrowding and corrupt behavior by prison officials, which included smuggled weapons, cigarettes, and cell phones for the inmates. Human rights NGOs wanting access to prisons during visiting hours must send a written request to the DGSP 15 days in advance.

Improvements: After the September 2016 implementation of the new accusatorial penal system and sentencing reduction arrangements, the adult penitentiary population decreased during the year from 17,000 to approximately 16,000 prisoners. As of August, 247 inmates were granted reduced sentences and 41 were granted conditional releases. For largely similar reasons, the juvenile prison population decreased by almost 50 percent, compared with the previous year.

In September the DGSP began implementing Law 42, which provides a career path for civilian prison officials, technicians, and administrative personnel. The DGSP also opened a new Administrative Career Directorate and inaugurated new facilities for its academy for correctional officers in the central province of Cocle. The La Joyita prison's 60-bed clinic was remodeled and better equipped, but it operated with limited hours.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

Panama has no military forces. The PNP is principally responsible for internal law enforcement and public order. Civilian authorities in the Ministry of Public Security and the Ministry of the Presidency maintained effective control over all police, investigative, border, air, maritime, and migration services in the country. The government has mechanisms to investigate and punish abuse and corruption, but information on the process and results of investigations were rarely made public. Due to the lack of prison guards, the PNP was sometimes responsible for security both outside and inside of the prisons. Its leadership expressed concern over insufficient training and equipment.

Arrest Procedures and Treatment of Detainees

The law requires arresting officers to inform detainees immediately of the reasons for arrest or detention and of the right to immediate legal counsel. Detainees gained prompt access to legal counsel and family members, and the government provided indigent defendants with a lawyer.

The country completed its transition to an accusatory justice system in 2016, but cases opened prior to September 2, 2016, continued to be processed under the previous inquisitorial system, known for its inefficiencies and bureaucratic hurdles.

Under the accusatorial system, bail exists but is rarely granted. Under the inquisitorial system, a functioning bail procedure existed for a limited number of crimes but was largely unused. Most bail proceedings were at the discretion of the Prosecutor's Office and could not be independently initiated by detainees or their legal counsel.

The law prohibits police from detaining adult suspects for more than 48 hours but allows authorities to detain minor suspects for 72 hours. In the accusatorial system, arrests and detention decisions were made on a probable cause basis.

Pretrial Detention: Under the inquisitorial system, the government regularly imprisoned inmates for more than a year before a pretrial hearing, and in some cases pretrial detention exceeded the minimum sentence for the alleged crime. According to the director of the DGSP, 54 percent of inmates were pretrial detainees as of September, compared with 66 percent in 2016. Some criticized the judiciary for applying unequal pretrial restrictive measures for individuals facing substantially similar charges. Prosecutors also reported internal pressure from the Public Ministry to prevent release of those accused of crimes pending trial. In an attempt to clear the backlog of thousands of inquisitorial system cases, in June the Supreme Court announced a decision allowing active inquisitorial system cases that had not started investigation by January 1, 2018, to be processed under the accusatory system.

e. Denial of Fair Public Trial

While the law provides for an independent judiciary, the judicial system was inefficient and susceptible to corruption as well as internal and outside influence, and it faced allegations of manipulation by the executive branch.

Courts proceedings for cases in process under the inquisitorial system were not publicly available, while accusatory system cases were. As a result nonparties to the inquisitorial case proceedings did not have access to these proceedings until a verdict was reached. Under the inquisitorial system, judges could decide to hold private hearings and did so in high-profile cases. Consequently the judiciary sometimes faced accusations, particularly in high-profile cases, of procedural irregularities. Since most of these cases had not reached conclusion, however, the records remained under seal. Interested parties generally did not face gag orders, but because of this mechanism, it was difficult to verify facts.

Trial Procedures

The law provides for the right to a fair and public trial, and the judiciary generally enforced this right. The law provides that all citizens charged with crimes enjoy the right to a presumption of innocence. They have the right to be informed promptly and in detail of the charges (with free interpretation as necessary for non-Spanish speaking inmates), to a trial without undue delay, to have counsel of their choice, to adequate time and facilities to prepare a defense, to refrain from incriminating themselves or close relatives, and to be tried only once for a given offense. The accused may be present with counsel during the investigative phase of proceedings.

During the year all new criminal cases were tried under the accusatory system. Under the accusatory system, trials were open to the public. Judges may order the presence of pretrial detainees for providing or expanding upon statements or for confronting witnesses. Trials are conducted based on evidence presented by the public prosecutor. Defendants have the right to be present at trial and to consult with an attorney in a timely manner. Defendants may confront or question adverse witnesses and present their own witnesses and evidence. Defendants have a right of appeal. The judiciary generally enforced these rights.

The judiciary complained that many hearings were canceled due to inmates' failure to appear, especially those involving inmates processed under the old inquisitorial system. This was usually for administrative shortcomings, such as a dearth of PNP agents to transfer the inmates to the courts. Authorities were also aware that available correctional officers and PNP agents focused more on inmates tried under the new accusatory system because the law fines police and correctional officers 100 balboas for failing to deliver an inmate to a hearing.

The judiciary continued to promote videoconference hearings. Judges were increasingly receptive to using this tool, and during the year the government continued to add video conference and hearing rooms to prison facilities.

Judicial response times generally decreased under the new accusatory system. As of June, 104,626 cases were tried under the accusatorial system. During the same period, judicial response time nationwide decreased from an average of 296 days under the inquisitorial system to 42 days under the accusatory system.

Political Prisoners and Detainees

There were no credible reports of political prisoners or detainees. Some individuals detained under corruption charges claimed their charges were politically motivated because they had served in former president Ricardo Martinelli's administration.

Civil Judicial Procedures and Remedies

Citizens have access to the courts to bring lawsuits seeking damages for, or cessation of, human rights violations, although most do not pursue such lawsuits due to the length of the process. There are administrative and judicial remedies for alleged wrongs, and authorities often granted them to citizens who followed through with the process. The court can order civil remedies, including fair compensation to the individual injured. Individuals or organizations may initiate cases involving violations of an individual's human rights by submitting petitions to the IACHR.

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

The law prohibits arbitrary interference with privacy, family, home, or correspondence, and the government generally respected these prohibitions. The law also sets forth requirements for conducting wiretap surveillance. It denies prosecutors authority to order wiretaps on their own and requires judicial oversight.

The investigation of the 2015 illegal wiretapping case against former president Martinelli, as well as against Alejandro Garuz and Gustavo Perez, two former intelligence directors in his administration, continued during the year.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of expression, including for the press. Some journalists complained of harassment, intimidation, and threats when covering stories of impropriety, corruption, or other crimes involving members of the Ministry of Public Security or members of the public security forces.

Press and Media Freedom: During the year media outlets owned by political and business leaders facing legal proceedings claimed those proceedings limited their freedoms of expression. Media outlets continued to publish and broadcast freely throughout the year. There were anecdotal reports of the government discouraging journalists from publishing stories critical of the administration.

Television channels owners and radio directors linked to opposition parties claimed to be victims of government retaliation for their political views through the opening of corruption investigation against them. In 2016 police arrested NexTV president and former president of the board of directors of the government-run national savings bank Caja de Ahorros, Riccardo Francolini, and former Caja de Ahorros board member and current NexTV anchor and news director Fernando Correa on embezzlement charges unrelated to their media activities.

Violence and Harassment: In 2016 the Ministry of Government submitted a bill that would fine media outlets that published material promoting violence against women. Several journalist unions condemned the bill as an attempt to censor and regulate media content. Pressure from civil society stalled the National Assembly's approval of the bill. In March the National Assembly approved a revised version of the bill, which transfers responsibility for the fines from the Ministry of Government to the judicial branch.

In April the National Assembly passed a law regulating sexual content in classified advertisements of newspapers, forbidding the publication of sex-work advertisements, in an effort to prevent sex trafficking. Some critics viewed it as a form of censorship.

New media journalists often faced challenges similar to their traditional media counterparts. For example, ClaraMente (a platform launched from Facebook, with a widespread audience) reporters Mauricio Valenzuela and Hugo German

reportedly received death threats over the telephone regarding their publications critical of anti-immigration right-wing groups and religious organizations.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

The government provided free, wireless internet in public spaces that, when working, reached 86 percent of the population. According to government statistics, two million persons had fixed internet access, representing 50 percent of the population.

Academic Freedom and Cultural Events

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

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights. The government provided permits for organized groups to conduct peaceful marches. Nevertheless, police at times used force to disperse demonstrators, especially when highways or streets were blocked. The law provides for six to 24 months' imprisonment for anyone who, through use of violence, impedes the transit of vehicles on public roads or causes damage to public or private property.

c. Freedom of Religion

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

d. Freedom of Movement

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

protection and assistance to refugees, persons under temporary humanitarian protection, asylum seekers, and other persons of concern.

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. The process of obtaining refugee status generally took three to four years, during which asylum seekers did not have the right to work and could not access basic services.

As of July the National Office for the Attention of Refugees (ONPAR) received 2,613 refugee applications, compared with 2,619 in 2016. In 2016 ONPAR reviewed 784 cases for admission and admitted 10 into the asylum process. Approximately 77 percent of the applicants were from Venezuela, and the remaining 23 percent were Colombians, Salvadorans, and Nicaraguans.

In August, following a separate process not involving ONPAR, the country granted asylum to three Venezuelan judges and a consul of the Venezuelan embassy. In September the government approved the asylum request of a Venezuelan Supreme Court alternate justice.

As of September the National Border Protection Force had apprehended 4,833 irregular migrants in the Darien region. Apprehensions were down from 17,306 in 2016 and 31,749 in 2015. Cuban nationals accounted for 716 of the migrants, compared with 5,083 in 2016. In March the government announced it would deport hundreds of Cuban migrants, and in August the government stated that 76 Cuban migrants accepted the offer and would receive 1,600 balboas and a Panamanian tourist visa once back in Cuba. In September authorities began arranging repatriation flights for Cuban migrants. The government continued to manage camps in the Darien region to provide food, shelter, and medical assistance to the migrants. The government reported continued migrations of persons from South Asia and Africa.

According to UNHCR and its NGO implementing partners, thousands of persons living in the country might be in need of international protection. These included persons in the refugee process, persons denied refugee status, and persons who did not apply for refugee status due to lack of knowledge or fear of deportation.

Employment: Refugees recognized by authorities have the right to work, but recognized refugees complained that they faced discriminatory hiring practices. In an effort to prevent this discriminatory practice, ONPAR removed the word "refugee" from recognized refugees' identification cards.

All foreigners seeking a work contract must initiate the process through a lawyer and pay a government fee of 700 balboas to obtain a work permit that expires upon termination of the labor contract or after one year, whichever comes first.

Access to Basic Services: Education authorities sometimes denied refugees access to education, while refusing to issue diplomas to others if they could not present school records from their country of origin. The Ministry of Education continued to enforce the government's 2015 decree requiring schools to accept students in the asylum process at the grade level commensurate with the applicants' prior studies.

Durable Solutions: The law allows persons legally recognized as refugees or with asylum status who have lived in the country for more than three years to seek permanent residency.

Stateless Persons

The government worked with Colombia to recognize approximately 200 stateless persons on the border. In July the governments of Panama and Costa Rica, with the cooperation of UNHCR, set up a mobile registry office on the border with Costa Rica to register indigenous Ngabe and Bugle seasonal workers who travel between Costa Rica and Panama and who had never registered their births in either country.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot based on universal and equal suffrage. Naturalized citizens may not hold specified categories of elective office, such as the presidency.

Elections and Political Participation

Recent Elections: In 2014 voters chose Juan Carlos Varela Rodriguez as president in national elections independent observers considered generally free and fair.

Elected at the same time were 71 national legislators, 77 mayors, 648 local representatives, and seven council members.

Political Parties and Political Participation: The law requires new political parties to meet strict membership and organizational standards to gain official recognition and participate in national campaigns. Electoral reforms passed in May, however, require that political parties obtain the equivalent of 2 percent of the total votes cast to maintain legal standing, a 2 percent reduction from previous requirements. The Revolutionary Democratic Party, Panamenista Party, Democratic Change Party, and Popular Party all complied with the requirement. During the year new political groups registered with the Electoral Tribunal, including the Broad Front for Democracy, the Alliance Party, the Independent Social Alternative Party and Creemos. The Electoral Tribunal provided oversight of internal party elections. On October 15, the Democratic Change Party held internal elections.

Participation of Women and Minorities: No laws limit participation of women and/or members of minorities in the political process, and they did participate.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively. Corruption remained a problem in the executive, judicial, and legislative branches as well as in the security forces. During the year, however, the government took steps to address corrupt practices among government employees and security forces. Anticorruption mechanisms such as asset forfeiture, whistleblower and witness protection, plea bargaining, and professional conflict-of-interest rules exist.

Corruption: During the year there were several credible allegations of corruption against current or former members of the government. More than a dozen high-ranking officials under the previous administration faced charges of corruption.

Investigations under the inquisitorial system continued of Panama Canal Authority board member Lourdes Castillo and her business partners for alleged payment of bribes in 2014 in exchange for a contract with the Panama Maritime Authority. The administration filed a complaint for alleged overpayment of 12 million balboas made to Castillo and her partners' corporations.

Corruption and a lack of accountability among police continued to be a problem, although the government took steps to address violations. Agents were dismissed

on corruption grounds and were under investigation by the Public Ministry. In January officials dismantled a human trafficking organization and arrested two National Migration Service inspectors suspected of receiving bribes.

In September, Eudocio "Pany" Perez, mayor of La Villa de Los Santos, was arrested on charges of corruption and money laundering for drug trafficking organizations. His assistant, a PNP major, a PNP agent, and seven other individuals were also detained in an operation in which 2.1 tons of illicit substances, 30 cars, and approximately one million balboas were seized.

In 2016 the former Agriculture Institute director general under the current administration, Edwin Cardenas, was detained under charges of mismanagement of more than six million balboas of public funds. The fourth anticorruption prosecutor charged Cardenas for wrongdoings from July 2014 through April 2015. Cardenas was released on bail in February. The case continued under the inquisitorial system.

In August the Second Superior Court ordered the separation from office of the mayor of Chagres in Colon Province on charges of embezzlement and document forgery. The 2012 case was under the inquisitorial system.

Former minister of the presidency Demetrio "Jimmy" Papadimitriu and former minister of public works Jaime Ford, both in the Martinelli administration, were detained in September for alleged links to bribes paid by Brazilian multinational construction company Odebrecht. Both faced money-laundering charges. The cases were under the inquisitorial system.

After two years in a private hospital undergoing medical treatment for an undisclosed illness, former internal revenue director under the Martinelli administration, Luis Cucalon, was taken to prison. Cucalon faced embezzlement charges for favoring a company with a direct contract for tax collection. The case was being processed under the inquisitorial system and saw several delays. Cucalon claimed medical problems and changed lawyers several times to keep moving hearing dates. After four postponements, the judge called for a closed-door hearing in October. Only prosecutors and defense lawyers, in addition to Cucalon, were able to attend. The hearing was closed to media since judges have discretion on whether to allow media presence or not under the inquisitorial system.

Financial Disclosure: The law requires certain executive and judiciary officials to submit a financial disclosure statement to the Comptroller General's Office. The information is not made public unless the official grants permission for access to the public.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

Government Human Rights Bodies: The ombudsman, elected by the National Assembly, has moral but not legal authority. The Ombudsman's Office received government cooperation and operated without government or party interference; it referred cases to the proper investigating authorities.

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

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, with prison terms of five to 10 years. The government generally implemented criminal aspects of the law better than protection aspects. Rapes constituted the majority of sexual crimes investigated by the PNP and its Directorate of Judicial Investigation.

The law against gender violence stipulates stiff penalties for harassment and both physical and emotional abuse and provides for prison terms of up to 30 years for murder. Officials and civil society organizations agreed that domestic violence continued to be a serious crime.

As of September the Attorney General's Office reported 13 killings of women in domestic violence-related crimes.

The Ombudsman's Office continued its program "Mujer Conoce tus Derechos" (Woman, Know Your Rights), which included a wide distribution of flyers.

There was a lack of shelters for victims of domestic abuse. In June the government, through the National Institute for Women's Affairs, opened a shelter in Puerto Escondido, Colon, for victims of domestic abuse and offered social, psychological, medical, and legal services.

Sexual Harassment: The law prohibits sexual harassment in cases of employer-employee relations in the public and private sectors and in teacher-student relations. Violators face a maximum three-year prison sentence. The extent of the problem was difficult to determine, because convictions for sexual harassment were rare, pre-employment sexual harassment was not actionable, and there was a lack of formal reports.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: The law prohibits discrimination based on gender, and women enjoyed the same legal status and rights as men. The law recognizes joint property in marriages. The law mandates equal pay for men and women in equivalent jobs. The Ministry of Social Development and the National Institute of Women promoted equality of women in the workplace and equal pay for equal work, attempted to reduce sexual harassment, and advocated legal reforms. Although an illegal hiring practice, some employers continued to request pregnancy tests.

Children

Birth Registration: The law provides citizenship for all persons born in the country, but parents of children born in remote areas sometimes had difficulty obtaining birth registration certificates. The National Secretariat for Children, Adolescents, and the Family estimated the registration level of births at 92 percent.

Child Abuse: The Ministry of Social Development maintained a free hotline for children and adults to report child abuse and advertised it widely. The ministry provided funding to children's shelters operated by NGOs in seven provinces and continued a program that used pamphlets in schools to sensitize teachers, children, and parents about mistreatment and sexual abuse of children.

Early and Forced Marriage: The minimum legal age for marriage is 18. The government prohibits early marriage even with parental permission.

Sexual Exploitation of Children: Officials continued to prosecute cases of sexual abuse of children in urban and rural areas, as well as within indigenous communities. Officials believed that commercial sexual exploitation of children occurred, including in tourist areas in Panama City and in beach communities, although they did not keep separate statistics.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

Jewish community leaders estimated there were 15,000 Jews in the country. 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 based on physical, sensory, intellectual, or mental disabilities; however, the constitution permits the denial of naturalization to persons with mental or physical disabilities. The law mandates access to new or remodeled public buildings for persons with disabilities and requires that schools integrate children with disabilities. Despite provisions of the law, persons with disabilities experienced discrimination in a number of these areas.

Panama City's bus fleet was not wheelchair accessible. Metro elevators were frequently locked and could not be used. A lack of ramps further limited access to the stations. Most businesses had wheelchair ramps and accessible parking spaces as required by law, but in many cases, they did not meet the government's size specifications.

Some public schools admitted children with mental and physical disabilities, but most did not have adequate facilities for children with disabilities. Few private schools admitted children with disabilities. The high cost of hiring professional tutors to accompany children to private schools--a requirement of all private schools--precluded many students with disabilities from attending.

The government-sponsored Guardian Angel program continued to provide a monthly subsidy of 80 balboas for children with significant physical disabilities. To qualify, the parents or guardian of a child must be living in poverty and must submit a medical certification specifying the degree of the disability and the child's dependency on another person. Authorities conducted home visits to ensure the beneficiaries' guardians used the funds for the intended purpose.

In June and July, the Ministry of Labor hosted job fairs for persons with disabilities for positions in the logistics field. Twenty persons were reported hired.

In August experts with the UN Convention on the Rights of Persons with Disabilities visited the country and found that the classification of disabilities by medical authorities did not take into consideration the barriers faced by the individuals with each disability.

National/Racial/Ethnic Minorities

Minority groups were generally integrated into mainstream society. Prejudice was directed, however, at recent immigrants, the Afro-Panamanian community, and indigenous Panamanians. Cultural and language differences and immigration status hindered the integration of immigrant and first-generation individuals from China, India, and the Middle East into mainstream society. Additionally, some members of these communities were reluctant to integrate.

The Afro-Panamanian community continued to be underrepresented in positions of political and economic power. Areas where they lived lagged in terms of government services and social investment. The government created the National Secretariat for the Development of Afro-Panamanians, focused on the socioeconomic advancement of this community. The secretariat was designed to work with the national census to ensure an accurate count of Afro-descendant Panamanians.

The law prohibits discrimination in access to public accommodations such as restaurants, stores, and other privately owned establishments; few complaints were

filed. The Ombudsman's Office intervened in several cases before students with Rastafarian braids were permitted entry into public school classrooms.

There were reports of racial discrimination against various ethnic groups in the workplace. Lighter-skinned persons continued to be overrepresented in management positions and jobs that required dealing with the public, such as bank tellers and receptionists.

Indigenous People

The law affords indigenous persons the same political and legal rights as other citizens, protects their ethnic identity and native languages, and requires the government to provide bilingual literacy programs in indigenous communities. Indigenous individuals have the legal right to take part in decisions affecting their lands, cultures, traditions, and the allocation and exploitation of natural resources. Nevertheless, they continued to be marginalized. Traditional community leaders governed legally designated semiautonomous areas (called comarcas) for five of the country's seven indigenous groups. The government also unofficially recognized eight other traditional indigenous government authorities. Government institutions recognize that these eight regions have traditionally been and still are organized indigenous settlements and territories not included when the original comarcas were created. Government officers still meet with traditional organized authorities from the community and many have requested recognition of their land via collective titles.

In August the Naso community was granted collective title to 423 acres of land in Bocas del Toro Province. Approximately 30 indigenous communities await grants for collective land titles.

The Ngabe and Bugle continued to oppose the Barro Blanco dam project, which was nearing completion. The Ngabe-Bugle and the government continued to negotiate details of the dam's operation.

Although the country's law is the ultimate authority in indigenous comarcas, many indigenous persons misunderstood their rights and, due to their inadequate command of the Spanish language, failed to use available legal channels. In response the government with NGO support conducted information sessions on the accusatory justice system in indigenous comarcas. The government also translated disability rights legislation into indigenous languages.

Societal and employment discrimination against indigenous persons was widespread. In September a Ngabe youth leader alleged that two local celebrities used racial slurs and discriminatory rhetoric to denigrate him and the Ngabes. The youth leader filed a formal complaint at the Public Ministry. Employers frequently denied indigenous workers basic rights provided by law, such as a minimum wage, social security benefits, termination pay, and job security. Laborers on the country's agricultural plantations (the majority of whom were indigenous persons) continued to work in overcrowded and unsanitary conditions. The Ministry of Labor conducted limited oversight of working conditions in remote areas.

Education continued to be deficient in the comarcas, especially beyond the primary grades. There were not enough teachers in these remote and inaccessible areas, with many multigrade schools often poorly constructed and lacking running water. In June, two teachers died in an accident on the road to their schools in the Ngabe comarca. This sparked a 60-day strike in 43 of the schools in the comarca as teachers demanded better work conditions, including safety bonuses, better life insurance, and improved roads. Access to health care was a significant problem in the indigenous comarcas, despite government investment in more health infrastructure as well as staff. This was reflected in high rates of maternal and infant mortality and malnutrition. The government continued to execute the Indigenous Development Plan jointly developed with indigenous leaders in 2013.

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

The law does not prohibit discrimination based on sexual orientation. There was societal discrimination based on sexual orientation and gender identity, which often led to denial of employment opportunities.

The PNP's internal regulations describe homosexual conduct by its employees as against policy and potentially grounds for dismissal. Harassment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons by security forces was a major complaint of LGBTI rights organizations.

On July 1, LGBTI rights advocates organized without impediment the 13th annual pride parade. For the first time, the president's spouse participated and was a flag bearer during the parade. For the third year in a row, the Panama City mayor and vice mayor were joined by members of the diplomatic corps.

HIV and AIDS Social Stigma

The law prohibits discrimination against persons with HIV/AIDS in employment and education. Discrimination continued to be common due to ignorance of the law and a lack of mechanisms for ensuring compliance. LGBTI individuals reported mistreatment by health-care workers, including unnecessary quarantines.

The 2015 government's National Network for the Continued Integral Attention of Persons with HIV/AIDS continued during the year. The Ministry of Social Development collaborated with the NGO PROBIDSIDA to conduct HIV/AIDS outreach to students in public junior and high schools. During the year PROBIDSIDA also worked with the Ministry of Public Security "Barrios Seguros" program to provide HIV/AIDS training and free testing services to at-risk youth from vulnerable communities. Youth who tested positive received medical treatment.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of private-sector workers to form and join unions of their choice subject to the union's registration with the government. Public servants may not form unions but may form associations that can bargain collectively on behalf of members. In August the Ministry of Labor submitted to the National Assembly a draft law to allow public servants to form unions and bargain collectively.

The law provides for the right of private-sector workers to strike. The Administrative Career Law grants public-sector employees the same right when the strike has been deemed legal and when a minimum percentage of workers cover essential positions, as set out in the law. The right to strike does not apply in areas deemed vital to public welfare and security, including police. The law provides all private-sector and public-sector workers the right to bargain collectively, prohibits employer antiunion discrimination, and protects workers engaged in union activities from loss of employment or discriminatory transfers. It requires reinstatement of workers terminated for union activity.

The law places several restrictions on these rights, including requiring Panamanian citizenship to serve on a trade union's executive board, requiring a minimum of 40 persons to form a private-sector union (either by company across trades or by trade across companies), and permitting only one trade union per business establishment.

The International Labor Organization continued to criticize the 40-person minimum as too large for workers wanting to form a union within a company; domestic unions, as well as the government and private sector, reiterated their support for keeping the figure at 40 individuals.

Forty public servants are required to form a worker's association. Member associations represent public-sector workers such as doctors, nurses, firefighters, and administrative staff in government ministries. The law stipulates there may not be more than one association in a public-sector institution and permits no more than one chapter per province.

In the private sector, the labor code provides that if the government does not respond to a registration application within 15 days, the union automatically gains legal recognition. In the public sector, unions gain legal recognition automatically if the General Directorate for Administrative Public Sector Careers does not respond to registration applications within 30 days.

A majority of employees must support a strike, which must be related to the improvement of working conditions, a collective bargaining agreement, or in support of another strike of workers on the same project (solidarity strike). In the event of a strike, at least 20 to 30 percent of the workforce must continue to provide minimum services, particularly public services as defined by the law, such as transportation, sanitation, mail delivery, hospital care, telecommunications, and public availability of essential foodstuffs.

Strikes in essential transportation services are limited to those involving public passenger services. The law prohibits strikes for the Panama Canal Authority's employees but allows unions to organize and bargain collectively on such issues as schedules and safety. It also provides for arbitration to resolve disputes. By law the National Federation of Public Servants (FENASEP), an umbrella federation of 21 public-sector worker associations, is not permitted to call strikes or negotiate collective bargaining agreements. Individual associations under FENASEP may negotiate on behalf of their members. FENASEP leaders noted that collective bargaining claims were heard and recognized, but they reported a lack of changes afterwards, particularly regarding firings without cause. FENASEP discussed structural changes with President Varela to promote equity and provide adequate treatment of the public sector as a sector with established rights like that of unionized groups. During the year FENASEP focused on the lack of job stability, the lack of a policy for salary beyond the minimum wage, salary gap and equal pay for men and women, and the lack of indemnity pay for unjustified firings.

Supreme Court decisions recognize that collective agreements negotiated between employers and unorganized workers have legal status equivalent to collective bargaining agreements negotiated by unions. Executive decrees provide that an employer may not enter into collective negotiations with nonunionized workers when a union exists and that a preexisting agreement with nonunionized workers cannot be used to refuse negotiations with unionized workers. The labor ministry's *Manual of Labor Rights and Obligations* provides that unorganized workers may petition the ministry regarding labor rights violations and may exercise the right to strike.

An executive decree protects employees from employer interference in labor rights, specifically including "employer-directed unions," and mandates that workers be able to choose unions freely, without penalty.

Since the beginning of the Varela administration in 2014, the government approved more than 20 applications it received for union formations and denied two based on evidence of company owners' influence.

In addition to the court system, the Conciliation Board of the labor ministry has the authority to resolve certain labor disagreements, such as internal union disputes, enforcement of the minimum wage, and some dismissal issues. The law allows arbitration by mutual consent, at the request of the employee or the ministry in the case of a collective dispute in a public-service company. It allows either party to appeal if arbitration is mandated during a collective dispute in a public-service company. The separate Labor Foundation's Tripartite Conciliation Board has sole competency for disputes related to domestic employees, some dismissal issues, and claims of less than 1,500 balboas.

For public-sector workers, the Board of Appeal and Conciliation in the Ministry of the Presidency hears and resolves complaints. The board refers complaints it cannot resolve to an arbitral tribunal, which consists of representatives from the employer, the workers' association, and a third member chosen by the first two. Tribunal decisions are final.

The government and employers generally respected freedom of association and the right to collective bargaining; however, the inspections and notifications departments lacked funding and inspectors to enforce labor laws adequately. Employers often hired employees under short-term contracts to avoid paying benefits that accrue to long-term employees. Employers in the maritime sector

also commonly hired workers continuously on short-term contracts but did not convert them to permanent employees as required by law. The law states that employers have the right to dismiss any employee without justifiable cause before the two-year tenure term. As a result employers frequently hired workers for one year and 11 months and subsequently laid them off to circumvent laws that make firing employees more difficult after two years of employment. This practice is illegal if the same employee is rehired as a temporary worker after being laid off, although employees rarely reported the practice.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced labor of adults or children. The law establishes penalties of 15 to 20 years' imprisonment for forced labor involving movement (either cross-border or within the country) and six to 10 years' imprisonment for forced labor not involving movement.

While prostitution is legal, according to media reports, forced labor continued to be a problem in the commercial sex industry, often due to disputes between women and their employers over wage amounts agreed in oral contracts.

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 law prohibits the employment of children under age 14, although children who have not completed primary school may not begin work until age 15. The family code permits children ages 12 to 14 to perform domestic and agricultural work with regard to schedule, salary, contract, and type. The labor code allows children ages 12 to 15 to perform light work in agriculture if the work is outside regular school hours. It also allows children over the age of 12 to perform light domestic work and says employers must ensure the child attends school through primary school. The law does not limit the total number of hours these children may work nor define the light work children may perform. The law prohibits 14- to 18-year-old children from engaging in potentially hazardous work such as work with electrical energy, explosives, or flammable, toxic, and radioactive substances; work underground and on railroads, airplanes, and boats; and work in nightclubs, bars, and casinos.

Youths under age 16 may work no more than six hours per day or 36 hours per week, while those 16 and 17 may work no more than seven hours per day or 42 hours per week. Children under 18 may not work between 6 p.m. and 8 a.m.

The Ministry of Labor generally enforced the law effectively in the formal sector, enforcing child labor provisions in response to complaints and ordering the termination of unauthorized employees. It did not do so in the informal economy. By law violators can be fined up to 700 balboas for a first-time violation. Employers who endanger the physical or mental health of a child may face two to six years' imprisonment. The law includes punishment of up to 12 years' imprisonment for anyone who recruits children under age 18 or uses them to participate actively in armed hostilities.

The National Office for Children, Youth, and Family implemented programs to identify children engaged in the worst forms of child labor, to remove them from exploitative situations, and to provide them with services. The Ministry of Labor offered training on the topic of child labor and lessons learned to various stakeholders.

Also, see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations prohibit discrimination regarding race, gender, religion, political opinion, citizenship, disability, social status, HIV status and other communicable diseases, but they do not do so on the basis of sexual orientation, and/or gender identity. In October the Ministry of Labor announced the adoption of the UN Development Program's Gender Equality certification program in the public and private sectors to promote gender equality in the workplace.

Discrimination in employment and occupation occurred with respect to race, sex, gender, disability, sexual orientation and/or gender identity, and HIV-positive status (see section 6). Discrimination against migrant workers also occurred (see section 6).

e. Acceptable Conditions of Work

The minimum hourly wage for private-sector employees does meet the monthly poverty line. Public servants' monthly minimum wage does meet the monthly

poverty line. Food and the use of housing facilities were considered part of the salary for some workers, such as domestic and agricultural workers. Minimum monthly salaries for domestic workers ranged from 225 balboas to 250 balboas. The agricultural sector and the marine and aviation sectors received the lowest and highest minimum wages, respectively.

The law establishes a standard workweek of 48 hours, provides for at least one 24-hour rest period weekly, limits the number of hours worked per week, provides for premium pay for overtime, and prohibits compulsory overtime. There is no annual limit on the total number of overtime hours allowed. If employees work more than three hours of overtime in one day or more than nine overtime hours in a week, excess overtime hours must be paid at an additional 75 percent above the normal wage. Workers have the right to 30 days' paid vacation for every 11 months of continuous work, including those who do not work full time. The Ministry of Labor is responsible for setting health and safety standards. Standards set were generally current and appropriate for the main industries in the country. The labor code requires employers to provide a safe workplace environment, including the provision of protective clothing and equipment for workers.

The Ministry of Labor generally enforced these standards in the formal sector. The inspection office comprises two groups: the Panama City-based headquarters group and the regional group. As of November within the headquarters there were 34 inspectors reported, including nine general labor inspectors, four child labor inspectors, and 12 safety inspectors in the construction industry. The construction industry paid the salaries of construction industry inspectors, although the inspectors remained ministry employees. The regional branches had 55 inspectors. As of September the Ministry of Labor had conducted labor inspections nationwide. Allowable fines for violations were low and generally insufficient to deter violations. During the year, however, the government levied fines according to the number of workers affected, resulting in larger overall fines. The ministry issued fines for migration violations, for safety and security violations, for general labor issues violations, and for violations related to child labor.

Reports of violations relating to hours of work existed, especially in the maritime sector, where unions reported shifts of 14 to 24 hours. These long shifts reportedly resulted in fatigue-based occupational safety and health risks. Reports also indicated that neither the Maritime Authority nor the labor ministry conducted inspections regarding working conditions in the maritime sector. Canal Zone unions and workers experienced difficulties accessing the justice system to adjudicate complaints due to delays and other deficiencies of the Labor Relations

Board, which is the court of first instance on labor matters in the Canal Zone. Reports also indicated violations relating to hours of work for coffee harvest workers, who often lacked formal contracts and were vulnerable to coercion from the employer.

Inspectors from the Ministry of Labor and the occupational health section of the Social Security Administration reported conducting periodic inspections of hazardous employment sites. The law requires the resident engineer and a ministry construction industry inspector to remain on construction sites, establish fines for noncompliance, and identify a tripartite group composed of the Chamber of Construction, SUNTRACS (the largest union of construction workers in the country), and the ministry to regulate adherence.

Most workers formally employed in urban areas earned the minimum wage or more. Approximately 40 percent of the working population worked in the informal sector, and many earned well below the minimum wage. In most rural areas, unskilled laborers, including street vendors and those involved in forestry, fishing, and handicraft production, earned three to six balboas per day without benefits. The Ministry of Labor was less likely to enforce labor laws in most rural areas (see section 6, Indigenous People).

Some construction workers and their employers were occasionally lax about basic safety measures, frequently due to their perception that it reduced productivity. Equipment was often outdated, broken, or lacking safety devices, due in large part to a fear that the replacement cost would be prohibitive.

Workers could not remove themselves from situations that endangered health or safety without jeopardy to their employment, and authorities did not effectively protect workers in this situation.

Tab 4

Immigration and Refugee Board of Canada | Commission de l'immigration et du statut de réfugié du Canada

Panama: Situation of sexual minorities, including treatment by society and authorities; implementation of legislation related to the treatment of sexual minorities; state protection and support services (2011-June 2013)

Publisher	Canada: Immigration and Refugee Board of Canada
Publication Date	8 July 2013
Citation / Document Symbol	PAN104476.E
Related Document (s)	Panama : information sur la situation des minorités sexuelles, y compris le traitement que leur réservent la société et les autorités; l'application de la loi en ce qui a trait au traitement auquel les minorités sexuelles sont soumises; la protection que l'État leur offre et les services de soutien (2011-juin 2013)
Cite as	Canada: Immigration and Refugee Board of Canada, *Panama: Situation of sexual minorities, including treatment by society and authorities; implementation of legislation related to the treatment of sexual minorities; state protection and support services (2011-June 2013)*, 8 July 2013, PAN104476.E , available at: https://www.refworld.org/docid/5429347a4.html [accessed 7 August 2020]
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1. Legislation

Homosexuality in Panama was legalized in July 2008 (AHMNP 2010, 16; AngloINFO n.d.a). According to an article published by AngloInfo, an English language website that provides general information to people living in a region which they are not totally familiar with (n.d.b), "gay couples [in Panama] have no official rights and same-sex relationships, marriages or unions are not recognized," which means that they are not entitled to the same protections and civil rights that heterosexual couples have (AngloInfo n.d.a).

According to AngloInfo, "[t]he constitution of Panama states that there can be no discrimination by gender, but there are no gay anti-discrimination laws in effect" (n.d.a). The leader of the New Men and Women Association of Panama [Asociación de Hombres y Mujeres Nuevos de Panamá, AHMNP] which is the country's main LGBT organization (US 19 Apr. 2013, 25), explained in an

article published by SentidoG, a news source from Buenos Aires, that [translation] "sexual orientation is not covered by Panamanian law, which 'produces a legal vacuum' that facilitates discrimination" (17 May 2010). Infobae América, a digital news source based in Buenos Aires, also cites the leader of AHMNP as saying that there is no law that protects sexual minorities in fields such as education, work or the health system (Infobae 15 Sept. 2010).

SentidoG reports that, on 17 May 2010, a group of gays and lesbians filed, before the Panamanian Congress, a draft bill to [translation] "'ban' discrimination and homophobia" proposing a punishment of six months to one year imprisonment for anyone who "'discriminates or physically or verbally assaults' a person for 'their sexual orientation'" (SentidoG 17 May 2010). According to Agencia EFE, a Spanish language news agency (n.d.), the bill has not been discussed (16 May 2012).

2. Treatment by Society

According to a survey made by Dichter & Neira, a company that provides market and public opinion surveys (n.d.), the results of which were published in 2010 in La Estrella de Panamá, a Panamanian newspaper published since 1853 (La Estrella de Panamá n.d.), almost 80 percent of the Panamanian population [translation] "rejected the idea" of homosexual marriages (ibid. 14 Sept. 2010). Corroborating information could not be found among the sources consulted by the Research Directorate.

An article published by the Inter-American Institute for Human Rights (Instituto Interamericano de Derechos Humanos, IIDH) states that [translation] "[h]omosexuals, lesbians and transgenders complain about the constant teasing and harassment that they suffer in the streets" (IIDH Oct. 2010). According to the leader of AHMNP, there is a [translation] "'very strong institutional and societal discrimination and homophobia' in Panama" (Agencia EFE 16 May 2012). According to a 2010 national report by the AHMNP on the humans rights for the LGBT population in Panama, which is based on data provided by AHMNP, news articles, studies, articles, and court orders between June 2009 and June 2010, and which was sent to the Research Directorate by a representative, the presence of discrimination and homophobia in everyday life is [translation] "so ingrained and accepted that some [people] do not even notice [it]" (AHMNP 2010, 14).

The AHMNP 2010 report also indicates that LGBT people receive [translation] "rude and contemptuous treatment" when they ask for health services and that a great number of these complaints were received by the AHMNP in the last year (AHMNP 2010, 17). According to a representative from the VIH-AIDS program at the Ministry of Health, [translation] "discrimination in medical centers and in hospitals does not come so much from the doctors but rather from nurses and administrative staff" (IIDH Oct. 2010, 2).

According to the AHMNP report, some people were transferred to other jobs because of their sexual orientation (2010, 18). The US Department of State's Country Reports on Human Rights Practices for 2010, 2011 and 2012 also indicate that people were "often" denied employment opportunities because of their sexual orientation (US 8 Apr. 2011, 25; ibid. 24 May 2012, 22; ibid. 19 Apr. 2013, 25). According to SentidoG, three students complained that they were barred from receiving their university diploma because of their sexual orientation (17 May 2010).

3. Treatment by authorities

According to AngloInfo, "gay men and women are banned from joining the armed forces or the police force" (AngloInfo n.d.a). Country Reports for 2012 and 2011 stated that

[h]arassment of lesbian, gay, bisexual, and transgender (LGBT) persons by security forces was a major complaint of the [AHMNP], ... but formal complaints were rare due to the perception that the reports were not taken seriously or that complaints could be used against claimants in the absence of non-discrimination legislation. (US 24 May 2012, 22; ibid. 19 Apr. 2013, 25)

In addition, "regular incidents in which security forces refused to accept complaints of harassment of transgender individuals" were reported by the Panamanian Association of Transgender People in 2010 (US 19 Apr. 2013, 25).

In 2013, three transgender people were detained in the airport over gender identity issues (ibid.). IIDH cites the leader of the Panamanian Association of Transgender Persons (Asociación Panameña de Personas Trans, APPT), an organization devoted to LGBT rights (ILGA n.d.), as saying that trans people sex workers are harassed by the police (IIDH Oct. 2010, 1). She said that the police [translation] "exhibit them and laugh at them [and] sometimes [the police officers] take away their money when they are taken to the police station" (ibid.). The Country Reports 2010 also stated that some police officers refused to aid or to take to the hospital a stabbed transsexual who was a minor and that "[n]o known investigations were pending at year's end" (8 Apr. 2011, 25). Country Reports 2011 indicates that, according to the AHMNP, six transgender people where arrested in 2010, and later released, on the basis of the sodomy law which was repealed in 2008 (US 24 May 2012, 22). According to the AHMNP 2010 report, four people were arrested for [translation] "alleged violations of public morality" because they were "dressed as women" (AHMNP 2010, 15). The report indicates that, according to the complaints, the police have justified the arrests by arguing that "people who have changed their appearance have violated the law, but do not make any mention of which law or regulation" (ibid., 15). Agence France-Presse cites the leader of AHMNP as saying that, according to the annual report produced by his organisation and presented to the Office of the Ombudsperson, at least 25 people were [translation] "'unreasonably' arrested by the police, who argued that a man cannot go dressed as a woman on the street" (AFP 11 Aug. 2010). Further information could not be found among the sources consulted by the Research Directorate.

La Estrella de Panamá reports that six lesbians were denied child custody because of their sexual orientation (18 May 2011). The 2010 AHMNP report indicates that a lesbian was barred from adopting a child because [translation] "the situation of lesbianism is a social risk that harms the best interest of the child" (AHMNP 2010, 23). In March 2011, two women were arrested by the police for kissing in public (La Estrella de Panamá 30 Mar. 2011; US 24 May 2012, 22). La Estrella de Panamá reports that, according to one of the women involved, the police used [translation] "excessive force" and considered the kissing as a "serious lack of public decency and public morals" (La Estrella de Panamá 30 Mar. 2011). However, in their report, the police claimed that the women were arrested for drinking in public (ibid.; US 24 May 2012, 22). La Estrella de Panamá cites the leader of AHMNP as saying that [translation] "this type of situation is seen everyday and in many times police officers have hit many trans[gendered people] and lesbians, because they tend to be more aggressive with them than with homosexuals" (La Estrella de Panamá 30 Mar. 2011). Corroborating information could not be found among the sources consulted by the Research Directorate.

4. Support Services

Information on support services for sexual minorities in Panama was scarce among the sources consulted by the Research Directorate.

According to AngloInfo, the AHMNP, which was founded in 1996, "remains the only lesbian and gay group in Panama" (AngloInfo n.d.a). AngloInfo adds that other attempts at creating lesbian and gay

organisations have been defeated by an article in the constitution that forbids any association that is "'contrary to morality'" (ibid.).

According to PortalSida, an [translation] "Internet platform which provides tools to support global collaboration and knowledge sharing between networks and organizations responding to the AIDS epidemic" (n.d.a), the AHMNP

[translation]

help[s] to improve the quality of life of GLBT people, MSM [men having sex with men] and WSW [women having sex with women], through the promotion and provision of comprehensive preventive health, education and counselling, with an emphasis on respect and defence of human rights and diversity of the Panamanian population. (n.d.b)

According to the Shadow Report 2009 presented to the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) by APPT and the International Gay and Lesbian Human Rights Commission (IGLHCR), the APPT was established in 2007 to assist transgender women (APPT and IGLHRC Nov. 2009, 3). More precisely, they educate "transgender women on various topics that affect them so that they learn that if their rights are threatened they should go to their courthouse" (ibid).

An article published by La Estrella de Panamá indicates that [translation] "there are, in Panama, pseudo-doctors who offer treatments to "revert" from homosexuality [such as] hypnosis therapies to change the [sexual] orientation" of a person (La Estrella de Panamá 2 June 2013). There are also centers that "admit patients until they are 'cured' from what they consider a disease" (ibid.). Cited in this same article, a psychologist indicated that [translation] "hormones, hypnosis, psychotherapy and even less orthodox methods such as the electroshock have been and are used in Panama, and touted as a panacea to reverse homosexuality and cause a 'change in the patient's sexual orientation'" (ibid.). Corroborating information 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 additional sources consulted in researching this Information Request.

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Oral sources: Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: Asociación Panameña de Personas Trans; Comisión Nacional de Derechos Humanos en Panamá; Panorama Católico; Inter-American Institute of Human Rights; International Gay and Lesbian Human Rights Commission; Panama - Defensoría del Pueblo; The People's Movement for Human Rights Education.

Internet sites, including: Aid for Aids Panama; Amnesty International; British Broadcasting Corporation; CastleGayGuide.com; Centers for Disease Control and Prevention; Council for Global Equality; Council on Hemispheric Affairs; ecoi.net; Factiva; Fédération internationale des ligues des droits de l'homme; Freedom House; GlobalGayz.com; Global Rights; Human Rights Watch; International Crisis Group; International Gay and Lesbian Human Rights Commission; LegalInfo Panama; Minority Rights Group International; Norway - Landinfo; Panamá América; Panama - Ministerio de Gobierno, Ministerio de Relaciones Exteriores, Ministerio de Salud; The People's Movement for Human Rights Education; Pink Choice; Pink News; Prensa Latina; UK Gay News; United Nations - ReliefWeb, Refworld, Joint United Nations Programme on HIV/AIDS, World Health Organization; United States - United States Agency for International Development.

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Countries

- Panama

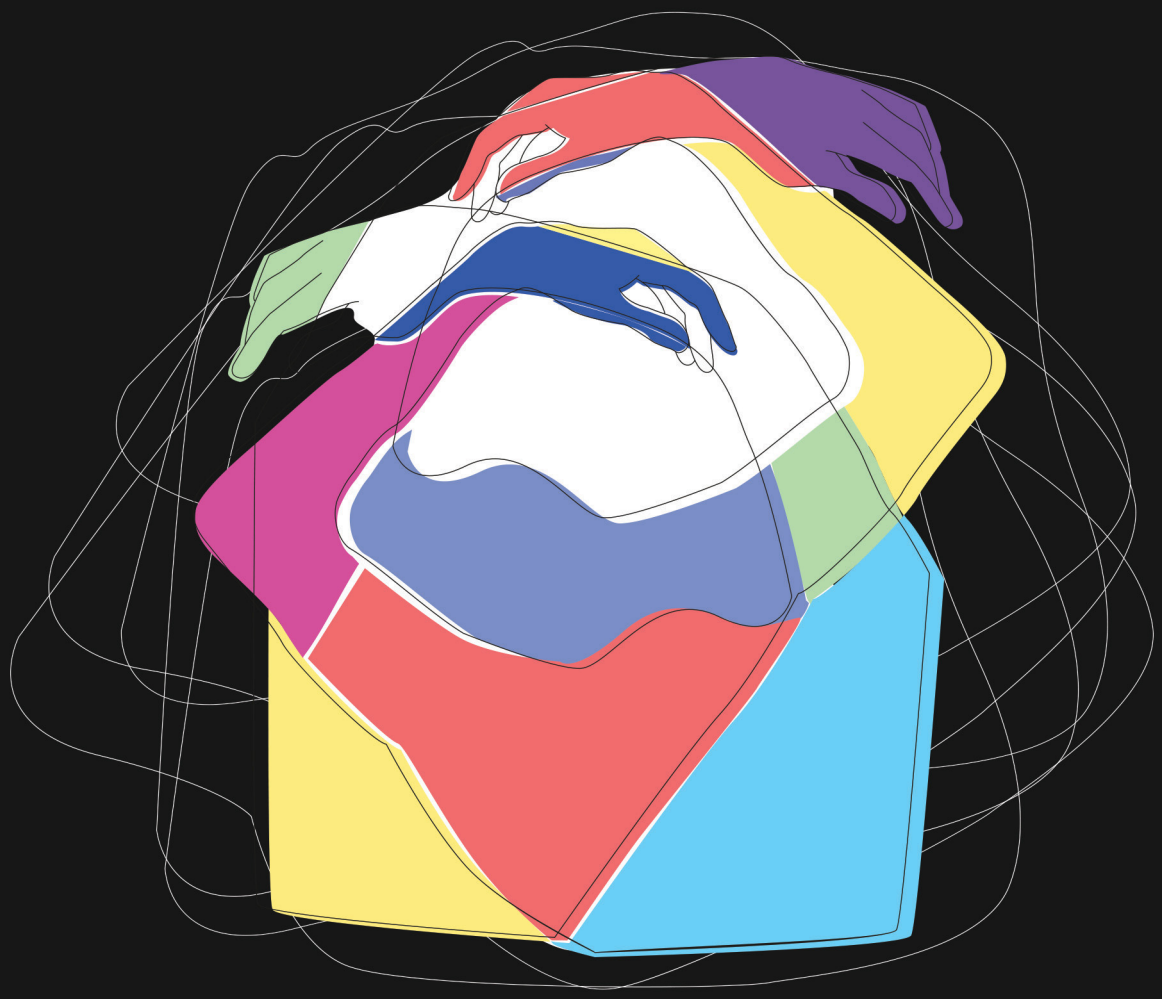
Topics

- Lesbian, gay, bisexual, transgender and intersex (LGBTI)
- Persecution on the basis of sexual orientation or gender identity
- State protection

Tab 5

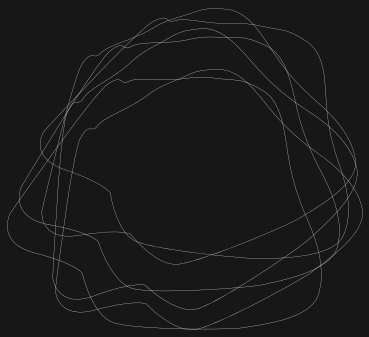
IACHR Inter-American Commission on Human Rights

Recognition of the Rights of LGBTI Persons



OAS

More rights for more people



Cover Art Concept

Three years on from the launch of the report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the levels of physical, psychological, and sexual violence toward this community remain constant. However, there has also been significant progress toward protecting, recognizing, and guaranteeing their rights in various countries in the region. These changes have been taking place through legislative processes, legal decisions, and public policy-making and have led to greater recognition of LGTBI people's rights by advancing the agenda of equality and nondiscrimination so as to ensure that these people can live their lives free of the risk of violence, terror, and poverty. The bodies of dismembered dolls that represented this violence on the cover of the previous report are featured once again on this cover, but this time they are reconstructed and intertwined in a show of solidarity and support that celebrates the progress that has been made. All the same, the image is just a sketch and some parts have been left unfinished, which symbolizes the ground still to be covered on the road to true equality.

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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas

2018
iachr.org

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CHAPTER 4

PERSISTENT CHALLENGES TO THE RECOGNITION OF THE RIGHTS OF LGBTI PERSONS IN THE REGION

PERSISTENT CHALLENGES TO THE RECOGNITION OF THE RIGHTS OF LGBTI PERSONS IN THE REGION

239. In this report, the Inter-American Commission has identified important developments made by the American States in recognizing the rights of LGBTI persons. In this regard, the Inter-American Court recently noted that "consensus exists among several countries in the region that measures must be taken to combat this scourge [violence and discrimination against LGBTI persons]" in fact "most of the OAS Member States have voluntarily accepted recommendations to confront violence and discrimination based on sexual orientation and gender identity".[346]

240. Despite these developments, however, the Commission considers that, on this occasion, it is also appropriate to refer to the obvious threats of regression in relation to the recognition of the rights of LGBTI persons observed in the region. These challenges include, among others, the persistence of violence against LGBTI persons in the continent; the existence of criminalization of sexual orientations, identities and non-regulatory gender expressions in several states of the continent; the recent adoption of laws and other state measures contrary to the principle of equality and non-discrimination; disinformation campaigns and initiatives that proliferate stigma and stereotypes against LGBTI persons, such as the so called "gender ideology"; and the expansion of groups and movements against the recognition of the rights of LGBTI persons, in society and at the level of State Powers.

241. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the IACHR criticized the 11 OAS Member States, all from the Caribbean, that maintain laws that criminalize consensual sexual relations between adults of the same sex in private, and that also affect trans persons and persons not conforming to gender, namely: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia; Saint Vincent and the Grenadines, and Trinidad and Tobago.[347] The IACHR recalls that the perpetuation of such laws generates a

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346 I/A Court H.R. Gender identity, and equality and non-discrimination of same-sex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 45.

347 IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 61.

culture of hostility, discrimination, and serious violations against LGBTI persons. The Commission regrets that, despite the recommendations made in this report, all of these norms remain in force in these States, in violation of their international obligations regarding the right to equality and non-discrimination.

242. In this regard, the State of Belize informed the Commission that on August 10, 2016, the Belize Supreme Court found the domestic law on "sodomy" unconstitutional in the Case of Caleb Orozco v. The Attorney General of Belize et al. in relation to consensual relations between adults in private. The Supreme Court's decision found that the impact of the law on Mr. Orozco - a gay man - was disproportionate because of the profound related stigmatization and violated his constitutional right to dignity, and that the constitutional prohibition against discrimination on the basis of "sex" also includes discrimination on the basis of "sexual orientation". However, the Government of Belize and the Catholic Church have reportedly appealed this decision to the Caribbean Court of Justice, and a final decision on the case is pending.[348]

243. Likewise, with respect to Trinidad and Tobago, the IACHR received information that the High Court of Justice ruled that Sections 13 and 16 of the Sexual Offences Act, concerning the offense of committing sodomy, are "unconstitutional, unlawful, void, invalid and without effect to the extent that these laws criminalize any act constituting sexual conduct between consenting adults in the framework of the Jones v. Trinidad and Tobago case, and confirmed by the High Court of Justice.[349]

244. Similarly, the Commission has noted the decision on the case Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) v The Attorney General of Guyana of the Caribbean Court of Justice (CCJ), the jurisdictional body of member countries of the Caribbean Community (CARICOM), which declared unconstitutional Section 153 (1) (XLVII) of the Summary Jurisdiction (Offences), Chapter 8:02, of Guyana, which criminalized the use of clothing socially attributed to another gender (cross-dressing).[350] This decision guarantees an important step towards the recognition of gender identity and expression in the country, complying with the international

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348 Belize. Response to the Consultation Questionnaire. The State reported that hearings on the case are scheduled to take place starting March 2018. The Supreme Court's decision, 2016.

349 IACHR, Press Release No. 088/18, "IACHR Welcomes Decision to Decriminalize Consensual Sexual Relations between Same Sex Adults in Trinidad and Tobago", April 23, 2018.

350 See *Quincy McEwan, and others v The Attorney General of Guyana*, November 12, 2018.

recommendation regarding the duty of States to repeal legal provisions that criminalize the various forms of sexual orientation and gender identity.

245. The IACHR emphasizes that the Yogyakarta +10 Principles state that, "[e]veryone has the right to be free from criminalization and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics."[351] Therefore, bearing in mind that none of the Caribbean States referred to above has reformed or annulled their discriminatory legislation to date, the IACHR reiterates its recommendation that laws criminalizing consensual sex between adults of the same sex, laws against "grave indecency" and "serious indecency", and legislation criminalizing the use of clothing traditionally assigned to another gender be amended and repealed. In the meantime, these States should impose an explicit and formal moratorium on their application.[352]

246. The IACHR is also concerned about the expansion of LGBTI anti-rights sectors within the State Powers, which translates into the adoption of laws and other State measures contrary to the principle of equality and non-discrimination. With regard to discriminatory legislation, it is worth referring once again to the issue of egalitarian marriage, which has led to a considerable mobilization of both pro-rights and anti-rights groups in the region.

247. For example, the State of Bolivia reported that "to date there has been an express violation of Act No. 603" (Code of Families and Family Procedure) of November 19, 2014, given that its Article 168 (b) states that "marriage is null and void: if it was not entered into between a woman and a man".[353] In El Salvador, three articles of the Constitution were amended in 2015 to expressly prohibit marriage between same-sex couples and to provide that marriage is only permitted between a man and a woman "born as such". The constitutional reform also prohibits adoption by same-sex couples and the recognition of marriages between such couples celebrated abroad.[354] The State of Honduras informed the IACHR that, through Legislative Decree No. 176-2004 (October 28, 2004), the Constitution of the Republic of Honduras was amended to prohibit marriage between and the adoption by same-sex

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351 Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics (only available in English) 2017. Principle 33 (The Right to Freedom from Criminalization and Sanction). See also paragraphs A - H of Principle 33, which contain additional obligations.

352 See, in the same vein, IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 85.

353 Bolivia. Response to the Consultation Questionnaire.

354 See Journal 1, "Assembly Agrees Constitutional Amendment Banning Gay Marriage", April 17, 2015.

couples.[355] The State of Panama reported that Article 35 of the Code of Private International Law (Law No. 61 of October 7, 2015), expressly prohibited marriage between individuals of the same sex.[356] In the Dominican Republic, a new Constitution was promulgated in 2010 that included, in article 55, the prohibition of same-sex marriage, and defined the family as based on the fundamental relationship between a man and a woman.[357] Finally, in August 2017, Haiti's Senate approved a legislative proposal to ban same-sex marriage, as well as to impose criminal sanctions and fines. According to the information received, the proposal is still pending final approval by Haiti's Chamber of Deputies.[358]

248. Several States have explicitly recognized the progress of these anti-rights sectors. The State of Costa Rica, for example, pointed out that "the lack of development of formal laws in this area [LGBTI] is the result of the strengthening, in recent years, of the most conservative sectors in Costa Rican society and their impact on national policy and state structures, hindering or obstructing the development of rights in both the legislative and jurisdictional spheres".[359]

249. For its part, the Office of the Human Rights Procurator of Guatemala indicated that "one of the main obstacles to the deconstruction of discrimination are the prejudices that have been generated against the LGBTI population. According to the Attorney General's Office, Congress deputies of the Republic of Guatemala presented, in April 2017, initiative No. 5272 ("Law for the Protection of Life and the Family") which, in their opinion, "contravenes international conventions and treaties on human rights ratified by the State, as well as international instruments and standards on the issues of sexual diversity, sexual orientation, gender identity, gender expression established in the Yogyakarta Principles; [and] promotes discrimination and hatred towards any sector, especially against people of sexual diversity".[360]

250. The State of Peru referred, for example, to the reaction of the Peruvian Congress to the "National Plan against Gender Violence 2016-2021", launched by the Executive, which explained that gender violence also includes violence against lesbians, gays and bisexuals. However, according to information provided by the State, this "was not a standard legitimized by the Congress of the Republic when it discussed the constitutionality of the

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355 Honduras. Response to the Consultation Questionnaire.

356 Panama. Response to the Consultation Questionnaire.

357 NACLA, A Giant Step Backward: The Dominican Republic Reforms Its Constitution, December 2, 2009.

358 KOURAJ (Haiti). Response to the Consultation Questionnaire.

359 Costa Rica. Response to the Consultation Questionnaire.

360 Human Rights Ombudsperson (Guatemala). Response to the Consultation Questionnaire.

amendments made to the Criminal Code to combat gender-based violence. As a result, the amendments made by the Executive to the Criminal Code punishing hate crimes and discrimination based on sexual orientation or gender identity were repealed because of the views of Congress that gender violence only includes violence against women.[361]

251. With respect to the State of Brazil, the Commission was informed during an ex officio hearing that the terms "gender identity" and "sexual orientation" have been removed from the document "Common National Curriculum Basis" (Base Nacional Comum Curricular), while conservative political and religious sectors are leading an initiative called "Schools without Party" (Escolasem partido), promoting draft laws aimed at prohibiting certain subjects in the educational sphere, including gender and sexual orientation, under the slogan that the initiative is aimed at discouraging ideological (political, religious or moral) indoctrination on the part of teachers.[362]

252. The IACHR also notes with concern several setbacks observed in the United States since 2017. For example, the letter issued by the U.S. Department of Education and the U.S. Department of Justice on February 22, 2017, on the withdrawal and rescission of the guidelines on trans students in the letter that had been issued by these same agencies on May 13, 2016, addressed to all schools receiving federal funds at the national level. In a press release, the IACHR stated that "with this new measure, the government of the United States is withdrawing important federal protections that ensured non-discrimination, inclusion, acceptance, and full recognition of gender identity in the school environment for trans and gender-nonconforming students".[363] Also, according to available information, in August 2017 the president issued a memorandum to the Department of Defense prohibiting trans persons from openly serving in the Armed Forces, as well as imposing restrictions on the right to specialized health for trans persons paid for by the Armed Forces.[364] The IACHR notes that the U.S. Court of Appeals for the Ninth Circuit stayed this executive decision.[365] However, the government

361 Peru. Response to the Consultation Questionnaire.

362 IACHR, Hearing "Human Rights and Free, Plural, and Uncensored Education in Brazil: The Proposed Exclusion of a Gender Identity and Sexual Orientation Perspective in the National Curriculum Base", May 25, 2017 (162nd Session), Buenos Aires, Argentina. The IACHR notes that this initiative was the subject of a joint statement by the Special Rapporteur on the Human Right to Education, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the UN Special Rapporteur on Freedom of Religion and Belief.

363 IACHR, Press Release No. 33/17 "IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States", March 15, 2017.

364 Time, President Trump Has Taken a Key Step to Implement His Transgender Military Ban, August 25, 2017.

365 See Lambda Legal, Karnoski v. Trump, Stay Decision, July 18, 2018.

announced new measures to reduce the number of trans persons in the armed forces and to assign them gender-stigmatizing roles.[366]

253. The Commission also notes with concern the proliferation of disinformation campaigns and demonstrations promoted by sectors opposed to the recognition of the rights of LGBTI persons throughout the continent. In this regard, the attention of the IACHR is drawn to the fact that, on many occasions, such acts are carried out as a reaction to the adoption of measures for the recognition of the rights of the LGBTI population.

254. The State of Peru, for example, informed the IACHR that after the adoption of the aforementioned "National Curriculum for Regular Basic Education", groups such as "Con mis hijos no te metas" (Don't mess with my children) have been hindering its implementation, positioning themselves against the gender approach, and "arguing that they intend to 'homosexualize' their children through what they have called 'the gender ideology'. The media campaigns that this group has carried out in public spaces have had a great impact on the population, as they have had the economic and logistical support of the evangelical churches."[367]

255. According to the information received, in the State of Bolivia, following the adoption of the aforementioned Gender Identity Act, the Catholic and Evangelical Churches took various national actions against it. One of the most forceful was a march, with the participation of more than 200,000 people, convened by the "Platform of Life and Family" on June 22, 2016, in the city of Santa Cruz de la Sierra, with the purpose of demanding the repeal of Law No. 807, alleging an interference of the "gender ideology".[368] The organizers of the march pointed out to the press that, "we are fighting against a system that seeks to destroy the family and society. That system has a name and surname and is called 'gender ideology', and it has attempted to strike a blow against the family with the approval, without prior consultation, of the misleading Gender Identity Law. This is a sign of what may come if we are not vigilant in stopping the progress of this colonizing ideology".[369] The IACHR has also referred supra to the Abstract Unconstitutionality Action filed against the Gender Identity Law by Congressmen from parties supported by conservative religious sectors, as well as to the result thereof.

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366 See New York Times, "Trump Approves New Limits on Transgender Troops in the Military", March 24, 2018.

367 Peru. Response to the Consultation Questionnaire. See also on these "disinformation campaigns", IACHR, Press Release No. 28/2017, "IACHR Hails Regional Progress on Human Rights of LGBTI persons in the Americas", March 10, 2017.

368 CDC – Capacitación y Derechos Ciudadanos (Bolivia). Response to the Consultation Questionnaire.

369 See *El Mundo*, "Large protest seeks to repeal Gender Identity Law", June 23, 2016.

256. With respect to Colombia, the IACHR was informed of reactions to the approval of the aforementioned Law No. 1620 of 2013, which creates the National School Coexistence System. According to the information, "another factor that explains the low compliance with Law 1620 of 2013 is pressure from conservative political and religious groups. In July 2016, debates and marches in opposition to the Law were held in several cities. Subsequently, the Minister of Education was summoned to a debate of political control in Congress for the publication of textbooks to combat discrimination on the grounds of sexual orientation and gender identity in schools.[370] Such reactions would have resulted in the resignation of the then Minister of Education and, as reported, the new minister assured that gender equity and programs to prevent and eradicate discrimination would not be a priority.[371]

257. Likewise, in Paraguay, the Commission took note of the September 2017 decision of the Minister of Education to remove existing gender equality materials that were disseminated through the Ministry of Education's website.[372] In the same sense, in October of the same year, through Resolution No. 29664 of the Ministry of Education and Science, "the dissemination and use of printed materials as digital materials referring to the theory or 'ideology of gender' in the institutions dependent on the Ministry of Education" was prohibited.[373] On this occasion, the Commission expressed concern that the gender perspective is pejoratively referred to as "gender ideology", and considered that the measures adopted prohibiting teaching with a gender perspective, correspond to "a limited and stereotyped interpretation of the concept of family, which fails to recognize existing Inter-American standards on the subject and arbitrarily excludes diverse families, such as those formed by same-sex couples, who deserve equal protection under the American Convention".[374]

258. The Commission refers to the reaction in Costa Rica to the request for Advisory Opinion OC-24 presented by the State before the Inter-American Court, regarding gender identity and the rights of same-sex couples. In fact, the IACHR observes that, following the announcement of the decision on the request for an advisory opinion, held between November 13 and 24, 2017, during the 120th Regular Session of the Court, in San José, Costa Rica, a massive mobilization was organized by the Catholic Church and the

370 Colombia Diversa (Colombia). Response to the Consultation Questionnaire.

371 See *El Espectador*, "New Minister of Education says that gender equality is not a priority", November 11, 2016.

372 See Actual, "Paraguay orders the removal of materials on gender ideology from the Ministry of Education's website", September 20, 2017.

373 See Color ABC, "MEC bans materials on 'gender ideology'", October 11, 2017.

374 IACHR, Press Release No. 208/17, "IACHR Regrets Ban on Gender Education in Paraguay", December 15, 2017.

evangelicals of Costa Rica.[375] According to available information, on December 3, 2017, this religious march "in defense of the family" promoted hate messages towards people of diverse sexual orientation and gender identity, and the rejection of "gender ideology", same-sex marriage, and sex education classes promoted by the Ministry of Education of that country.[376]

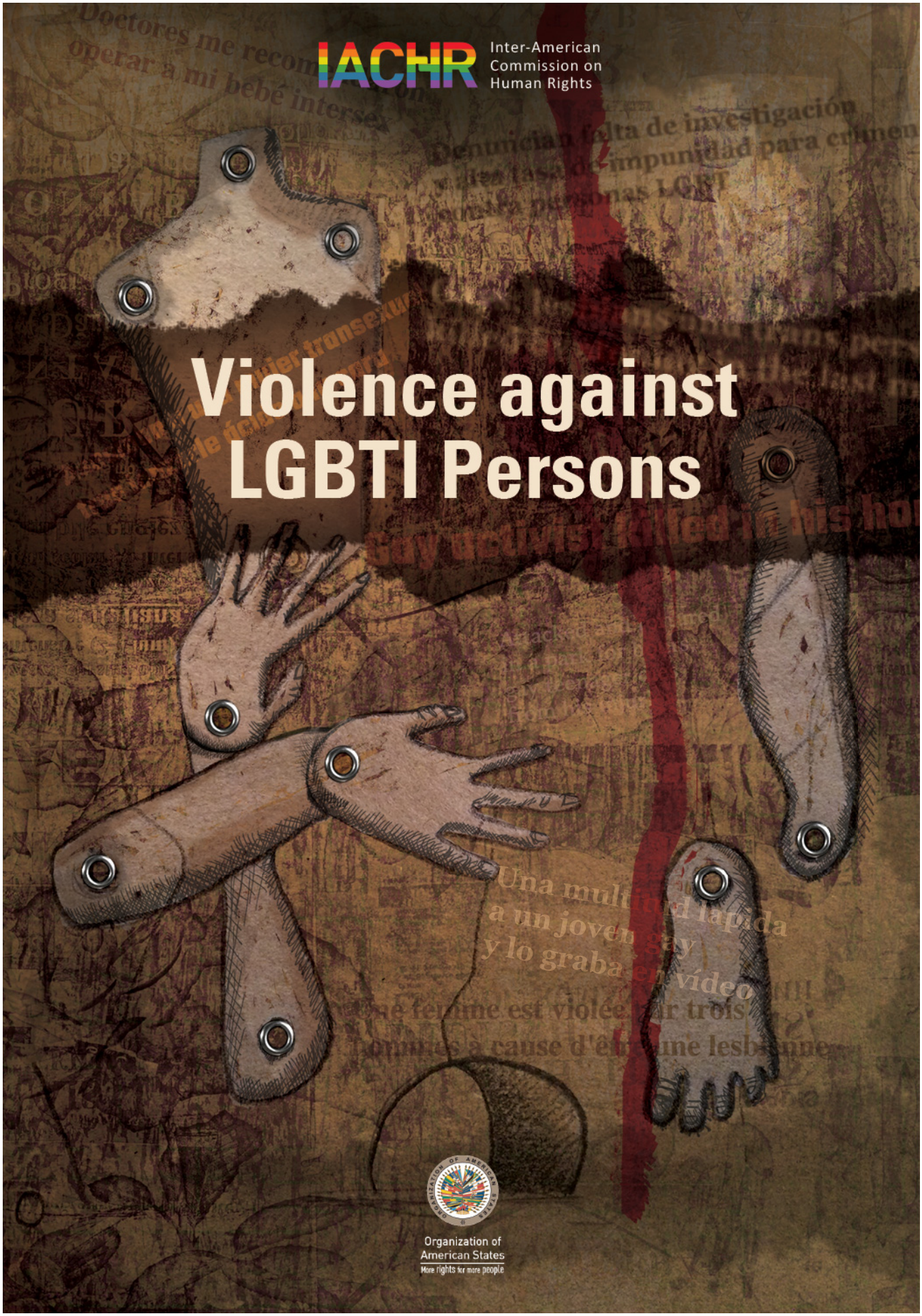
375 I/A Court H.R. Press Release No. 38/2017, November 8, 2017.

376 El Periódico, "Marcha religiosa en "defensa de la familia" promovió mensajes de odio hacia personas de la diversidad", December 3, 2017.

Tab 6

IACHR Inter-American Commission on Human Rights

Violence against LGBTI Persons



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas

2015
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CHAPTER 4

FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS

FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS

A. *Introduction*

96. The Inter-American Commission emphasizes that this Report focuses on physical violence against LGBTI persons, namely killings and serious non-lethal attacks such as rape and attacks by large groups of people (mob attacks). This chapter first identifies general trends with respect to violence faced by LGBTI persons. Next, it examines violations of the right to life and personal integrity, resulting from acts committed by both State and non-state actors, followed by an examination of some of the different contexts in which this violence occurs, including medical violence against intersex persons, and attempts to "modify" sexual orientation or gender identity. State actors who perpetrate violence include law enforcement agents such as police officers and members of the armed forces, prison personnel, custodial staff in migration detention centers, health care professionals working in public hospitals, teachers and non-teaching staff in public schools, and other State employees. Acts of violence based on prejudice perpetrated by State agents have been reported in almost every OAS Member State. Finally, the Commission analyzes hate speech and incitement to violence.

B. *General trends in the findings of the IACHR*

1. Underreporting and lack of official data

97. The IACHR notes that the available data do not reflect the full dimensions of the violence suffered by LGBTI persons in the Americas. The IACHR has noted that "[m]any cases of violence against LGBT persons are underreported; many persons are afraid of reprisals, reluctant to identify themselves as LGBT, or do not trust the police or the justice system." [257] Further, internalized stigma and prejudiced views

[257] IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

held by LGBT persons themselves might also hinder recognition and acknowledgment of abuse.

98. In many OAS member States, victims, family members, and friends of victims are frequently deterred from reporting the killings of their lesbian, gay, bisexual or trans relatives or friends, due to the high levels of prejudice and hostility against non-normative sexual orientations and gender identities held by authorities and other members of their communities. Oftentimes when the crime is reported, the information regarding the sexual orientation or gender identity of the victim is either concealed or overlooked. The IACHR has indicated that underreporting of cases of violence against LGBT persons is particularly apparent in cases of non-lethal attacks, since few of these are reported to authorities, monitored by non-governmental organizations, or covered by the media.[258] One organization in Mexico has estimated that the available data may reflect only one third of the crimes actually committed in that country.[259]

99. The data collection mechanisms in OAS countries are very limited.[260] The IACHR recently conducted a fifteen-month monitoring project concerning LGBT-related killings and acts of violence. In carrying out this project, the IACHR found that official statistics were insufficient, and it had to rely on other sources of information such as media coverage, reports from civil society organizations, and other monitoring sources.[261] This monitoring effort produced a Registry of Violence that, although not exhaustive, revealed pervasive violence against LGBT persons throughout the region.[262]

100. Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as "men dressed in women's clothes."[263] Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender

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258 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

259 Letra S, Sida, Cultura y Vida Cotidiana A.C., *Informe de crímenes de odio por homofobia México 1995-2008*, 2009, p. 10.

260 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

261 IACHR, Press Release No. 153A/14,*Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

262 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

263 See, *e.g.*, [Guatemala] IACHR, Hearing on Discrimination based on Sexual Orientation and Gender Identity in Guatemala, 146th Period of Session, 4 November 2012; [Colombia] Colombia Diversa, *Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*, 2013, p. 10.

identity and thereby identify trans women as "gay men."[264] In some States, organizations have reported that authorities register gay, trans, lesbian or bisexual persons under umbrella terms like "LGBT" or "gay" —even if they are trans persons— without specifying their sexual orientation or gender identity.[265]

101. Underreporting and a lack of official data mechanisms render violence against LGBT persons invisible, and hinder an effective State response. The UN Office of the High Commissioner on Human Rights indicated in its May 2015 Report to the Human Rights Council that:

> In most countries, the absence of effective systems for recording and reporting hate-motivated violence, or "hate crimes," against LGBT persons masks the true extent of violence. Where they exist, official statistics tend to understate the number of incidents. Victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality or reprisals. In addition, prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting. Failure to investigate, prosecute and punish violations when reported also contributes to incomplete assessments of the scale of violence.[266]

2. Pervasiveness of violence

102. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the region. The IACHR closely monitored killings and other acts of violence during a fifteen-month period (between January 2013 and March 2014). The findings of the Registry of Violence indicate that there were at least 770 acts of violence committed against LGBT persons during this period, across 25 OAS Member States (Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela). However, when reporting this statistic the Commission noted that lack of information with respect to violence in other countries in the Americas during that time period was not an indication that violence did not occur in those countries. It is likely that killings and/or other acts of violence against LGBT persons did take place in those countries, but this

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264 IACHR, Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas, Washington DC, February 24-25, 2012.

265 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Colectivo Entre Tránsitos et. al." (Colombia), received by the IACHR Executive Secretariat on 25 November 2013, p. 16; Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012,* June 2014, p. 7.

266 OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 25 [original footnotes omitted].

violence was not officially reported and was not covered in the media.[267] The IACHR is of the view that violence based on prejudice, in the terms definied in chapter two of this Report, is prevalent in all countries in the Americas.

3. Invisibility of everyday violence

103. The IACHR notes that underreporting also renders everyday violence against LGBT persons invisible, particularly as it relates to non-lethal attacks. Non-lethal attacks are the most common type of violence suffered by LGBTI persons in all OAS Member States. Reports received by the IACHR from independent sources indicate that lesbian, gay, bisexual and trans persons suffer a wide variety of attacks on a regular basis, which may range from pushing and shoving to beatings or the throwing of bottles, stones, or other objects. These acts of violence are reported to be so commonplace in some parts of the region that they may not be reported, because they are part of 'everyday life' for LGBT persons. Further, instances of day-to-day violence are generally not monitored by organizations or covered by the media, both of which tend to focus on the most serious crimes and especially murder. When the Commission published the findings of its Registry of Violence, it noted that during the fifteen-month period referred to above, it had documented 176 cases of non-lethal violence. This was low relative to the 594 killings in the Registry of Violence, and suggests underreporting of non-lethal violence against LGBT persons. In publishing the Registry of Violence the Commission stated: "killings are most prone to be reported by the media, leaving out ordinary and persistent forms of everyday violence, which have to be, nonetheless, fully exposed, identified and addressed by States."[268] Further, available information regarding violence against LGBT persons in private settings is limited, which renders this type of violence invisible and reducing the possibilities that the State can effectively address it.

4. Invisibility of violence against certain groups: trans men, bisexual and intersex persons

104. There are certain groups of persons within the "LGBTI" acronym whose experiences of violence are more invisible than others, due to a variety of reasons. For example, the IACHR has been informed by civil society organizations that violence against trans men or trans persons who identify as male takes place mainly in the private sphere and is frequently not visible outside the spaces in

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267 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

268 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

which it occurs.[269] The IACHR has held that "trans men tend to be more invisible within the larger LGBT community, and in this regard –contrary to what happens with trans women– invisibility shields them from the types of societal violence usually affecting other gender non-conforming persons."[270] According to the information received, severe violence in the family, in the health sector, and school bullying, are among the most common types of violence suffered by trans men.[271] However, the Commission received information that Alex Peña, a trans man and police officer from the Metropolitan Police (Cuerpo de Agentes Metropolitanos - CAM) in San Salvador, was allegedly severely beaten by four police officers from the National Civil Police (PNC), following his participation in a LGBT pride parade in San Salvador. While he was been beaten he allegedly was told that he was been treated "like a man," making reference to his gender identity.[272]

105. Further, the IACHR has found that violence against bisexual persons is the most difficult to track. During the fifteen-month period monitored (between January 2013 and March 2014), the IACHR was informed of three acts of violence against bisexual men, or those perceived as such. The IACHR notes the difficulty in documenting violence specifically targeting bisexual persons. Unless a source specifically indicates that someone is being targeted because of his or her bisexuality, violence against bisexual persons is often exerted because such persons are perceived as either gay or lesbian, or because such persons are witnessed expressing same-sex affection. This tendency in the data to categorize bisexual persons and bisexual expressions of affection as gay or lesbian, regardless of the true motivation, renders violence based on prejudice towards bisexuality invisible for data collection purposes.[273] Notwithstanding, a study carried out in the United States suggests that bisexual persons "experience higher rates of sexual and intimate partner violence than gay, lesbian, and straight people."[274]

106. Regarding intersex persons, the IACHR notes that during the fifteen-month period (between January 2013 and March 2014) included within the Registry of Violence referred-to above, there was no data or reports recording instances of violence against intersex persons. The Commission also indicated that this lack of data is due to a variety of reasons, including the fact that these so-called "normalizing" surgeries conducted on intersex persons is generally carried out according to State-approved medical protocols, and is not reported in the media or denounced by victims, families or organizations. The IACHR also noted that intersex persons and their families often experience deep feelings of shame and fear; this

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269 IACHR, Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133rd Period of Sessions, October 23, 2008.

270 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

271 IACHR, Hearing on *Discrimination against Trans Persons in the Americas*, 153rd Period of Sessions, October 30, 2014.

272 Lá Página, "Comunidad LGBTI pide investigar detención de transgénero agente del CAM," June 29, 2015.

273 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

274 Movement Advancement Project-BiNetUSA- Bisexual Resource Center, Understanding issues facing bisexual Americans, September 2014.

contributes to the invisibility of, and secrecy surrounding, this subject.[275] These negative feelings, amplified by existing societal taboos about sexuality and genitalia, are the most commonly reported reactions of intersex persons to the lengthy procedures to which they are subject.[276] A study by the Human Rights Commission of San Francisco found that the parents of intersex children have also reported feeling shame, fear, horror, humiliation, regrets, and ongoing doubt about the choices they may have made for their children.[277] A study conducted in Uruguay found that most intersex persons who were subjected to "normalizing" surgeries were not informed that they were intersex until after their surgeries. In fact, due to the societal taboo surrounding intersex issues, those who were interviewed were unaware of any "out" intersex individuals, even within the LGBT community.[278]

5. High levels of cruelty

107. OAS Member States[279] and civil society organizations[280] have pointed out that crimes against LGBT persons stand out for their brutality and cruelty. The UN Special Rapporteur on Violence against Women has indicated that killings due to sexual orientation and gender identity are characterized by serious levels of physical violence that "in some cases exceed those present in other types of hate crimes."[281] The cruelty and brutality of acts of violence based on prejudice against persons with non-normative sexual orientations and gender identities has been

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275 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014. Information also presented by intersex human rights defenders, academics and activists during IACHR, Hearing on *Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013.

276 See, among others: IACHR, Hearing on *Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013; Cabral, Mauro, "*Pensar la intersexualidad, hoy*" in Maffía, Diana (Ed.), *Sexualidades Migrantes: género y transgénero*, 2003, p. 122.

277 Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical "Normalization" of Intersex People*, April 28, 2005, p. 19.

278 Heinrich Böll Foundation (Ghattas, Dan Christian), *Human Rights between the Sexes: A preliminary study on the life situations of inter* individuals*, Vol. 34 Publication Series on Democracy, 2013, p. 46.

279 For example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 5.

280 See *e.g.,* [Bolivia] Red de Travestis, Transexuales y Transgénero de Bolivia (Red TREBOL) & Heartland Alliance for Human Needs & Human Rights, *La situación de los derechos humanos de las personas lesbianas, gay, bisexuales, transgénero en Bolivia*, March 2013, p. 4; [Canada] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Eagle, Canada Human Rights Trust," received by the IACHR Executive Secretariat on November 22, 2013, p. 1; [Colombia] Caribe Afirmativo - Global Rights, *Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno*, October, 2014, p. 14; [Guatemala] OASIS, *Informe de OASIS sobre la Situación de los Derechos Humanos de la Comunidades de la Diversidad Sexual y de Género en Guatemala*, April 10, 2012, párr. 9; Organización Trans Reinas de la Noche, *Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011*, May 1, 2011, pp. 37-38; [Mexico] Letra S, Sida, Cultura y Vida Cotidiana A.C., *Informe de crímenes de odio por homofobia México 1995-2008*, 2009, p. 12; [Latin America] Transgender Europe (TGEU), Transrespect versus Transphobia Worldwide (TvT), *A Comparative Review of the Human Rights Situation of Gender-variant/Trans People*, 2012, p. 49.

281 UN, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/20/16, May 23, 2012, para. 71.

noted by the IACHR,[282] the UN High Commissioner for Human Rights,[283] and civil society organizations.[284]

108. In the Registry of Violence, referred-to above, there are numerous examples of killings that are particularly heinous, including cases of stoning, decapitation, burning, or impalement. Many victims are repeatedly stabbed or beaten to death with hammers or blunt objects. Others are punched or kicked to death, have acid thrown at them, or are suffocated. Some victims in the Registry were repeatedly run over by cars, mutilated or set afire. In many cases, victims were killed after being subject to gruesome acts of torture, inhumane or degrading treatment, and multiple forms of extreme humiliation, debasement, torture and/or rape. [285]

109. In the last few years, several cases of brutal killings against LGBT persons were brought to the attention of the IACHR. For example, in 2009, the body of Jorge Lopez Mercado was found decapitated, partially burned and with his four limbs severed from his torso in Puerto Rico.[286] In March 2012, Daniel Zamudio, a 24-year-old man, was brutally attacked and sadistically tortured for several hours by a group of four men at a park in Santiago, Chile. Although Daniel Zamudio was found still alive and was immediately hospitalized, the severity of the wounds inflicted lead to his death a few days later.[287] The IACHR issued a press release strongly

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282 IACHR, Press Release No. 153A/14. *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014,* Annex to Press Release No. 153/14. December 17, 2014.

283 See *e.g.*, OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 22. OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 23.

284 See e.g. [Canada] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Eagle, Canada Human Rights Trust," received by the IACHR Executive Secretariat on 22 November 2013, p. 1; [Colombia] Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012,* June 2014, p. 17. [Honduras] Cattrachas et. al., "*Audiencia de Homicidios de Personas LGTTBI e Impunidad en las Américas ante la CIDH*", November 1, 2012, p. 11.

285 IACHR, *Registry of Violence against LGBT persons in the Americas*, (excel spreadsheet), December 17, 2014 (in Spanish only); IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153. December 17, 2014. For "acid" reference, see Christopher Carrico, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 18. Information also from: IACHR, Testimonies received during the IACHR Chair visit to Colombia, September 29 to October 3, 2014.

286 Primera Hora, "Espeluznante crimen de odio contra joven homosexual," November 16, 2009 (Available only in Spanish). Five months later, Ashley Santiago, a trans woman, was found stabbed to death in her home. The Advocate, "Transgender Woman Murdered in Puerto Rico," April 26, 2010. The following month, Angie González, another trans woman, was strangled to death with an electrical cord in her home. Edge Media Network, "Another transgender woman murdered in Puerto Rico," May 25, 2010. A recent case was also reported in Puerto Rico: the body of a young volleyball player was found floating in the water at a beach in Dorado. His body had no trousers and there were numerous bullets in his stomach, legs and arms. Primera Hora, "Dos individuos confiesan haber asesinado a joven voleibolista por ser gay," March 20, 2014 (Available only in Spanish).

287 Movimiento de Integración y Liberación Homosexual (MOVILH), *Daniel Zamudio Vera, A un año de la tragedia*, March, 2013 (Available only in Spanish); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Implementation of General Assembly resolution 66/143, A/HRC/20/38, May 29, 2012, para. 8.

condemning his murder and urging an investigation.[288] In October 2013, the four defendants were found guilty and sentenced to prison.[289] The IACHR also learned of the case of a 17-year-old lesbian girl from Valdivia, Chile, who was attending a vigil for Daniel Zamudio shortly after his death, when she was attacked, beaten with objects and marked with a swastika using cigarettes. She did not file a complaint out of fear of revealing her sexual orientation to her mother.[290]

> 110. "Ahumada and Angulo asked [Daniel Zamudio] if he was gay. […] When he answers "yes," Ahumada slapped him […] Angulo said he was a shit because he was gay, Ahumada laughed. // Ahumada and Angulo started to beat him continuously; they jumped on his head and nose. […] Then they sat down and they continued smoking. Then, Angulo rose and urinated on Zamudio's mouth and chest; Ahumada did the same, he also urinated on him; then they kept beating him; Ahumada smashed a bottle […] on Zamudio's head and Angulo grabbed the bottle neck and carved three swastikas on him, two on his stomach and one on his chest, and he stabbed him twice on the left side of his body. […] Ahumada and Angulo beat Daniel again, they grabbed his head […] and it bounced against the floor. […] Ahumada then smashed another bottle against Zamudio's head and told Angulo that he should learn "the carvings" and carves two other swastikas on his back. After that, they jumped on his head, beat him on the nose, eyes, genitals and they urinated again over Zamudio. Raúl Lopez then grabbed a rock, and smashed it against his leg, trying to break it. He then […] grabbed his leg, twisted it and broke it; they were all laughing and they said it sounded like a chicken bone."[291]

111. In February 2013, the body of a 20-year-old trans woman was found in a rural road in Puebla, Mexico. Her face had been disfigured with a club or bat, several of her teeth were found a few yards apart and one of her eyeballs was detached.[292] In 2013, the IACHR was informed of the case of Joel Molero, a 19 year-old Peruvian man who was brutally attacked and beheaded, with his genitals, fingers and toes mutilated. His body was then put on a mattress and set on fire.[293]

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288 IACHR, Press Release No. 34/12, "*IACHR Deplores Death of Daniel Zamudio in Chile*," March 29, 2012 (Available only in Spanish).

289 Ahora Noticias, "Caso Zamudio: Patricio Ahumada es sentenciado a presidio perpetuo," October 28, 2013 (Available only in Spanish).

290 La Nación, "Joven lesbiana habría sido atacada por presuntos neonazis en Valdivia," March 29, 2012 (Available only in Spanish).

291 Testimonies rendered by defendants Raúl Alfonso López Fuentes and Fabián Mora Mora. Case of Daniel Zamudio Vera. Fourth Oral Tribunal in Criminal Matters of Santiago, File (RUC) 1200245128-8, October 28, 2013, pp. 56, 58, 63, 64 and 68.

292 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México*, received by IACHR Executive Secretariat on 20 December 2013, p. 135; Zocalo Saltillo, "Torturan y asesinan a homosexual en Puebla," (available only in Spanish) February 6, 2013.

293 PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2013*, May 2014, p. 36; El Comercio, "Chachapoyas exige justicia para Joel Molero, joven gay asesinado brutalmente," (available only in Spanish) December 2, 2013; Perú 21, "Piden justicia para Joel Molero, joven gay descuartizado en Chachapoyas," (available only in Spanish), December 2, 2013. La República, "Juez dispone prisión preventiva para asesino," (available only in Spanish), December 6, 2013.

6. Violence in response to public displays of same-sex affection

112. The Inter-American Commission has received reports of same-sex couples who were attacked because they showed affection in public, such as holding hands, caressing, embracing or kissing.[294] Private security guards in shopping centers have also been known to expel same-sex couples in response to public displays of affection.[295] In São Paulo, a gay couple was allegedly attacked and violently thrown off a metro train by a group of more than fifteen men after the group of men told the couple to stop embracing each other.[296] In Mexico, a gay couple who were watching a football game at a bar are reported to have been suddenly surrounded by twenty other male patrons who cursed at them, demanded they kiss each other, and then proceeded to push, spit, and throw beer at them. The couple declared to the press that they would not file a formal complaint because they were accustomed to these kinds of attacks.[297] In Chile, lesbian women have also been attacked for displaying same-sex affection.[298] In Colombia, organizations allege that same-sex couples continue to be persecuted and harassed, even after a decision by the Constitutional Court establishing that discrimination had occurred when a gay couple was expelled from a shopping mall by two guards for displaying affection in public.[299] Same-sex couples showing public displays of affection are also a frequent target of police abuse and arbitrary detention by state agents – often with excessive use of force or verbal abuse– because of what is considered "immoral behavior" in public spaces.[300]

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294 See *e.g.*, [Brazil] O Tempo, "Jovem homossexual é agredido na Praça da Liberdade," September 8, 2011 (Available only in Portuguese); [United States] Human Rights Campaign, *Research Overview: Hate Crimes and Violence against Lesbian, Gay, Bisexual and Transgender People*, May 2009, p. 11; Daily News, "'I'm NOT sorry I'm gay': Defiant tweet goes viral after Ohio college student punched after kiss," November 12, 2014; The Advocate, "Bible-Quoting Man Shoots Couple With BB Gun Outside Minneapolis Gay Bar," September 30, 2014.

295 See *e.g.* [Mexico], Milenio, "Retiran a pareja gay de centro comercial," March 27, 2015.

296 Pragmatismo Politico, "*Gays são espancados por 15 homens no metrô de São Paulo*" November 14, 2014 (Available only in Portuguese).

297 SDP Noticias, "*Fanáticos gays del Atlético de Madrid sufren ataque homofóbico en México*," May 27, 2014 (Available only in Spanish).

298 See *e.g.* [Chile] The Clinic, "*Movilh denuncia golpiza a lesbianas en pub y dos casos de discriminación en clínica*," July 25, 2012 (Available only in Spanish).

299 Colombian Constitutional Court, Decision T-909 of 2011, December 1, 2011 (Available only in Spanish).

300 IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012; [Brazil] O Tempo, "*Jovem gay afirma ter sido agredido por guardas em SP*," April 4, 2014 (Available only in Portuguese); [Chile] Movimiento de Integración y Liberación Homosexual (MOVILH), *XI Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2012*, 2013, p. 61 - 65. [Colombia] Colombia Diversa, *Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*, 2013, p. 49-50. [Ecuador] Fundación Ecuatoriana Equidad, *Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*, 2013, p. 30. One of the victims reported that police agents told them that "they should be grateful they were not raped;" [Mexico] 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*, 2010, p. 8; Telediario, "*Pareja gay denuncia discriminación por parte de policías de Metepec*," May 3, 2013 (Available only in Spanish); Novedades Acapulco, "*Sorprenden a pareja de hombres besándose; los trasladan a barandilla*," February 5, 2013 (Available only in Spanish); Diario Contra Poder en Chiapas, "*Pareja gay denuncia a policías por discriminación, extorsión y amenazas*" (s.f.) (Available only in Spanish); Notiese, "*Pareja gay denuncia a tres policías bancarios por abuso de autoridad*," May 5, 2004 (Available only in

C. *Violations of the Right to Life*

1. Extrajudicial Executions

113. For the purpose of this Report, *extrajudicial executions*[301] are understood as deprivations of the right to life unlawfully perpetrated by State agents. The inter-American case law has already established that extrajudicial executions are, by definition, contrary to Article 4(1) of the American Convention,[302] and that the deprivation of life by the authorities of the State is a matter of the utmost gravity.[303] Although there is underreporting and lack of information regarding extrajudicial executions of LGBT persons at the hands of state officials, the IACHR is very concerned about reports received of extrajudicial executions of LGBT persons that are perpetrated by State agents. According to one regional organization, which obtained its information from witness testimony, police officers have been directly involved in a "good number" of killings of trans women. The motives included retribution against those who had reported an officer's wrongdoing, and the result of arguments with the police over "sexual favors or money."[304]

114. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that lesbian, gay, bisexual and trans persons are "especially vulnerable" to extrajudicial killings.[305] For example, it is reported that four military police officers, after having humiliated two trans sex workers in Salvador, Brazil, in August 1998, forced them to jump into the sea, where one of them drowned.[306] The IACHR also received information about the 2006 killing in Guatemala of Paulina Méndez Cartagena, a trans woman who was allegedly killed by four police

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Spanish); [Peru] El Comercio, "*Plaza San Miguel fue multada por discriminación a pareja gay*," April 10, 2014 (Available only in Spanish); [Argentina] DiarioHuarpe, "*Detuvieron a una pareja gay por besarse en el Parque*," April 5, 2015 (Available only in Spanish).

301 The term "extrajudicial executions" has been used to refer to executions carried out by the State, other than those executions that are carried out in conformity with the law, such as in the application of the death penalty. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, January 29, 2007, para. 1, fn. 1.

302 I/A Court H.R., *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 57. See also, I/A Court H.R., Case *of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167; I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165.

303 I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 172; I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 145; UN Human Rights Committee, *General Comment No. 6: Article 6 (Right to life)*, April 30, 1982, para. 3.

304 Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 14.

305 UN, Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Addendum. Follow-up country recommendations: Colombia, A/HRC/20/22/Add.2, May 15, 2012, para. 51.

306 UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,* E/CN.4/2000/3, 25 January 2000, para. 54.

officials.[307] Paulina Méndez Cartagena was with Sulma Alegría Robles, another trans woman, when they were attacked. Robles survived the attack and the IACHR granted her precautionary measures.[308]

115. "On 16 December 2005, around 11.30 p.m., Paulina and Sulma – both transgender persons – were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements about the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well-intended advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission on Human Rights."[309]

116. The IACHR has also received information about attempted extrajudicial executions of trans persons by members of the police. In December 2008, Nohelia Flores Álvarez was stabbed seventeen times in the throat, back, stomach and arms by a male police officer in Honduras, after the officer held her at gunpoint demanding sex, which she refused. The police officer was sentenced to ten years in prison on September 2009.[310] In January 2010, the IACHR requested the State of Honduras to adopt precautionary measures to protect her life and personal integrity, as well as that of three other persons who were being threatened in the context of the trial against the police officers, including two state agents, members of the *Dirección Nacional de Investigación Criminal* in Tegucigalpa, who were investigating the case.[311]

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307 HRW, *"Guatemala: Transgender People Face Deadly Attacks: Victims concerned that police may have been responsible for these crimes*," February 21, 2006.

308 On February 3, 2006, the IACHR granted precautionary measures in favor of Sulma Alegría Robles, Jorge Luis López Sologaistoa, and 11 other members of OASIS (the Organization to Support Integrated Sexuality) in Guatemala. According to the information available, on the night of December 16, 2005 in Guatemala, two transsexual persons (Robles, a client of OASIS, and Paulina Méndez Cartagena, a communications assistant at OASIS), were shot and injured in an incident allegedly involving four uniformed policemen. Cartagena's injury reportedly proved fatal and Robles, who survived the incident, is a key witness in the investigation of the shooting. Other sources confirm that the lesbian, gay, bisexual, and transgender community in Guatemala faces attacks and threats that often involve the police, which has given rise to the fear of a clandestine policy of "social cleansing." In view of these incidents, the Commission requested that the Government of Guatemala adopt the measures necessary to protect the life and physical integrity of the beneficiaries of the precautionary measures, and report on action taken to investigate judicially the events that gave rise to the precautionary measures. IACHR, Summary of PM 3-06 – Sulma Alegría Robles and members of OASIS, Guatemala.

309 UN, Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Mission to Guatemala*, A/HRC/4/20/Add.2, February 19, 2007, para. 33.

310 Amnesty International, Report: The State of the World´s Human Rights, 2011, Chapter on Honduras.

311 The IACHR continues monitoring the implementation of these precautionary measures. The latest meeting between the State and the beneficiaries was held in October 2015, in the context of the 156th Period of Sessions. IACHR, Summary of PM 18-10 – Indyra Mendoza Aguilar *et al*., Honduras, January 29, 2010.

117. In January 2013, two police officers were arrested in connection with the kidnapping, torture and execution of a young gay couple. The incident apparently originated with a quarrel between two young men, aged 17 and 22, in Mexico City. After they were both expelled from a nightclub, a police patrol car and other cars arrived and police agents violently pushed them into a white vehicle that was escorting the patrol car. The bodies of the two men were found the following day with numerous signs of beatings in various parts of the body (some of which were so brutal they left bones uncovered), their hands and feet strongly tied with wire, their ears amputated, and with three gunshot wounds in the head of each man. Surveillance cameras showed that the vehicles that were used to apprehend the men outside the nightclub drove to the vicinity of the place in which the bodies were found.[312]

118. The IACHR has noted that for the majority of cases of violence against LGBT persons recorded in the Registry of Violence covering the time period of January 2013 to March 2014, there is little or no data as to the perpetrators of the violence, particularly in the cases of killings. Notwithstanding this, during that fifteen-month period, the IACHR received information of alleged executions by state agents of a 15-year-old boy in Patu, Brazil,[313] a 40-year-old trans woman in Mexico city,[314] and the aforementioned two gay men aged 17 and 22 in Mexico City.[315] The IACHR was also informed of the killing of Angelina Lucía Martínez Figueroa, a 19-year-trans woman in Cartagena, Colombia, from a shot in the head, allegedly from a stray bullet resulting from shots fired into the air by a police agent in an effort to break up a street fight.[316]

2. Killings

119. The Commission found that during a fifteen-month period (between January 2013 and March 2014), at least 594 persons who were LGBT or perceived as such were killed in attacks that were apparently related to the perception of their sexual orientation or their gender identity and expression.[317] This included 283 killings of gay men, or those perceived as such, and 282 killings of trans women and trans

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312 Comisión de Derechos Humanos del Distrito Federal, *Recomendación 8/2013*, Anexo IV, Caso A, Expediente CDHDF/IV/122/CUAUH/13/D0208, p. 1-14; La Razón, "*Arraigan a policía por las muertes del Living*," January 23, 2013. (Available only in Spanish).

313 Portal Catolé News, "*Soldado PM mata adolescente em Patu, e comete suídio em seguida*," April 7, 2013. (Available only in Spanish).

314 Sdpnoticias, "*Soldado mata a travesti en hotel del DF; no sabía que era hombre,"* October 10, 2013. (Available only in Spanish).

315 Animal Político, "*CDHDF confirma 7 asesinatos cometidos por policías capitalinos*," May 2, 2013. (Available only in Spanish).

316 Caracol, "*En Cartagena muere transsexual tras recibir impacto de bala en la cabeza,"* March 3, 2014 (Available only in Spanish). Corporación Caribe Afirmativo, "Caribe Afirmativo exige claridad en el homicidio de una mujer trans en la Ciudad de Cartagena," March 3, 2014. (Available only in Spanish).

317 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

persons who identify as female.[318] The IACHR was also able to identify trends in the data regarding the locations of killings and the weapons used. Gay men, or those perceived as such, were more likely to be killed by bladed weapons and in private spaces, such as the home of the victim.[319] Whereas trans women and trans persons with female gender identities were more likely to be killed by firearms, and their bodies were more likely to be found in the streets or other public spaces, and sometimes in situations linked to sex work.[320]

120. Some civil society organizations and State agencies in some countries in the Americas have registered an increase in the number of killings in recent years. However, it is not possible to categorically conclude whether in fact there has been an increase in killings, or, because of a more rigorous monitoring, there is greater visibility and documentation of the killings of LGBT persons. In this section, the IACHR summarizes some data on killings by different sources in several countries in the region, while signaling countries in which there seems to be an increase in the number of killings. For example, in 2014, the Mexican Executive Commission for Attention to Victims ["*Comisión Ejecutiva de* Atención *a Victimas*" (CEAV)] —a federal autonomous governmental agency— expressed its concern with regard to the rising number and increasingly violent nature of crimes based on prejudice against LGBT persons.[321] According to the Mexican civil society organization *Letra S Sida, Cultura y Vida Cotidiana A.C.*, there have been 1,218 killings motivated by prejudice against LGBT persons. According to this report, more than 80% of victims had received several types of attacks before being killed.[322] Other organizations in Mexico documented at least 164 killings of trans women between 2007 and 2012, confirming a steady increase in the numbers in these years.[323]

121. In 2013 an organization in Chile reported an increase in the number of killings of LGBT persons with respect to previous years,[324] amounting to a total of 24 since 2002.[325] Organizations from Guatemala report that killings of LGBT persons are not found in police records, and when exceptionally they are, they end in

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318 IACHR, *Registry of Violence against LGBT persons (January 2013- March 2014)*, (Available only in Spanish).

319 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

320 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

321 Comisión Ejecutiva de Atención a víctimas (CEAV), Boletín 32/2014: "Preocupa a la CEAV que en México sigan aumentado víctimas de homofobia con expresiones cada vez más violentas," May 16, 2014 (available only in Spanish).

322 Report by Letra S, Sida, Cultura y Vida Cotidiana A.C., cited in Notiese, Registran 1218 homicidios por homofobia en México, May 12, 2015 (available only in Spanish).

323 Centro de Apoyo a las Identidades Trans (CAIT), *Informe Crímenes de Mujeres Trans en México: Invisibilidad = Impunidad*, 2013, p. 9.

324 Movimiento de Integración y Liberación Homosexual (MOVILH), *XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013*, 2014, p. 37.

325 Movimiento de Integración y Liberación Homosexual (MOVILH), *XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013*, 2014, p. 40.

impunity.[326] They also point out that victims who are transgender tend to be young, with an average age of 25,[327] and live in constant fear of being assaulted or attacked.[328] According to an organization from civil society, at least 30 trans persons were killed between 2009 and 2010 in Guatemala.[329] In Honduras, according to *Red Lésbica Cattrachas*, at least 189 killings of LGBT persons were registered between 2008 and 2014,[330] and 10 killings had taken place during the first five months of 2015.[331]

122. In Peru, local organizations reported that at least 38 LGBT persons were killed between 2001 and 2013,[332] and 13 were killed between April 2014 and March 2015.[333] In Venezuela, organizations reported that at least 46 killings have been documented between 2009 and 2013.[334] In Argentina, an organization indicated that 25 killings of LGBT persons have been reported between 2011 and 2013.[335] In 2014, it was reported that seven LGBT persons were killed, compared to five the year prior. The organization noted that while there were fewer killings of gay men in 2014, killings of trans persons more than doubled, in comparison with 2013.[336] In October 2015, organizations reported that three trans women were killed in one

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326 Organización de Apoyo a una Sexualidad Integral Frente al SIDA (OASIS), Crímenes de Odio en Guatemala: *una Aproximación a los Retos y Desafíos para el Desarrollo de una Investigación sobre Crímenes en el País en contra de Gay, Bisexuales y Trans*, April 2010, p. 35.

327 Organización Trans Reinas de la Noche, *Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011*, May 1, 2011, p. 37.

328 Organización Trans Reinas de la Noche (Guatemala), *Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011*, May 1, 2011, pp. 37-38.

329 Fundación Myrna Mack et. al, *Discriminación por orientación sexual e identidad de género y una aproximación a la interseccionalidad con otras formas de discriminación en Guatemala*, November 4, 2012, p. 33.

330 Cattrachas & Safo, *Informe del Observatorio binacional Honduras-Nicaragua: Muertes violentas de la comunidad Lésbica, Gay, Bisexual, Transexual e Intersexual, 2008-2014*, p. 9. June 26, 2015. It is noteworthy that the State of Honduras referred to the reliability of statistics gathered by this organization. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 3.

331 Red Lésbica Cattrachas, *Listado de Víctimas 2015 al 6 de junio de 2015*. Received by the IACHR Executive Secretariat on June 11, 2015.

332 PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2013*, May 2014, p. 34; PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2012*, May 2013, p. 61; PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2011*, May 2012, p. 52;

333 Promsex, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2014-2015, citing Observatorio of LGBT Human Rights and HIV/AIDS and other sources, p. 31.*

334 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Acción Ciudadana Contra el SIDA (ACCSI), November 25, 2013, received November 25, 2013, p. 1; Acción Ciudadana Contra el SIDA (ACCSI), *Informe Venezuela 2013 Crímenes de odio por orientación sexual, identidad de género y expresión de género en la noticia de los medios de comunicación y organizaciones de la sociedad civil*, p. 20.

335 Comunidad Homosexual Argentina, *Informe crímenes de odio del año 2013 (Asesinatos por Orientación Sexual e Identidad de Género)*, 2014; *Informe crímenes de odio del año 2012 (Asesinatos por Orientación Sexual e Identidad de Género)*, 2013, p. 3.

336 Comunidad Homosexual Argentina, *Informe Anual Crímenes de Odio del año 2014 (Asesinatos por Orientación Sexual e Identidad de Género)*, 2015. (Available only in Spanish).

month in Argentina.[337] In Uruguay, according to information provided by civil society organizations, the Ministry of Interior had reported that five trans women were killed in 2012,[338] four of which were killed in the spam of three months.[339]

123. The State of Colombia informed the IACHR that between 2011 and 2013, at least 219 killings of LGBT persons had been registered nationwide.[340] A civil society organization reported that between 2010 and 2011 at least 280 LGBT persons were killed.[341] The UN Office of the High Commissioner for Human Rights indicated that 2013 had seen an increase in the number of reported killings of LGBT persons in Colombia in comparison to those reported in 2012.[342] The Commission has also received information on the differential impact of the armed conflict in Colombia on LGBTI persons. The Colombian organization Caribe Afirmativo has documented 114 violent deaths of LGBT persons in the Caribbean Region of Colombia, 58 of which occurred in territories where the armed conflict persists. The victims were primarily gay men and trans women.[343] Worrisome information has been brought to the attention of the Commission from other regions in Colombia. In Cauca, it was reported that a gay man had his penis cut off and he was left to bleed to death.[344]

124. Further, the IACHR has received troubling information about the number of killings of LGBT persons taking place in Brazil. Reported figures from Brazil far surpass the number of killings reported in any other OAS Member State. It bears mentioning in this regard that, although high levels of violence and prejudice against persons with non normative sexual orientations and gender identities may exist in Brazil, several other factors may also contribute to these figures being so disproportionately high. First, Brazil is the second most populated OAS Member State after the United States of America, with more than 200 million inhabitants. Second, Brazilian civil society, and the State itself during the last few years, have built up robust reporting mechanisms through which cases are identified and recorded. In quantitative terms, the State of Brazil informed the IACHR that there were 278 killings of LGBT persons in 2011 and 310 reported cases in 2012, a year-

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337 Office of the UN High Commissioner for Human Rights, "Oficina Regional repudia muertes de personas transgénero en Argentina" ["Regional Office repudiates deaths of trans persons in Argentina"], October 21, 2015.

338 El Correo, "Asesinadas cinco mujeres transexuales en Uruguay este año," ["Five trans women killed in Uruguay this year"], September 27, 2012. (Available only in Spanish).

339 El Mundo, "Asesinados cuatro transexuales en tres meses en Uruguay," ["Four trans persons killed in Uruguay in three months"], April 4, 2012. (Available only in Spanish).

340 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Colombia, Note MPC/OEA No. 1673/2013 dated December 27, 2013, received by the IACHR Executive Secretariat on February 12, 2014, p. 16.

341 Colombia Diversa, *Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*, 2013, p. 14.

342 United Nations High Commissioner for Human Rights, *Situation of Human Rights in Colombia*, A/HRC/25/19/Add.3, January 24, 2014, para. 94.

343 Caribe Afirmativo - Global Rights, *Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno*, Octubre,2014, p. 14.

344 IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (and Cali and Tumaco). Information provided by a human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.

over-year increase of 11.5%.[345] In 2013, the local organization "Grupo Gay da Bahia" (GGB) documented at least 312 killings of gay men, lesbian women, and trans persons in its 2013 Annual Report.[346] Gay men (59%) and trans women (35%) represent the majority of the victims.[347]

125. The disturbing brutality of the killings reported in Brazil can be grasped through the following examples. In April 2014, a bisexual woman —who had a 6-year-old son and who had left her boyfriend to live with a woman— was viciously stabbed, disemboweled, and her body abandoned near a railroad track. The perpetrator cut out the victim's vulva and inserted it in her mouth before leaving. Investigators stated that this action spoke to the motive of the crime and that a former boyfriend of the woman was among the suspects.[348] In January 2014, a 40-year-old gay man was found near death near a sugar cane plantation in João Pessoa, his body showing signs of having been brutally beaten and raped. He was hospitalized but died shortly after.[349] In May 2013, a 22-year-old gay man was verbally attacked with homophobic epithets on the street and then run down with a car three consecutive times in Rio de Janeiro. Although his friends took him to a hospital, he did not survive the wounds; his spinal cord was fractured in three places and his hip, ribs and lungs were also severely affected.[350] During 2013, the IACHR was informed of numerous killings of trans women who were sex workers, most of the killings allegedly perpetrated by their clients. These included victims who were — among many other violent acts — smashed in the head with rocks,[351] stoned to death while offering their services,[352] beaten to death with a broken bottle,[353] stabbed while waiting in their regular spots,[354] repeatedly shot when approaching a car,[355] and shot following a disagreement over fees.[356]

126. Entertainment and socialization spaces for gay persons, and their vicinities, are also common locations in which killings take place. Bars and dance clubs are

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345 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 3.

346 Grupo Gay da Bahía (GGB), *Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014*.

347 Grupo Gay da Bahía (GGB), *Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014*, p. 5.

348 Meionorte.com, "Estudante estripada foi vítima de crime passional e morte tem uma trama," April 17, 2014. (available only in Portuguese); Gazeta da Ilha, "Mulher é brutalmente morta em Teresina," April 16, 2014. (available only in Portuguese).

349 PB Agora, "Sepultado corpo de homossexual que foi espancando e estuprado," January 29, 2014 (available only in Portuguese); Portal Litoral PB, "Acusado de estuprar e matar homossexual em João Pessoa é preso," January 30, 2014.

350 Governo do Rio de Janeiro - Rio Sem Homofobia, "Policia prende acusado de matar Eliwellton da Silva Lessa," August 9,2013. (Available only in Portuguese); Pragmatismo Politico, "Motorista passa com veículo três vezes por cima de homossexual," May 3, 2013 (available only in Portuguese).

351 Globo.com "Travesti é encontrado morto com a cabeça esmagada na Vila Irmã Dulce," January 5, 2014 (available only in Portuguese); R7 Noticias, "Travesti é encontrada morta com marcas de pedrada na cabeça em Teófilo Otoni," August 13, 2013. (Available only in Portuguese).

352 Globo.com, "Homem é morto a pedradas em uma rua do bairro Mumbuca em Maricá, RJ," May 16, 2013 (available only in Portuguese).

353 Folha PE, "Travesti assassinado na praia de Piedade," January 24, 2013 (available only in Portuguese).

354 Terra Noticias, "RS: travesti é morto com sete facadas no centro de Gravataí," March 6, 2013 (available only in Portuguese).

355 DOL Br, "Travesti é executada no bairro da Guanabara," January 8, 2014 (available only in Portuguese).

356 Gazeta do Povo, "Travesti é morta a tiros no Boqueirão," July 2013 (available only in Portuguese).

reported to be frequent locations where perpetrators target their victims, a *modus operandi* colloquially referred to as "pick-up crime." In 2006, a serial killer was known to be targeting gay men in Mexico City by seducing them at gay bars, kidnapping them, and demanding ransom from their families. At least four gay men were killed. The gruesome details of the cold-blooded confessions of the serial killer included different ways in which he tormented his victims during their captivity, such as engraving marks on their foreheads with bladed instruments. The killer declared that "he had done society a favor, because gay men corrupt children."[357] Other examples in which killers reportedly lured victims at bars include the well-known case of Matthew Shepard in the United States,[358] and a similar case reported in Chile.[359] In recent years, online dating sites and location-based phone dating applications have also been reported as tools used by perpetrators to find their victims in the United States.[360] In November 2014 in Colombia, there was reportedly a criminal gang that would lure gay men through social media in order to rob, attack, or kill them.[361] In January 2013, a group of men in a car passed in front of a gay bar in Mexico City and started screaming slurs directed at two patrons who were hugging each other. When one of the gay men confronted the group, one of the men in the car pulled out a gun and shot him dead on the spot.[362]

D. *Violations of the Right to Personal Integrity*

1. Violations in the context of law enforcement: Torture, cruel, inhuman and degrading treatment

127. Articles I and XXV of the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration" or "Declaration") and Articles 5 and 7 of the American Convention protect the right to security of the person, the right to

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357 Procuraduría General de la República, *Informe de labores. Resumen Ejecutivo*, September 2006, p. 23; El Universal, "Presenta la AFI a asesino serial de homosexuales," January 26, 2006 (available only in Spanish); and Letra S, Sida, Cultura y Vida Cotidiana A.C., *Informe de crímenes de odio por homofobia México 1995-2008*, 2009, p. 12.

358 New York Times, "Gay Man Beaten and Left for Dead; 2 Are Charged," October 10, 1998. For more information, see Matthew Shepard Foundation: Embracing Diversity, http://www.matthewshepard.org/.

359 Case of the killing of José González Quiroga (54) in Teno, Maule Region of Chile. See Movimiento de Integración y Liberación Homosexual (MOVILH), *XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013*, 2014, p. 50.

360 National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013*, 2014, p. 92; Vocativ, "Death by Grindr: Is It the New Killer App?," May, 2014.

361 Colombia Diversa, Activista LGBT fue brutalmente asesinado en Bogotá, 18 de noviembre de 2014; Sentiido, *La Muerte de Guillermo Garzón, más allá de un "crimen pasional"*, November 20, 2014 (available only in Spanish).

362 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México* (México), received by IACHR Executive Secretariat on December 20, 2013, p. 135; Terra Noticias, "PGJDF investiga crimen de odio a pareja homosexual," January 27, 2013 (available only in Spanish).

personal integrity, and the right to be free from arbitrary and illegal detention. Further, the Inter-American Convention to Prevent and Punish Torture, adopted by the OAS General Assembly in 1985 and ratified by 18 OAS Member States, establishes States' obligations to prevent, investigate, punish and provide redress regarding acts of torture. According to this treaty, State Parties shall take measures to emphasize the prohibition of torture in interrogation, detention or arrest in the trainings of police officers and other public officials who are responsible for the custody of persons who are deprived of liberty whether temporarily or long-term.[363]

128. The IACHR has held that the lawful activity of security forces, directed toward the protection of the population, is fundamental for achieving the common good in democratic society. Human rights require that States prevent and respond to the arbitrary exercise of authority and constitute an essential safeguard of the security of the public. Respect for, and correct interpretation and application of, the guarantees established in the American Convention and American Declaration must serve as a guide to member states to ensure that the activities of their security forces respect human rights.[364]

129. Regarding the prevention by the State of acts of torture and ill-treatment against LGBTI persons, the IACHR has highlighted that legislation and regulations concerning the police must set out "clearly that no law enforcement officer can inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment," and that every law enforcement agent must immediately report any case of torture or cruel, inhuman or degrading treatment of which he or she has knowledge.[365]

130. In the last few years, the IACHR has continuously received information on acts of violence against LGBT persons that are perpetrated by law enforcement agents,[366] including acts of torture, degrading or inhumane treatment, excessive use of force, arbitrary detention, and other forms of abuse.[367] Numerous cases of State-led

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363 Article 7, Inter-American Convention to Prevent and Punish Torture, adopted at the 15th Regular Session of the OAS GA, OAS, Treaty Series No. 67 on December 9, 1985, and entered into force on February 28, 1987.

364 IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II., Doc. 57, December 31, 2009 (hereinafter IACHR, Report on Citizen Security and Human Rights, 2009, para. 24.

365 IACHR, Report on Citizen Security and Human Rights, 2009, para. 129.

366 For the purposes of this Report, "law-enforcement agent" includes any state agent legally empowered to fulfill duties pertaining to public security, including regular police forces, military police, airport security agents, 'gendarmerie', constabulary forces, and migration police or other border control authorities.

367 IACHR, Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas,* 133rd Period of Sessions, October 23, 2008 (audio and video not available); Hearing on *Situation of Lesbians, Gays, Bisexuals and Transgender Persons in Colombia*, 137th Period of Sessions, November 5, 2009; Hearing on *Hate Crimes against Members of the LGBT Community and Impunity in Central America*, 140th Period of Sessions, October 26, 2010; Hearing on *Citizen Security, Prisons, Sexual Diversity, and Equality in Venezuela, 140th Period of Sessions*, October 29, 2010; Hearing on *Situation of the Rights of LGBTI Persons in the Americas*, 143rd Period of Sessions, October 28, 2011; Hearing on *Homicides of LGTBI Persons and Impunity in the Americas*, 146th Period of Sessions, November 1, 2012; *Hearing on Information on Discrimination based on Sexual Orientation and Gender Identity in Guatemala*, 146th Period of Sessions, November 4, 2012; Hearing on *Human Rights Situation of Trans Persons of African Descent in Brazil*, 149th Period of Sessions, October 29, 2013; Hearing on *Reports of Violence against Trans People in El Salvador*, 149th Period of Sessions, October 29, 2013; Hearing on *Human Rights Situation of LGBTI Persons in Belize*, 150th Period of

violence have been documented throughout the Americas.[368] Indeed, several OAS Member States have expressed concern about these abuses.[369] The Registry of

Sessions, March 28, 2014; Hearing on *Human Rights Situation of LGBTI Persons in the Andean Region*, 150th Period of Sessions, March 28, 2014; Hearing on *Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica*, 150th Period of Session, March 27, 2014; Hearing on *Discrimination Against Trans Persons in the Americas*, 153rd Period of Session, October 30, 2014; Hearing on *Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia*, 153rd Period of Sessions, October 27, 2014; *Hearing on the Human Rights of Trans Persons in Paraguay*, 154th Period of Sessions, March 2015; Hearing on *the Human Rights Situation of Trans Women in Panama*, 156th Period of Sessions, October 19, 2015; Hearing on *Human Rights Situation of LGBT Persons in Cuba*, 156th Period of Sessions, October 19, 2015; Hearing on *Human Rights of LGBT Persons Deprived of Liberty in Latin America*, 156th Period of Session, October 23, 2015; among others. Videos and audios of public hearings before the IACHR, available at: www.iachr.org.

368 *See among others*: [Argentina] Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), *Hacia una Ley de Identidad de Género,* 2012, pp. 7, 21; [Belize] United Belize Advocacy Movement (UniBAM) & Belize Youth Empowerment for Change (BYEC), *Final Presentation before the Inter-American Commission on Human Rights*, March 28, 2014, p. 6; [Bolivia] Conexión Fondo de Emancipación, *Situación de las poblaciones TLGB en Bolivia: Encuesta Nacional 2010*, 2011, p. 63; MANODIVERSA, Red TREBOL, MTN, ILGA, *Examen Periódico Universal (EPU): Estado Plurinacional de Bolivia*, March 2014, p. 5; [Brazil] ABGLT & Sexual Rights Initiative, *Informe sobre Brasil 13° Ronda del Examen Periódico Universal*, June 2012, p. 5; [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Organización de Transexuales por la Dignidad de la Diversidad (OTD)," received by IACHR Executive Secretariat on November 25, 2013, p. 3; OTD Organización de Transexuales por la Dignidad de la Diversidad (OTD) & International Gay and Lesbian Human Rights Commission (IGLHRC), *Violaciones de derechos humanos de las personas lesbianas, bisexuales y transexuales (LBT): Un informe sombra*, September 2012, p. 6. [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos *et. al*., received by the IACHR Executive Secretariat on November 25, 2013, p. 9; Colombia Diversa, *Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*, 2013, p. 53; [Costa Rica] Mulabi & International Gay and Lesbian Human Rights Commission (IGLHRC), *Situation of lesbian, bisexual, transsexual, transgender and intersex women in Costa Rica in regards to discrimination: Shadow Report*, July 2011, p. 5; [Dominican Republic] Human Rights Observatory for Vulnerable Groups et. al, *Discrimination and violence towards Transgender women in the Dominican Republic*, October 27, 2014, p. 4; Coalition LGBTTI (CLGBTTI) of the Dominican Republic, *Joint Submission before the Human Rights Council for the Dominican Republic Universal Periodic Review*, 2013, paras. 15-22; [Guatemala] IACHR, Hearing on *Discrimination based on Sexual Orientation and Gender Identity in Guatemala*, 146th Period of Sessions, November 4, 2012; Fundación Myrna Mack et. al, *Discriminación por orientación sexual e identidad de género y una aproximación a la interseccionalidad con otras formas de discriminación en Guatemala*, November 4, 2012, pp. 37-39; Organización Trans Reinas de la Noche*, Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011*, May 1, 2011, p. 10; [Guyana] Society Against Sexual Orientation Discrimination (SASOD) & Sexual Rights Initiative (SRI), *On Devil's Island: A UPR Submission on LGBT Human Rights in Guyana*, June 2014, para. 14; Guyana RainBow Foundation (GuyBow), The International Gay and Lesbian Human Rights Commission (IGLHRC), Society Against Sexual Orientation Discrimination (SASOD), *Human Rights Violations of Lesbian, Bisexual and Transgender (LBT) People in Guyana: a Shadow Report*, July 2012, p. 6; [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS," received by the IACHR Executive Secretariat on November 25, 2013, p. 2; [Honduras] Cattrachas et. al., *Audiencia de Homicidios de Personas LGTTBI e Impunidad en las Américas ante la CIDH"*, November 1, 2012, p. 9; Human Rights Watch, *"Not Worth a Penny" Human Rights Abuses against Transgender People in Honduras*, 2009, pp. 3, 20-29; [Jamaica] Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al.*, Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report.* October 2011, pp. 12-13; Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, November 2004, pp. 18-21; Human Rights Watch, *Not safe at home: Violence and Discrimination against LGBT People in Jamaica*, 2014, p. 33-38; Amnesty International, *Jamaica: Killings and Violence by Police: How many more victims?*, April 2001, pp. 40-41; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Centro de Apoyo a las Identidades Trans," received by the IACHR Executive Secretariat on 20 December 2013, p. 2; [Paraguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Organización Centro de Denuncias de VIH/SIDA y DDHH," received by the IACHR

Violence of the IACHR, referred-to above, indicated that between January 2014 and March 2015, there were forty-three cases of police abuse; however, the Commission highlights the high levels of underreporting of acts of violence, particularly, those committed by state agents, as noted at the beginning of this chapter. Further, Human Rights Treaty Bodies within the United Nations Human Rights System,[370] several Special Procedures[371] and the Office of the High Commissioner for Human Rights,[372] have all received similar information, and have documented their concern over reports of police abuse against LGBT persons in several OAS Member States. Several organizations have reported that police forces even feel that they are entitled to exert violence against LGBT persons.[373]

Executive Secretariat November 24, 2013; [Peru] Defensoría del Pueblo, *La discriminación en el Perú: Problemática, normatividad y tareas pendientes*, Serie Documentos Defensoriales – Documento Nº 2, Septiembre 2007, p. 109; Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2008*, 2009, pp. 85-90; Instituto de Desarrollo y Estudios de Genero "RUNA," *Informe de derechos humanos sobre la población trans (transexuales, travestis, transgénero) en la ciudad de Lima (Informe 2008)*, January 2009, p. 4; [United States] Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, October 2012, p. 19; [Venezuela] Acción Ciudadana contra el SIDA (ACCSI), *Informe sobre Homofobia, Violencia e Impunidad contra la Población Lesbiana, Gay, Bisexual, Transexual y Bisexual en la República Bolivariana de Venezuela*, 2008, p. 3; [Regional] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, pp. 13-18; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TvT), *Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans*, 2012, p. 49.

369 [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Ecuador, Note 4-2-380/2013 dated December 2 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 3; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 8; 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*, 2010, p. 10; [Nicaragua] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 2-4; Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policia Nacional*, March 2012, pp. 7, 22, 23, 26-30; [Venezuela] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20, 2013, received by IACHR Executive Secretariat on December 26, 2013, p. 3; IACHR, Hearing on *Citizen Security, Prisons, Sexual Diversity, and Equality in Venezuela*, 140th Period of Session, October 29, 2010.

370 [Peru] Committee against Torture, *Concluding observations: Peru*, CAT/C/PER/CO/5-6, 21 January 2013, para. 22; [Costa Rica] Committee on the Elimination of Discrimination against Women, *Concluding Observations: Costa Rica*, CEDAW/CRI/CO/5-6, 29 July 2011, para. 40.

371 [Honduras] UN, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1, 13 December 2012, para. 90; [Colombia] UN, Human Rights Council, *Report of the Working Group on Arbitrary Detention. Addendum: Mission to Colombia*, A/HRC/10/21/Add.3, February 16, 2009, para. 56.

372 [Colombia] UN High Commissioner for Human Rights, *Report on the situation of human rights in Colombia: Annex*, A/HRC/16/22, February 3, 2011, para. 9; United Nations High Commissioner for Human Rights, *Report on the Situation of Human Rights in Colombia, Annex IV: Situation of Especially Vulnerable Groups*, E/CN.4/2006/009, January 20, 2006, para. 27.

373 IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012.

131. The Commission has previously expressed concern about cases of police abuse against LGBT persons,[374] and has indicated that police involvement in discrimination and violence against LGBT persons leads others to believe that they can harm persons of non-normative sexual orientations and gender identities with impunity.[375] The IACHR notes that police and other State security agents – legally entitled to enforce public order – share the same attitudes and prejudices against LGBT persons that are prevalent in society at large. Arbitrary detention is another significant concern in the overall context of police abuse against LGBT persons. As indicated in the previous chapter, the IACHR found that police officers arbitrarily deprive LGBT persons of their liberty on the grounds of alleged "public scandal," or because their sole presence is considered a threat to "public morals". Numerous reports indicate that trans women and trans sex workers are particularly vulnerable to police abuse and are regularly subjected to inhumane treatment by law enforcement when detained.[376] Many trans Latin American women in Queens, New York, have experienced being stopped and searched by the police on suspicion of prostitution while walking in their own neighborhoods. As was affirmed by a trans woman: "to the police, all transgenders are prostitutes."[377]

132. According to information received by the Commission, the violence occurs at all stages of police custody, including apprehension, transportation in police vehicles and, above all, in the premises of police stations and lock-up facilities. Among the most commonly reported forms of abuse are: extortion and the demand for sexual favors; the use of excessive force; vicious beatings; the use of firearms to hurt or incapacitate victims; instances in which trans women are forced to strip fully naked in public; and constant hostility and acts of humiliation such as forcible removal of wigs, misgendering,[378] and constant verbal abuse. As noted by the UN Office of the High Commissioner for Human Rights, "States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity."[379]

133. According to information received, police agents have arrested LGBT persons based solely on their appearance, the way they are dressed, or their gender expression. For example, it is reported that in 2011 in Belize, two police officers arrived at a bar. One of the police officers asked two trans women: "why are you dressing like that if you are men?" The officers proceeded to arrest the women and, when asked for a reason, the officers answered: "because you look suspicious, you confuse me." In transit, the two trans women were subjected to mistreatment. The

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374 IACHR, Press Release No. 79/13. *IACHR Expresses concern about Mob attacks, police abuse and other forms of violence against LGBTI persons*. October 24, 2013.

375 IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, 2012, para. 275.

376 See below, section of this Report on LGBT persons deprived of liberty.

377 Human Rights Watch, *Sex Workers at Risk, Condoms as Evidence of Prostitution in Four US Cities,* 2012, p. 20.

378 Willful misgendering occurs when someone refers to a person using terms (generally pronouns, nouns, and adjectives) that express a gender with which they do not identify, in order to humiliate and debase. This takes place when trans women are referred to as men or according to their male registered name and when trans men are referred to as women or according to their female registered name. *See,* for example, Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*, June 2014 (available only in Spanish), p. 30.

379 OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 15.

abuse continued at the lock up facility, with one police officer insinuating that they "should be murdered and dumped on a nearby highway." The women suffered rape threats from other detainees and one of them was forced to strip naked. They were released the next morning, with no charges brought against them. They did not file charges out of fear of reprisals and further victimization.[380]

134. "All my arrests always came from just walking on the street, coming out of a club, or just because a cop identified me as transgender. They would always look for condoms. They don't care about you, they take your purse, throw it on their car, your stuff they throw it on the floor, they pat frisk you, they ask if you have fake boobs, take them off right there, if you have a wig, take it off. It's humiliating. Right there in the street, they take your identity right there. When they find condoms, they say 'what are these for… how many dicks did you suck today? How much money did you make today?"[381]

135. In 2013, a group of men were dancing during carnival in Port-au-Prince, Haiti, when police officers started beating them, uttering slurs and making comments that "they did not like it that they were effeminate."[382] In Mexico City, a young man was allegedly arrested by federal police officers while he was walking on the street late at night. When he asked why he was being arrested, the officers answered "because you are gay" and then asked him to perform oral sex on them.[383] In Nicaragua, reports indicate that lesbian women have been repeatedly arrested by the police and kept for hours in detention facilities while being asked "why they dressed like that" and "why didn't they look for men."[384] In 2013, two men were talking in a park in Santo Domingo, Dominican Republic, when a police car stopped beside them. Two police agents pushed the two men into the police car while referring to them as women, and drove them to a police station. When they demanded an explanation for their arrest, a police officer answered: "If you need a reason, we will say that you both were having oral sex at Parque Duarte." Another officer then said that the men should be put in cells where men would rape them to "make them men." Police agents told them that being a "faggot" was worse than being a criminal. The next day they were released without any further explanation.[385]

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380 United Belize Advocacy Movement (UNIBAM) - Belize Youth Empowerment for Change (BYEC), *Final Presentation before the Inter-American Commission on Human Rights*, March 28, 2014, p. 6.

381 Human Rights Watch interview with Victoria D. [trans woman], New York City, January 20, 2012 featured in: Human Rights Watch, *Sex Workers at Risk, Condoms as Evidence of Prostitution in Four US Cities*, 2012, p. 25.

382 *Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre*, ILGHRC, Cuny School of Law, SEROVie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

383 Agenda LGBT A.C., *Informe de la situación de homofobia en México del año 2013*, February 2013 (updated in June 2013); La Jornada, "*Joven fue detenido, vejado, golpeado y robado por policías 'por andar de puto'*," March 27, 2013 (available only in Spanish).

384 Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policia Nacional*, March 2012, p. 27.

385 IACHR, Press Release 79/13, "IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons," October 24, 2013; Acento.com.do, "¡*En este país ser maricón es peor que ser delincuente!*" (opina "agente de la ley"), August 22, 2013 (available only in Spanish); Testimony of the

136. Police abuse is also reported to take place in or around places where LGBT persons socialize or its surroundings. For instance, a violent police raid is reported to have taken place at an LGBT beauty pageant in Monterrey, Mexico, in February 2013. Agents of the federal police force —under the command of an official of the Federal Public Ministry— stormed the night club where the contest was taking place, ordered everyone out, and arrested at least 70 people who were present at the event, who were fined, without criminal charges. According to the information presented to the Commission, police agents insulted them using homophobic and transphobic slurs: "faggots, we are taking you because dressing up as women is immoral."[386] The IACHR has also received reports of police cracking down on clubs and hangouts of LGBT persons in other countries. [387]

137. In Argentina, an official study conducted in 2012 showed that 83% of surveyed trans women had been victims of serious acts of violence and discrimination perpetrated by police officers.[388] Another study prepared by civil society organizations two years following the passing of the gender identity law indicated that trans women feel safer in public spaces, and police abuses against trans persons had diminished.[389] However, other reports indicate that grave instances of police abuse against LGBT persons, particularly trans women, are still frequent in various Argentinean provinces.[390]

138. The IACHR has received reports from multiple organizations of cases in which police agents not only perpetrate violence, but also incite others to attack LGBT persons, or are indifferent toward violence perpetrated against LGBT persons by third parties. Reportedly, police officers were involved in the attack of a gay man in Jamaica which ultimately led to a mob killing. The incident began with the police officers beating the victim with batons, after which they urged others to beat him. The victim was dismembered, stabbed and stoned to death.[391]

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victim, Acento YouTube Channel https://www.youtube.com/watch?v=NKaB4XrHk_w#t=23; Le Monde, "*Les Caraïbes touchées par une vague d'homophobie*," August 23, 2013 (available only in French).

386 Agenda LGBT A.C., *Informe de la situación de homofobia en México del año 2013*, February 2013, (updated June 2013) (available only in Spanish).

387 Information provided to the IACHR by Cuban LGBT organizations (October 2014). See, also Actup.org, "Costa Rica - *Disco Gay denounces police abuse in operation*," April 29, 2012.

388 Instituto Nacional de Estadística y Censos (INDEC), "*Primera Encuesta sobre Población Trans 2012*", September 2012, p. 19, (available only in Spanish).

389 ATTTA, "*Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina*", pp. 12-13, (available only in Spanish).

390 IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asociación por los Derechos Civiles (ADC), received December 20, 2013, p. 4; El Tribuno de Salta, "*Una travesti denunció feroz acoso, abuso y golpiza policial*," November 10, 2012 (available only in Spanish); La Gaceta, "*Cinco policías abusaron de una travesti en una comisaría*," December 3, 2013 (available only in Spanish); La Gaceta, "*Aprehendieron a dos policías por agredir a una travesti en el parque 9 de Julio*," November 4, 2013 (available only in Spanish); Página/12, "*Agresión a Diana Sacayán*," August 23, 2013; Kaosenlared, "*Argentina. Cómo tortura la policía a las trans*," (caso de ataque a Michelle Mendoza en Rosario), July 3, 2015.

391 Human Rights Watch, Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic, November 2004, p. 18; Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 30.

139. A trans woman in Honduras explained that when a drunk and aggressive client stabbed her in the arms, neck, and leg in September 2011, she sought help from the police. She recalls: "the police didn't ask me to make a statement, they laughed at me and asked me for sexual services even after I had told them that I was injured and needed help. They told me that I got what I deserved for being out in the street."[392]

140. When Argentinean human rights defender and activist Diana Sacayán was insulted and attacked at a bar in 2013, she sought the assistance of two gendarmerie agents who were nearby. Allegedly, the agents spoke to her attacker, allowed him to leave and went back to her saying, "you'd better start running." They then hit her with a baton. When she arrived at the local police station to file a report, it is alleged that the chief officer on duty refused to take her report and had her taken to a nearby hospital. She suffered a fractured nose and cheekbone. No record was made of her presence at the police station.[393] The IACHR has also received information of police indifference in cases of violence against LGBT persons in Chile.[394]

141. Since the coup d'état in Honduras in 2009, the Inter-American Commission[395] and the UN Special Rapporteur on the situation of human rights defenders[396] have found that LGBT persons were among the groups suffering severe violence in Honduras. In fact, the Special Rapporteur indicated that the persistence of such acts could indicate a pattern of hate crimes, primarily committed by the police and private security guards.[397] In its latest visit to Honduras, the IACHR received more reports on arbitrary detention and acts of violence perpetrated by police agents against LGBT persons.[398] Civil society alleges that mistreatment of trans women regularly takes place in public view and with no consequences for the perpetrators.[399] For instance, in July 2014, a video emerged of a trans woman sex worker being attacked by a man, while others watched, in the city of San Pedro Sula, Honduras.[400] According to the victim, the perpetrator was a doctor who had

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392 Tesimony given by a transgender human rights defender in El Progreso, Honduras, July 2012. Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 16.

393 Página 12, "*Ataque brutal a una activista trans*," August 27, 2013 (available only in Spanish); Infojus Noticias, "*Líder trans pide que se cree un protocolo para las fuerzas de seguridad*," August 28, 2013 (available only in Spanish); El 1 Digital, "*Sacayán denunció que gendarmes la atacaron a bastonazos*," September 3, 2013 (available only in Spanish); Diario NCO, "*La Matanza: Diversas Organizaciones Sociales Repudiaron Hechos De Violencia Contra Diana Sacayan*," September 5, 2013 (available only in Spanish).

394 Organización de Transexuales por la Dignidad de la Diversidad (OTD) & International Gay and Lesbian Human Rights Commission (IGLHRC), *Violaciones de derechos humanos de las personas lesbianas, bisexuales y transexuales (LBT): Un informe sombra*, September, 2012, p. 7.

395 IACHR, *Honduras: Human Rights and the Coup d'État.* OEA/Ser.L/V/II. Doc. 55, December 30, 2009, paras. 10, 198, 206, 265.

396 *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1, December 13, 2012, para. 90.

397 *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1, December 13, 2012, para. 90.

398 IACHR, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

399 Cattrachas et. al., *Audiencia de Homicidios de Personas LGTTBI e Impunidad en las Américas ante la CIDH*, November 1, 2012, p. 9.

400 La Prensa, "*Video: Indignación por golpiza que le dan a un transexual en Honduras*," July 29, 2014 (available only in Spanish).

hired her for sex but refused to pay. The video reportedly shows how law enforcement officers not only fail to intervene or provide any assistance to the victim, but how they also take part in the beating.[401] Similarly, a transgender activist en El Progreso, Honduras, recounted: "[in] 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."[402]

142. In Colombia, civil society organizations claim that violence perpetrated by police officers is part of a larger, pervasive, systematic pattern of behavior based on prejudice that the State has not been able to prevent or eradicate,[403] particularly in areas outside the capital. Numerous cases of alleged police abuse have been documented in Cartagena, Barranquilla, Cali and Medellin. For example, *Corporación Caribe Afirmativo* documented 18 cases of mistreatment carried out in 2014 by members of the security forces — which includes police and soldiers — in the departments of Atlántico (5), Bolívar (5), César (2), Córdoba (1), Guajira (2), Magdalena (2), and Sucre (3).[404] There were also reports that members of security forces beat trans women, particularly those who are sex workers, in the places where they receive surgery, such as silicone implants, as if wishing to destroy those parts of their bodies.[405] In 2011, the UN High Commissioner for Human Rights highlighted the case of a trans woman who was brutally attacked by eight police agents and left unconscious at a neighborhood police station in Medellín.[406] With respect to police mistreatment in Cali, a defender of transgender rights told the IACHR that only in one very serious case of assault of a transgender woman, followed by threats to force the woman to drop her complaint, was a policeman suspended for three days without pay. The defender explained: "only some police are abusive, but the lack of response and impunity concerns the whole police force."[407] In September 2014, the IACHR requested information from the State of Colombia concerning reports by local organizations of a wave of violence perpetrated by police officers against trans women in Cali, Cartagena and Barranquilla.[408] The State informed the Commission that official records showed

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401 El Heraldo, "*Brutal golpiza a 'gay' en Honduras*," August 6, 2014 (available only in Spanish).

402 REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 15.

403 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos *et. al*. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 9; Colombia Diversa, *Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011, 2013*, pp. 48 a 49.

404 Corporación Caribe Afirmativo. Information received on January 1, 2015. On file with the Executive Secretariat of the IACHR.

405 Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014. Cited in IACHR, Annual Report 2014, *Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 308.

406 United Nations High Commissioner for Human Rights, *Report on the situation of human rights in Colombia: Annex*, A/HRC/16/22, February 3, 2011, para. 9.

407 Testimony of a transgender woman human rights defender from Cali. Meeting of LGBTI persons with the President of the IACHR in Cali. September 30, 2014, cited in IACHR, Annual Report 2014, *Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 310.

408 IACHR, *Letter of request of information pursuant Article 41 of the American Convention*. September 24, 2014. On file with the IACHR Executive Secretariat. The formal letter sent to the government requested

that 22 cases had been registered by police forces in those three cities, 17 of which had occurred in Cali. The State also informed the Commission that out of these 17 cases of abuse, 7 had been closed with no finding of wrongdoing by the officer (*archivados*), 8 had been stayed, one was under investigation, and in only one case the defendant had received a written admonition. Further, three of the four cases in Cali had also been closed with no finding of wrongdoing by the officer (*archivados*), while one was still under investigation.[409]

143. In 2011, activists from the Mexican state of Durango demonstrated before the local council, denouncing at least 70 instances of rape and sexual abuse committed by the local police against gay and trans sex workers, all of which had ended in impunity.[410] A survey carried out by civil society in the Dominican Republic found that 36% of trans women who were engaged in sex work reported having to agree to "sexual favors" demanded by police agents to avoid arrest.[411] Civil society organizations also report instances of police abuse, extortion, and arbitrary detention targeting afro-descendant trans women in Brazil. [412] In November 2014 the IACHR declared admissible a petition against the State of Peru in which Luis Alberto Rojas Marín, a young gay man, was allegedly arrested by police agents and, as alleged, suffered severe physical violence while in detention, including torture. Petitioners allege that three police officers raped the alleged victim with a rubber baton, in a context in which he was sexually harassed and insulted because of his sexual orientation.[413]

144. Finally, the Inter-American Commission has received information indicating that local governments in the Peruvian districts of Lima Metropolitana, Pueblo Libre,[414] Jesús María, San Isidro, and Comas, have enforced policies aimed at the "eradication" of gay persons.[415] In 2012, civil society organizations reported the

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information with regard to three specific issues: (1) the number of reports of police abuse against trans women and the current stage of investigations; (2) specific measures adopted by the State at a national level to enforce Police Directive 6/2010; and (3) specific measures adopted either by the State at the national level or by local governments to prevent and punish police abuse.

409 State of Colombia, Request for information: alleged instances of police abuse against trans women in Cali, Cartagena and Barranquilla, Nota MPC/OEA No. 1509/2014, October 20, 2014, p. 5.

410 La Voz de Durango, "*Denuncia comunidad Gay 70 casos de abusos sexuales por parte de policías*," February 18, 2011 (available only in Spanish).

411 Human Rights Observatory for Vulnerable Groups *et. al*, *Discrimination and violence towards Transgender women in the Dominican Republic*, October 27, 2014, p. 4.

412 Global Rights: Partners for Justice, Report on the Human Rights Situation of Afro-Brazilian Transgender Women, 2013.

413 IACHR, Report No. 90/14, P-446-09. Peru. Luis Alberto Rojas Marín. Admissibility. November 6, 2014.

414 In the "Strategic Institutional Plan 2007-2011" of the Government of the District of Pueblo Libre, "homosexualism" was listed as one of the main delinquency problems affecting the district. Municipalidad de Pueblo Libre, *Plan Estratégico Institucional 2007 – 2011*, December 2007, p. 39 (available only in Spanish). Records featured in the report show that between January and September of 2007, local security forces had intervened in 16 instances of "eradication of homosexuals." Municipalidad de Pueblo Libre, *Plan Estratégico Institucional 2007 – 2011*, December 2007, p. 46.

415 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX," received by the IACHR Executive Secretariat on December 20, 2013, p. 5; Promsex, *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2012*, May 2013, p. 57; La República, "*Mas denuncias contra comunas que discriminan a homosexuales en Lima*," June 30, 2012 (available only in Spanish). Lamula.pe, "*Política de 'erradicación' de homosexuales se practica en varios municipios de Lima*," July 11 ,

existence of official documents issued by a section of the government of the City of Lima ("Gerencia de Seguridad Ciudadana"), which allegedly specified that the "eradication" of gay persons would be included among the security operations carried out.[416] The Municipality of Lima and the mayor apologized through social media and indicated that the document had been revoked.[417] In 2014, the online reporting system of the Government of the District of Santiago de Surco in Lima, Peru, featured an option to report gay persons.[418] Further, the IACHR had access to a copy of the statistical report issued by that district in August 2014, which indicated that since 2008, local agents had intervened in 1,257 cases of "eradication of prostitution and homosexualism."[419]

- **Persons Deprived of Liberty**

145. The Commission is concerned about recurring acts of violence faced by lesbian, gay, bisexual and trans persons,[420] or those perceived as such, who are deprived of liberty in the Americas. The IACHR has received troubling reports from various States and State agencies,[421] as well as experts[422] and non-governmental organizations,[423] of instances of violence, torture, and inhumane and degrading

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2012 (available only in Spanish); Audio recordings of telephone consultations with security officers: https://www.youtube.com/watch?v=hFTpcy_k3ls.

416 Lamula.pe, "*Política de 'erradicación' de homosexuales se practica en varios municipios de Lima*," July 11, 2012 (available only in Spanish); Audio recordings of telephone consultations with security officers: https://www.youtube.com/watch?v=hFTpcy_k3ls (available only in Spanish).

417 Peru.com, "*Municipio de Lima se disculpa por documento que dispone 'erradicación' de homosexuales*," June 29, 2012 (available only in Spanish).

418 Boletín Diversidad, "*Municipio promueve denunciar a personas homosexuales*," February 4, 2014 (available only in Spanish).

419 Municipalidad de Santiago de Surco, *Compendio estadístico municipal 2013*, August 2014.

420 The IACHR has yet to receive specific information regarding the human rights situation of intersex persons deprived of liberty in the Americas.

421 [Argentina] Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013, pp. 10-11; [El Salvador] United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador, 2013, p. 37; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 1.

422 IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012.

423 [Argentina], IACHR, Public Hearing on *Situation of Human Rights of Persons Deprived of Liberty in the Province of Buenos Aires*, held during the 153rd Period of Sessions, October 28, 2014; [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Organización de Transexuales por la Dignidad de la Diversidad [Transexual Organization for the Dignity of Diveristy] OTD, received by IACHR Executive Secretariat on November 25, 2013, p. 4; [Colombia] IACHR, *Hearing on Situation of Lesbians, Gays, Bisexuals and Transgender Persons in Colombia*, 137th Period of Sessions, November 5, 2009; and Colombia Diversa, "Del amor y otras condenas: personas LGBT en cárceles en Colombia", 2013-2014; [Grenada] Grenada Caribbean HIV/AIDS Partnership (GrenCHAP), Hope Pals Foundation and Grenada Human Rights Desk, *Sexuality, Gender, HIV Vulnerability& Human Rights in Grenada: A Shadow Report to the United Nations Human Rights Committee*, July, 2007, p. 6; [Peru] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Centro para la Promoción de Derechos Sexuales y Reproductivos (PROMSEX)," received by IACHR Executive Secretariat on December 20, 2013, p. 1; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Colectivo Ovejas Negras," received by the IACHR Executive Secretariat on December 20, 2013, p. 3. [Nicaragua and Honduras] IACHR, *Public Hearing: Hate Crimes against Members of the LGBT Community*

treatment against LGBT persons, or those perceived as such, in prisons, lock up facilities, police stations, immigration detention centers, and other places of detention. According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, LGBT persons are at the bottom of the informal hierarchy in detention facilities, which results in double or triple discrimination,[424] and they are disproportionately subjected to torture and other forms of ill treatment.[425] Although the IACHR has received information that LGBT persons live in deplorable conditions in detention centers,[426] the focus of this Report is on violence. Thus, other aspects of deprivation of liberty of LGBT persons more related to discrimination,[427] and not directly linked to violence, are out of the scope of this Report.

146. Every person deprived of liberty is to be treated humanely in strict accordance with international human rights instruments, with respect for his or her inherent dignity, and with the guarantee of fundamental rights.[428] States are the guarantors of the rights of persons deprived of liberty, given the dependence of persons in custody on the State and on the decisions made by custodial staff.[429] As such, States are called on to guarantee the life and physical and personalintegrity of persons under their custody.[430] States have the duty to ensure that the manner and method of the deprivation of liberty does not exceed the level of suffering inherent to being locked up.[431] States have a duty to take necessary preventive measures to protect persons deprived of liberty from attacks by the State's own agents or by third persons, including other persons deprived of liberty.[432]

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and Impunity in Central America, 140th Period of Sessions, October 26, 2010; [Guatemala] *REDNADS, Primer Diagnóstico: Necesidades de las Poblaciones LGBTI Privadas de Libertad*, June, 2015 (available in Spanish only).

424 United Nations, Human Rights Council. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* A/HRC/13/39Add.1*,* February 5, 2010.

425 United Nations, Human Rights Council. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 79.

426 IACHR, Press Release No. 97/14, *Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*, September 15, 2014.

427 The IACHR has received information regarding entrenched discrimination faced by LGBT persons, particularly trans persons, in places of detention, related to hormone treatment, clothing, length of hair, discrimination in accessing benefits and services, such as intimate visit, among others. The IACHR has addressed some of these issues regarding discrimination against LGBT persons deprived of liberty in previous reports. See for example, IACHR, *Truth, Justice and Reparation – Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013 (hereinafter "IACHR, *Truth, Justice and Reparation: Colombia*, 2013").

428 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas,* OEA/Ser.L/V/II, doc. 64, December 31, 2011, (hereinafter "IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas,* 2011), para. 9.

429 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 2011, para. 49.

430 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 2011, para. 30.

431 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 2011, para. 70, citing I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 198, among others.

432 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas,* 2011, para. 73, citing IACHR*, Report No. 41/99*, Merits, Minors in Detention, Honduras, March 10, 1999, paras. 136 and 140.

147. Discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance.[433] According to the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, persons deprived of liberty shall not be discriminated against for reasons of sex, gender, sexual orientation, or any social condition.[434] According to the Yogyakarta Principles, "everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity."[435]

148. According to the information received by the IACHR, LGBT persons who are deprived of their liberty are at a heightened risk for sexual violence – including a higher risk for multiple sexual assaults – and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty.[436] The Special Rapporteur on violence against women, its causes and consequences has expressed concern about lesbian women being placed in cells with men as punishment for the women refusing the sexual advances of prison staff. Allegedly, female prisoners whom guards viewed as "masculine" in appearance have reportedly been subjected to harassment, physical abuse, and "forced feminization."[437] Additionally, gay men or trans women deprived of their liberty may be forced into servitude by other inmates, required to do menial tasks on their behalf, and provide "sexual services" to them.[438] Police agents have reportedly incited others to sexually abuse LGBT persons who are detained, even handing out condoms to facilitate the abuse.[439] Further, there are reports of prison guards having LGBT prisoners beaten up or allowing other prisoners to rape them, and of prison staff placing LGBT prisoners in cells with known sexual predators. There are also reports of prison staff

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433 IACHR, Press Release No 97/14 *"Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*," September 15, 2014.

434 IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the IACHR by Resolution 1/08 at its 131st Regular Period of Sessions, held March 3-14, 2008.

435 *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2006. Principle 9.

436 IACHR, Press Release 53/15"*IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*," May 21, 2015. "Sexual assaults, including instances of gang rape in detention of lesbian, homosexual, bisexual and transgender activists, were also reported in Ecuador, Honduras, [and] Mexico." United Nations, Human Rights Council *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/16/44, December 20, 2010, para. 87. Comittee against Torture, Costa Rica, CAT/C/CRI/CO/2, July 7, 2008, para. 18. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 23; *Report of the Special Rapporteur on the independence of judges and lawyers*, A/66/289, August 10, 2011, para. 81.

437 UN, Human Rights Council, *Pathways to, Conditions and Consequences of Incarceration of Women*, A/68/340, August 21, 2013, paras. 58, 59 and 63, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 36.

438 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 105.

439 [Guyana] Carrico, Christopher, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policia Nacional*, March 2012, p. 23.

running prostitution rings, in which all trans prisoners are forced to participate as sex workers.[440] Several NGOs report that LGBT persons often decide to remain in their cells as much as possible in order to avoid being attacked by other inmates.[441]

149. According to the Bureau of Justice Statistics of the United States Department of Justice, LGBT inmates in US detention facilities are among those with the highest rates of sexual victimization.[442] Among LGBT prisoners, 12.2% reported being sexually victimized by another inmate and 5.4% reported being victimized by staff.[443] In México, for instance, local organizations allege that at least 60% of LGBT persons deprived of their liberty have been subject to different kinds of abuse.[444] In Colombia, a case that was decided by the Constitutional Court is illustrative of the extent to which a gay man may be subjected to repeated sexual abuse.[445] In Guatemala, organizations report that a young gay man was sexually assaulted by 17 men,[446] and a trans woman was allegedly raped more than 80 times while in detention.[447]

150. The Subcommittee on the Prevention of Torture indicated that one trans person deprived of liberty in Paraguay had been raped by a group of inmates after having been forced to walk around in a short skirt. Allegedly, trans persons deprived of liberty at the National Penitentiary of Tacumbú were routinely asked to perform sexual scenes in the common areas of the prison, watched by other inmates and paid for by guards. A trans person was allegedly killed in 2008 after a guard inserted a police baton into her anus.[448] In the September 2014 visit to Paraguay

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440 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 106.

441 [Mexico*] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (México)*, received by the IACHR Executive Secretariat on November 1, 2013, p. 9; [Peru] *Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by El Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX (Perú)*, received by the IACHR Executive Secretariat on December 20, 2013, p. 1.

442 US Department of Justice - Bureau of Justice Statistics, *PREA Data Collection Activities 2013*, June 2013, NCJ 242114, p. 2.

443 US Department of Justice - Bureau of Justice Statistics, *PREA Data Collection Activities 2013*, June 2013, NCJ 242114, p. 2.

444 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (Mexico), received by the IACHR Executive Secretariat on November 1, 2013, p. 9.

445 Colombian Constitutional Tribunal, *Decision T-1096/04*, case of Mauricio Gutiérrez, November 4, 2004; see also, Colombia Diversa, *Situación de los derechos humanos de lesbianas, gays, bisexuals y transgeneristas en Colombia*, 2005, p. 35.

446 Fundación Myrna Mack *et. al*, *Discriminación por orientación sexual e identidad de género y una aproximación a la interseccionalidad con otras formas de discriminación en Guatemala*, November 4, 2012, p. 37. The IACHR has also received information regarding degrading treatment and sexual violence by authorities against gay detainees. IACHR, *Fifth Report on the Situation of Human Rights In Guatemala*, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, chapter 8, para. 45.

447 UN, Human Rights Council, *Pathways to, Conditions and Consequences of Incarceration of Women*, A/68/340, August 21, 2013, paras. 58, 59 and 63, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 36.

448 UN, Subcomitee on Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay* CAT/OP/PRY/1, adopted on June 7, 2010, para. 241. 214. See also, UN, Special Rapporteur on torture and

by the IACHR's Rapporteur on Persons Deprived of Liberty he noted that trans persons were subject to different forms of violence and discrimination ranging from physical and verbal assaults to multiple instances of rape.[449] During a March 2015 public hearing, the government of Paraguay informed the IACHR that it had adopted measures to guarantee improved conditions of detention for trans persons in the National Penitentiary of Tacumbú.[450]

151. In 2014 and 2015, the Commission received troubling information regarding instances of rape and sexual violence against trans persons deprived of liberty in the United States, in prisons and immigration detention facilities.[451] In July 2014, the IACHR was informed that Marichuy, a trans woman detained at the Eloy Detention Center in Arizona, had been raped after having been subjected to previous instances of abuse and threats of rape.[452] According to a 2013 Report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sixteen gay and trans persons in the United States were subjected to solitary confinement, torture and ill treatment, including sexual assault, while in detention in immigration facilities.[453]

152. In January 2015, it was reported that Leslieann Manning, a trans woman, sued the New York maximum security facility where she was being held, alleging that prison staff were deliberately indifferent to her heightened risk for the sexual assault which she suffered.[454] In the case of Ashley Diamond, a trans afro-descendant woman deprived of liberty in Georgia, United States, the Commission requested information from the government in April 2014,[455] based on publicly available information that Diamond had been raped at least seven times since being detained in 2012, and that her access to hormone therapy had been withheld. According to a news report, she had been mocked by prison officials as a "he-she thing" and thrown into solitary confinement for "pretending to be a woman." Allegedly, Diamond has undergone drastic physical changes after being denied access to hormones and, in desperation, has tried to castrate herself and kill herself several times.[456] In an interview, Diamond said, "every day I struggle with

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other cruel, inhuman or degrading treatment or punishment. *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development; mission to Paraguay* A/HRC/7/3/Add.3. Adopted on October 1, 2007, chapter IV: *Conditions of detention*, para. 70.

449 IACHR, Press Release No. 97/14, "*Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*," September 15, 2014.

450 IACHR, *Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay*, 154th Period of Sessions, March 17, 2015. See also, IACHR, Press Release No. 37A/15, "*Report on the 154th Session of the IACHR*," June 19, 2015.

451 The IACHR received information on further cases of violence against LGBT asylum seekers detained in the United States and Mexico, referred to in the section of this report concerning migration status.

452 El Nuevo Día, "*Denuncian violación de mujer transgénero en centro de detención de inmigrantes*," ["Rape of Trans Woman Reported in a Migration Detention Center"], July 31, 2014 (Available in Spanish only).

453 A/HRC/22/53/Add.4, para. 178, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 35.

454 GBTQ Nation, *Transgender inmate sues N.Y. prison over sexual assault*, January 8, 2015.

455 Response to IACHR, *Request for information on the basis of Article 18 of the Rules of Procedure of the IACHR,* September 27, 2015 (ref: request for information regarding Ashley Diamond). The Permanent Representantive of the United States of America before the OAS, May 28, 2015, received June 3, 2015 (on file with the Executive Secretariat).

456 The New York Times, *Transgender Woman Cites Attacks and Abuse in Men´s Prison*, April 5, 2015.

trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this."[457] The United States government responded to the request for information indicating that the US Department of Justice had joined in the federal lawsuit that Diamond had filed against Georgia corrections officials.[458]

153. On November 26th 2013, Ayelén, a trans woman, was reportedly arrested by local police in the city of San Miguel de Tucumán in Argentina. She was allegedly taken to the police station where five police officers raped her. She was then taken to a cell shared with other prisoners, where she, as it is reported, was raped again by several of them. The following day she was forced to clean the police station. She managed to escape, and she went to a local hospital and filed a report. While the physical examinations were being performed at the hospital, police agents allegedly showed up and persuaded her to drop the charges. She alleges that was even forced to sign a document in which she declared that what she had previously stated was untrue.[459]

154. In April 2015, the IACHR was informed of the situation of violence and discrimination faced by Veronica Bolina, an afro-Brazilian trans woman deprived of liberty in São Paulo, Brazil. According to the information received, Bolina had been severely beaten, tortured, and subjected to degrading treatment at the hands of police after she bit off half the ear of a prison warden. On April 27, 2015, the IACHR sent a letter requesting information on the measures taken to investigate the attacks perpetrated against her and the measures taken to guarantee her safety, as well as information on the situation of other trans persons deprived of liberty in São Paulo.[460]

155. Trans women are at a heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case.[461] The Commission has received reports that trans women are regularly housed in male pavilions in some OAS Member States.[462] On the other hand,

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457 The New York Times, *Transgender Woman Cites Attacks and Abuse in Men´s Prison*, April 5, 2015.

458 Response to IACHR, *Request for information on the basis of Article 18 of the Rules of Procedure of the IACHR,* September 27, 2015 (re: request for information regarding Ashley Diamond). The Permanent Representantive of the United States of America before the OAS, May 28, 2015, received June 3, 2015 (on file with the Executive Secretariat).

459 Akahatá (Equipo de Trabajo en Sexualidades y Géneros) & Heartland Alliance for Human Needs & Human Rights, *Situación de los Derechos Humanos relacionados con las personas LGBTI y los Derechos Sexuales y Derechos Reproductivos en Argentina*, January 2014, para. 4.

460 Letter dated April 27, 2015, (Reference: Investigation in the case of Veronica Bolina). Filed with the IACHR Executive Secretariat.

461 See *e.g.* Lambda Legal, "Transgender Incarcerated People in Crisis," no date.

462 [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Organización de Transexuales por la Dignidad de la Diversidad* (OTD, received by IACHR Executive Secretariat on November 25, 2013, p. 4; [Guatemala] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 16; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México* (Mexico), received by IACHR Executive Secretariat on December 20, 2013, p. 135.

according to the available information, various prison compounds in Argentina,[463] Brazil,[464] Colombia,[465] El Salvador,[466] Guatemala,[467] Honduras,[468] Jamaica,[469] Paraguay,[470] the United States,[471] and Uruguay,[472] have separate pavilions or cells in male prisons to specifically house trans women and gay men.

156. Although this segregation of gay men and trans women from the general inmate population is done to better ensure their safety, the IACHR is concerned about reports of inferior living conditions in these cells or units when compared to other units in the facility, and further stigmatization due to these measures of segregation.[473] Further, it is possible that this segregation limits their access to programs and benefits afforded to the general population, which are key to rehabilitation or participation in early release programs.[474] Measures taken to protect persons deprived of liberty who are LGBT should involve no greater restrictions on their rights than is experienced by the general inmate population. The United Nations Office on Drugs and Crime has recommended that the principle for classification and allocation should be to house LGBT detainees "in whichever environment will best ensure their safety."[475] The violence committed against

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463 Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013, p. 5. Diario Uno (Mendoza), "*En el pabellón gay conviven 15 presos*," May 5, 2009 (available only in Spanish).

464 Answer to the IACHR LGBTI Rapporteurship questionnaire, submited by the organization Gajop, Gabinete de Assessoria Jurídica às Organizações Populares, Brazil, p. 4.

465 Colombia Diversa, "*Del Amor y otras condenas; personas LGBT en cárceles en Colombia*", 2013-2014, pp. 26-27, indicating that according to data produced by the State (INPEC), 14% of prisons in Colombia have a specific pavilion or cell for LGBT persons.

466 Response by the Government of El Salvador to a list of issues*, to be addressed during the sixth periodic report by El Salvador* (CCPR/C/SLV/6), CCPR/C/SLV/Q/6/Add.1, September 21, 2010, para. 56; United Nations Development Program (UNDP), "Procuraduría para la Defensa de los Derechos Humanos" (El Salvador), "*Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*", 2013, p. 35.

467 IACHR, *Fifth Report on the Situation of Human Rights In Guatemala*, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, chapter 8, para. 45.

468 Verified by the IACHR delegation that visited the San Pedro Sula National Penitentiary, during the December 2014 onsite visit to Honduras. IACHR, Press Release No. 146/14, *IACHR Wraps Onsite Visit to Honduras*, December 5, 2014. The IACHR delegation was informed that gay and bisexual men and trans women were previously housed with the general male population, and that this made them more vulnerable to sexual violence. This situation had changed and they had their separate dorm, where they felt safer.

469 The Jamaica Gleaner, *Gay colony in prisons*, October 8, 2006.

470 IACHR, Press Release No. 97/14, *Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*, September 15, 2014.

471 Huffington Post, *New York´s Largest Jail to Open Housing Unit For Transgender Women*, November 18, 2014.

472 Colectivo Ovejas Negras, "*Informe sobre Uruguay para la 18º Ronda del Examen Periódico Universal del Consejo de Derechos Humanos de la Organización de las Naciones Unidas"*, June 2013, para. 9; *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Uruguay*, A/HRC/13/39/Add.2, December 21, 2009, para. 112.

473 For example, the IACHR has also received information that sometimes LGBT persons are housed with persons living with HIV, furthering stereotyping and stigmatizing LGBT persons. Colombia Diversa, "*Del amor y otras condenas: personas LGBT en cárceles en Colombia*," 2013-2014, p. 26.

474 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

475 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 115. In the United States, some prisons in certain states have adopted policies for trans persons deprived of liberty, which apply to housing, clothing, showering, grooming, searches, and other aspects of detention, with the result of trans women being placed in female prisons and being referred to treatment on the basis of their gender, as opposed to their sex assigned at

LGBT persons deprived of liberty, including torture and sexual abuse, is compounded by the impunity surrounding these acts. This is particularly true when state agents overseeing custody of the victims perpetrate violence against them, since the victims tend not to report these crimes out of fear of further victimization and violence.

157. During a public hearing held in October 2015, the IACHR received information about the allocation of trans women to penitentiaries depending solely on criteria related to their genitalia: "if she has a penis she will be assigned to a male detention facility, and if she has a vagina, she will be sent to a female detention facility."[476] The non-governmental organization *Almas Cautivas A.C.* indicated that both in male detention facilities, and in female detention facilities, trans women are "isolated from the general population, in spaces called "annexes" or "*módulos,*" arguing that it is for their safety. There, they face physical, verbal, psychological and even sexual abuse. The threats and insults by the authorities of the detention centers (security, custody and technical staff) and by the penitentiary authorities is a constant."[477] The IACHR considers that the decision on where to house trans persons must be made on a case-by-case basis,[478] and that OAS Member States must undertake the measures to ensure, whenever possible, that trans persons participate in the decision related to their allocation in detention centers.

158. "I was detained 18 times because I was a sex worker… they took me from the street and told me I was disrupting public order (*escándalo en la vía pública*) so they would lock me up. At the beginning I was in Sector 10, which was only for gay and trans persons, but that (disappeared)… the last time I was housed in Sector 5 with men… I was also victim of abuse, several rapes… one has to have sex the "chiefs," to those in charge, in order to survive. These acts are not denounced out of FEAR… when I entered a prison, I was treated as a man, they would use my male name, they would insult me, they would tell me "you are a man, stop with your bad habits ("*mañas*"). Having a trans identity is very challenging, and assuming oneself as trans comes with great responsibility… some [trans women] prefer to cut their hair short because they would rather pass as gay and not as trans women, because we are victimized the most."[479]

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birth. These policies have led to positive results. NBC Chicago, *Jail Has New Policy for Transgender Inmates*, April 8, 2011.

476 Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, *Human Rights of LGBT Persons Deprived of Liberty in Latin America,* hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156th Period of Sessions, October 23, 2015 (free translation by the IACHR).

477 Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, *Human Rights of LGBT Persons Deprived of Liberty in Latin America,* hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156th Period of Sessions, October 23, 2015.

478 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

479 Testimony by a trans woman who was formerly deprived of liberty in Guatemala. REDNADS, "*Primer Diagnóstico: Necesidades de las Poblaciones LGBTI Privadas de Libertad"*, June 2015, p. 65 (availble in Spanish only. Free translation by the IACHR).

159. The Commission has also received troubling reports of the routine use of solitary confinement[480] to segregate LGBT individuals for their purported "protection". For example, in the United States, the American Civil Liberties Union (ACLU) found that "…for prisoners and detainees who are […] (LGBT), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population."[481] The ACLU has also indicated that depression and suicidal behavior can be "made significantly worse by forced segregation and isolation."[482] The IACHR has also received reports of the use of solitary confinement in immigration detention centers in the United States, such as the case of Delfino Quiroz, a gay man from Mexico who was held in solitary for four months in 2010.[483]

160. The Inter-American Commission reiterates that solitary confinement should only be used in exceptional circumstances, for the shortest possible period of time, and only as a measure of last resort.[484] It must be subject to strict judicial oversight and take place in cells that meet the minimum conditions according to international standards. Persons deprived of liberty in solitary confinement must undergo strict medical supervision. Subjecting prisoners to prolonged periods of time in solitary confinement, or in similar situations of deprivation of human contact, may produce irreversible physical and mental damage, and amount to inhuman or degrading treatment.[485] Sexual orientation and gender identity should not be used as criteria in subjecting persons to unduly prolonged solitary confinement.[486] Persons deprived of liberty must not be penalized or punished due to prejudice and discrimination based on perceived or actual sexual orientation or gender identity.[487] Even where the intent is to protect LGBT persons deprived of liberty from other inmates, the methods used must not subject LGBT persons deprived of liberty to harmful situations such as prolonged solitary confinement.

161. The IACHR has received information on good practices being employed in some countries in the region, such as Argentina, Brazil, Colombia, El Salvador,

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480 Generally, solitary confinement refers to any regime where an inmate is held in isolation from others (except guards) for at least twenty-two hours a day. UN Special Rapporteur against Torture, *Solitary confinement should be banne in most cases, UN expert says*, October 18, 2011. UN, *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, August 5, 2011.

481 American Civil Liberties Union, *Ending Solitary Confinement – The Dangers of Isolation for LGBTI Prisoners and Detainees*, June 27, 2012. See also, Lambda Legal, *Transgender Incarcerated People in Crisis*, Updated 2015. See, *e.g.*, [United States] Huffington Post, CeCe McDonald Shares The Struggles of Being A Trans Woman in A Male Prison Facility," May 5, 2014.

482 American Civil Liberties Union, *Ending Solitary Confinement – The Dangers of Isolation for LGBTI Prisoners and Detainees*, June 27, 2012. See also, Lambda Legal, *Transgender Incarcerated People in Crisis*, no date (updated 2015).

483 New York Times, *Immigrants Held in Solitary Cells, Often for Weeks*, March 23, 2013.

484 IACHR, Press Release No. 51/13, *IACHR Expresses concern over excessive use of solitary confinement in the United States*, July 18, 2013.

485 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

486 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

487 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

Guatemala, Honduras, Mexico, and the United States, among others. The IACHR was informed, for example, of certain measures that have been adopted by the *Procuración Penitenciaria de la Nación* of Argentina since 2008.[488] In Colombia, a directive issued by the penitentiary authority in 2011, and several decisions of the Constitutional Court, have helped to protect the rights of LGBT persons deprived of liberty. The subject of these include trainings and sensitization programs aimed at guards and detainees regarding sexual orientation and gender identity in places of detention.[489] In the United States, the Federal Prison Rape Elimination Act (PREA) requires prison authorities to make sexual abuse complaint procedures accessible to trans detainees, and to train guards on issues related to trans persons.[490] The IACHR has received reports of positive developments in El Salvador,[491] Guatemala[492] and Mexico,[493] in which governments and civil society organizations have jointly engaged in training prison guards and staff on treatment of LGBT persons deprived of liberty, and developing protocols for the handling of LGBT detainees. In Honduras, the bill that establishes the National Preventive Mechanism[494] states that its personnel need to verify the existence of LGBT persons as "vulnerable groups" within the population of persons deprived of liberty.[495] Finally, the IACHR notes that a trans person, Maria Clara de Sena, has been appointed as a member of the State Mechanism to Prevent and Combat Torture in the state of Pernambuco in Brazil. It has been reported that this appointment and the subsequent work of de Sena have further helped to protect the right to personal integrity of LGBT persons in that state.[496]

162. States must refrain from committing acts of torture, inhuman or degrading treatment against persons deprived of liberty, including those that are motivated by prejudices related to sexual orientation or gender identity. Further, as guarantors of the rights of persons deprived of liberty, states must protect the life and personal integrity of LGBT persons, or those perceived as such, from other persons deprived of liberty. The IACHR urges OAS Member States to adopt urgent

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488 Information submitted to the IACHR by the Federal Prison Supervisory Agency [*Procuración Penitenciaria de la Nación Argentina*], received by the IACHR Executive Secretariat on December 20, 2013.

489 Decisions by the Colombian Constitutional Court T-062 of 2011, February 4, 2011. Directive by the INPEC No. 10 issued on July 5, 2011. See also new penitentiary legislation (Código Penitenciario and Carcelario approved in 2014 through Law 1709), in which sex, sexual orientation and gender identity are specially protected categories. Colombia Diversa, "*Del Amor y otras Condenas: personas LGBT privadas de libertad en América Larina"*, June, 2015, pp. 9-10.

490 United States Department of Justice, National Institute of Corrections, "*Lesbian, Gay, Bisexual, Transgender and Intersex Offenders*" January 2015.

491 Contra Punto, *LGBTI Recluidos contarán con protocolo de atención*, June 23, 2015 (Available only in Spanish).

492 Ministerio de Gobernación de Guatemala, *SP Comprometido con Sensibilizar Necesidades de Reclusos LGBT*, February 19, 2015.

493 The IACHR was informed that the organization *Almas Cautivas, A.C.* has provided a series of trainings in different penitentiaries in the country, effectively training more than 300 public servants on issues pertaining to trans persons and gender identity. They have also joined forces with the UNHCR to conduct trainings for immigration detention officers who work for the "Instituto Nacional de Migración" in Mexico. April and June 2015.

494 National Prevention Mechanisms are national agencies, either standalone or incorporated in national human rights institutions, which are responsible for the prevention of torture. They are mandated by the Optional Protocol to the Convention against Torture, of which Honduras is a signatory.

495 Association for the Prevention of Torture (APT), *LGBT Persons Deprived of Liberty*, 2013, p. 14.

496 GELEDES, "*Maria Clara de Sena, transexual de PE é a 1º do mundo a atuar no combate à tortura em prisões*", June 6, 2015 (available in Portuguese only).

and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region's places of detention, including prisons and immigration detention centers. The IACHR urges OAS Member States to develop comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.[497]

163. The Commission calls on OAS Member States to restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons. The IACHR urges OAS Member States to ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not result in punishment of, deny access to benefits to, or place undue restrictions on, such LGBT persons.

164. Finally, the Inter-American Commission calls on OAS Member States to adopt measures to prevent violence against LGBT persons deprived of liberty. These measures include, among others, the following: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers.[498] Caution must be exercised in collecting data on the prevalence of LGBT persons and of violence based on prejudice in places of detention, given the inherent risks of further victimization, stigmatization, and abuse.[499] Finally, an important component of prevention is also the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons. This sends a clear message to the population deprived of liberty that violence against LGBT persons is not tolerated.

2. Rape and other acts of sexual violence

165. The Inter-American Court of Human Rights has defined sexual violence as any action "with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever."[500] The Court has established that "rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. …[R]ape must also be understood as an act of vaginal or anal penetration, without the victim's consent, through the

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497 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty,* May 21, 2015.

498 IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty,* May 21, 2015.

499 The Association for the Prevention of Torture (APT) has developed a set of guidelines for conducting preventive monitoring of the situation of LGBT persons deprived of liberty around the world. In the guidelines, the APT draws special attention to the caution that is warranted when conducting interviews of, or collecting data regarding, LGBT persons deprived of liberty. APT and Penal Reform International, "LGBTI Persons Deprived of Liberty: a framework for preventive monitoring," 2013.

500 I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 306.

use of other parts of the aggressor's body or objects, as well as oral penetration with the virile member."[501] Following this same line of reasoning, the IACHR, too, has observed that sexual violence takes many forms. The Court's jurisprudence regarding sexual violence creates comprehensive, multidimensional obligations for the State to prevent, investigate, prosecute, and redress this serious human rights violation.[502]

166. Lesbian, gay, bisexual, trans, and intersex persons can be particularly vulnerable to sexual violence. One of the reasons for this vulnerability stems from the fact that non-normative sexual orientations and gender identities challenge the traditionally accepted notions of sex, sexuality, and gender. Therefore, in societies where such challenges are confronted with violence, discrimination, and prejudice, sexual violence may acquire a particular significance when perpetrated against LGBT persons, as it can be used as a way to punish and debase victims for being who they are. The IACHR has also received information on rape and acts of sexual violence committed against intersex persons, since in the "social imaginary" these types of sexual abuses are part of a way to "cure intersex bodies."[503]

167. The Commission has received worrying numbers of reports of rapes committed against gay men and trans persons. These acts regularly form part of attacks that combine physical, psychological, and sexual violence, and which may lead to the murder of the victim.[504] The IACHR has also received information concerning the related stigma faced by gay men who are victims of sexual violence.[505] Forcible introduction of objects into the anus appears to be a common way of inflicting excruciating pain on victims, and is usually a part of brutal acts of violence perpetrated against gay men and trans women.

168. In the United States in 2010, a gang kidnapped and brutally raped two 17-year-old gay adolescents and a 30-year-old gay man, using a baseball bat and the wooden handle of a plunger. The act was carried out as punishment for the victims being gay and having admitted to having sex with each other. The victims were also tied and burned with cigarettes on their nipples and penises.[506] In 2007, several men in Trinidad and Tobago who were seeking sexual partners on a popular internet site fell victim to a pattern of crimes. In the worst instances they were kidnapped, tortured, robbed, gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) was able to document a number of these assaults by interviewing victims. Only one of these victims has pursued police action, and none of the rape victims who were interviewed had sought medical attention.[507] In 2013, the IACHR received

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501 I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 310.

502 IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 6.

503 IACHR, Public Hearing on the *Human Rights of Intersex Persons*, March 2013.

504 Ojo.pe, "*Degüella y viola gay en plena calle,"* November 13, 2011 (available only in Spanish).

505 The Advocate, *Gay Male Sexual Assault Survivors Speak Out*, January 27, 2015.

506 New York Times, *Lured Into a Trap, Then Tortured for Being Gay*, October 8, 2010.

507 IACHR, Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133rd Period of Sessions, October 23, 2008. Video y audio no disponibles.

information about a case in Brazil in which a former alderman was viciously stabbed 106 times and was anally penetrated with the handle of a sickle.[508]

169. During the October 2014 visit to Colombia of the Chair of the IACHR, the Rapporteurship on the Rights of LGBTI Persons was informed of the case of a trans woman in Barranquilla who, after suffering many years of attacks and discrimination, was brutally raped by a group of four men who introduced several ants into her anus. She committed suicide shortly after the episode.[509]

170. The Commission has also received reports of acts of rape which appear to have a distinct and clear motivation: so-called "corrective rapes," which are an extreme manifestation of prejudice against diverse sexual orientations and gender identities, and are perpetrated especially against lesbian or bisexual women. "Corrective rape" has been defined as a "hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to 'correct' the individual's orientation or make them 'act' more like their gender."[510] Behind this crime lies the perverse and erroneous belief that being penetrated by a male will render the woman "normal" again. Former UN High Commissioner for Human Rights, Navi Pillay, stated that "corrective" rape commonly combines "a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia."[511]

171. The IACHR recognizes that the very concepts of "corrective rape" and "corrective sexual violence" are incoherent and deplorable, since any attempt to "correct" a fundamental aspect of a human being's identity by violence is repugnant to human dignity and decency. The essence of these crimes is punishment for non-normative sexualities and genders. As the Inter-American Court has noted, rape is an extremely traumatic experience.[512] It causes great physical and psychological damage that is difficult to overcome even with time, and it leaves the victim "physically and emotionally humiliated."[513] The IACHR notes that this type of sexual violence ranks among the least reported types of violence against LGBT persons in the Americas. In addition to the reasons why victims are often deterred from reporting sexual violence generally, such as shame and re-victimization, the reporting of this type of sexual violence may additionally raise victims' fears of revealing their sexual orientation.

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508 Grupo Gay da Bahía (GGB), "*Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014" (*Available only in Portuguese), p. 3; UOL.com, "*Ex-vereador foi morto com mais de 100 facadas e teve cabo de foice introduzido no ânus*," May 25, 2013 (available only in Portuguese).

509 IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (Cali and Tumaco). Information provided by human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.

510 Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans' Health Priorities, June 27, 2013.

511 Pillay, Navi "*The shocking reality of homophobic rape*" in *The Asian Age*, June 20, 2011.

512 Cfr. U.N., Human Rights Commission. 50th Session. Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments. Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance to resolution 1992/32 of the Human Rights Commission. Doc. E/CN.4/1995/34 of January 12, 1995, para. 19.

513 *Cfr*. Eur.C.H.R., *Case of Aydin v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.

172. During the 2014 visit of the Chair of the IACHR to Colombia, the LGBTI Rapporteurship also received testimonies of several lesbian and bisexual women who had been raped as a punishment due to their sexual orientation.[514] One of these testimonies stood out: "the [IACHR] delegation heard a story of a young afro-descendant woman who, after telling her father she was a lesbian at the age of 11, was allegedly subjected to rape during a 14-year period by her father's friends, which resulted in five children. She alleges that she was not given information on health services or access to justice. After she managed to escape, she was then raped several times at the hands of illegal armed groups, often in front of her partners, as a punishment for her sexual orientation, and has been consequently internally displaced several times."[515]

173. Further, several sources indicate that rape against lesbian women or those perceived as such is an issue of particular concern in Jamaica.[516] To name a few of the reported incidents, in 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days. During this time, different religious men raped her repeatedly, day after day, in an attempt "to make her take men" and "live as God instructed."[517] In 2008, four more cases with similar facts were reported to local organizations. In all of these cases the women refused to report the matter to the police out of fear of further victimization.[518] At least another three episodes of rape were reported in 2009.[519] In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her "butch" or "manly" attire. After she was raped, the rapists cut her with a knife "so she could better take men." A few days after that episode, a friend of the first woman was abducted in a car at knifepoint, brutally raped, and then left on the side of the road half-naked. The women refused to go to the police because of the perceived ineffectual nature of any police response.[520] In at least one case, a foreign court has made explicit reference to the risk of rape of lesbian women when granting asylum to a Jamaican lesbian due to the risk of violence to lesbians in Jamaica.[521]

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514 IACHR Chair meeting with the National Table of Victims affected by the Armed Conflict. Cartagena, Colombia. October 3, 2014.

515 IACHR, Press Release No. 118/14, "*IACHR Chair concludes visit to Colombia*," October 10, 2014.

516 IACHR, Hearing on *Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica*, 150th Period of Sessions, 27 March 2014; Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report.* October 2011, p. 14; AIDS-Free World, *Protect Lesbian and Gay Population: A letter by Maurice Tomlinson to the Jamaica Observer*, September 23, 2010; The Gleaner, *Lesbians Targeted By Men Who Want To 'Straighten Them Out'*, December 3, 2014.

517 Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

518 Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

519 Gay Lesbian Bisexual Transgender & Queer Jamaica (GLBTQJ), "'*Corrective Rape' in Jamaica? ….. Yes*," August 5, 2009.

520 Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

521 United Kingdom Upper Tribunal Immigration and Asylum Chamber (UTIAC), SW (lesbians - HJ and HT applied), UKUT-251, decision of June 24, 2011, para. 107(2).

174. The IACHR has received several reports this type of sexual violence in other OAS Member States.[522] Organizations from Haiti have indicated that in 2012, five police officers gang-raped two lesbians and during the attack they told them: "You have never been with a man? You are not a real woman! We will make you one!."[523] In another case in 2012, two women who were engaging in romantic behavior in a car were suddenly interrupted by four police officers on patrol. The police officers proceeded to rape the women.[524] In Ecuador, this type of sexual violence has been reported to take place as one of the heinous methods employed in the "clinics of de-homosexualization," which are described in more detail later in this chapter.[525]

175. Sexual violence generates psychological and emotional suffering and scarring. Further, sexual violence may cause physical injury —including life-threatening wounds, as is the case when anal or vaginal rape is performed with large or sharp objects— and greater susceptibility to HIV infection. Taking into account that LGBT and gender non-conforming persons are at high risk of being denied medical treatment or being further victimized when seeking health care following a sexual assault, the impact of sexual assaults on LGBT and gender non-conforming persons may, in some cases, be even more serious than for other victims that do not identify as LGBT or are not perceived as such.

3. Mob attacks

176. In the past few years, the IACHR has also received information about alarming numbers of angry mob attacks, particularly in countries in the Caribbean. During the months of August and September 2013, the Commission received various accounts of attacks consisting of "large crowds barricading, throwing objects (such as stones and Molotov cocktails), or calling for lynching of gay men. At least seven of these attacks were reported in the past two months: 5 in Jamaica and 2 in Haiti."[526] These attacks usually start with a person or a group of persons being "singled out" as gay or trans.[527] by passers-by in public places. Tension tends to escalate quickly and, within minutes, large numbers of people may gather around the victim or victims. Several reported cases include victims being chased while trying to escape or having bottles, stones, or other objects thrown at them. In cases

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522 See, among others: [Peru] Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2010*, 2011, p. 81; [Paraguay] Heartland Alliance - Aireana, *Human Rights Violations of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Paraguay: A Shadow Report*, March 2013, para. 17(e); See also Ultimahora.com, "*Romper el silencio*," February 5, 2014.

523 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre *et. al*, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

524 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre *et. al*, (Haiti), received by the IACHR Executive Secretariat on November25, 2013, p. 2.

525 Fundación de Desarrollo Integral "Causana," "*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?"*, February 20, 2014, p. 3.

526 IACHR, Press Release No. 79/13. *IACHR Expresses concern about Mob attacks, police abuse and other forms of violence against LGBTI persons*. October 24, 2013.

527 The word used may not necessarily be "gay" but instead can be local expressions such as "battyman," "sissy boy," "shemale," or other offensive epithets.

where a crowd surrounds the victim, physical violence may escalate to the point of leaving the victim severely wounded or even dead.

177. In particular, the Commission has received reports of mob attacks occurring with unsettling frequency in Jamaica.[528] The information presented indicates that a number of mob attacks against gay men or those perceived as such took place in December 2005,[529] February 2007,[530] March 2007,[531] and in 2008.[532] In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Reportedly, villagers also confronted the police when they arrived at the scene and tried to protect the three men.[533] Another alarming case took place in 2012 at the University of Technology, Jamaica, when a student was chased by a group of male and female students through the university campus. The victim was able to reach the security office, where the mob remained screaming outside. A video shows how at least two guards slapped, kicked and punched the student in front of the crowd, while members of the mob began entering through the security office windows.[534] A few months later, the guards were released after the student decided to drop the case.[535]

178. Further, in 2013 there were several reports of mob attacks in Jamaica. In July 2013, Dwayne Jones, a 16-year-old transgender teen, was stabbed to death by a mob at a party in Jamaica.[536] According to available press reports, a group of men gathered around Jones after someone had told them that Jones was trans. Jones was viciously stabbed and shot to death and then thrown into nearby bushes. Jones was reported to have suffered relentless teasing in high school for being considered "an effeminate boy," until dropping out for good. Jones had also been expelled from her house at the age of 14 and had resorted to living on the street.[537] One year after the murder, a local organization indicated that no arrests had been made in the case.[538] Upon a request for information made by the IACHR,[539] the State responded

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528 See IACHR, *Annual Report 2014*, *Chapter V: Follow-up of Recommendations issued by the IACHR in its country or thematic reports, Report on the Situation of Human Rights in Jamaica*, para. 173 and ff.

529 Jamaica Forum for Lesbians, All Sexuals and Gays (J-FLAG), *Statement on the death of Nokia Cowen*, December 28, 2005.

530 Direland, *Jamaica: Gay Leader Escapes St. Valentine's Day Lynch Mob,*February 21, 2007.

531 Pink News, *Homophobic violence at Jamaica funeral*, April 12, 2007; Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 31.

532 The New York Times,"*Attacks Show Easygoing Jamaica Is Dire Place for Gays*, February 24, 2008.

533 CVM TV Jamaica – News Watch: video, [minute 3:16], June 21, 2012.

534 The Gleaner, "CAUGHT ON TAPE! UTech Security Guards Beat Alleged Gay Student," November 2, 2012.

535 On The Ground News, "Confirmed: Former UTech guards accused of beating student freed ," August 31, 2013.

536 The Jamaica Gleaner, *J-FLAG Condemns Mob Killing Of Alleged MoBay Cross-Dresser*, July 24, 2013; The Huffington Post Gay Voices, *Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report*, August 11, 2013; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

537 Human Rights Watch, *Jamaica: Cross-Dressing Teenager Murdered*, August 1, 2013; The New York Post, *Transgender teen killed by mob in Jamaica after wearing dress to party - casts light on nation's 'rabid homophobia'*, August 11, 2013.

538 Quality of Citizenship Jamaica (QCJ), Press Release: *Dwayne 'Gully Queen' Jones One Year Later*, July 22, 2014; Jamaica Observer, *Justice Minister condemns killing of St James cross-dresser*, July 29, 2013; IACHR,

that investigations were ongoing; forensic materials had been collected, thirteen statements had been recorded, and two suspects had been interrogated and later released due to insufficient evidence for prosecution.[540]

179. According to a report received by the IACHR, on August 1, 2013, in Jamaica, a crowd quickly gathered around a police patrol car and started harassing two men inside who were perceived to be gay. Police officers had to disperse the crowd using warning shots and pepper spray.[541] On the very same day, the police had to be called to rescue two gay men from another irate crowd that claimed the men "were engaging in an illegal activity in a house" in St. Catherine.[542] Only ten days after these incidents, the IACHR received information that, on August 10, 2013, police personnel had to rescue a trans person in St. Catherine, after an angry mob that had seen her in the community threatened to flog her.[543] On August 22, 2013, another irate mob barricaded five gay men in their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety.[544] Additionally, on August 26, 2013, local media reported that two men had to seek refuge when, after the men had arrived at a police station following their involvement in a motor vehicle accident, angry local residents said that the men "appeared" to be gay. Police officers had to escort the men out of the police station and away from the angry mob that had gathered outside.[545] Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.[546]

180. On October 2, 2013, the IACHR sent a letter to the Jamaican State asking for specific information on measures taken in response to these mob attacks, particularly regarding policies adopted to prevent future acts of violence against LGBT persons, or those perceived as such.[547] The government replied in part:

> It is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such. [548]

Press Release 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

539 IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR's Executive Secretariat].

540 Permanent Mission of Jamaica to the OAS, ref. 6/80/1, received November 12, 2013.

541 On The Ground News, *Residents and Police square off over Cops found in 'compromising position'*, August 2, 2013.

542 The Daily Extra, *Angry crowds surround gay men in two Jamaican incidents*, August 6, 2013. See also, CVM TV (Kingston, Jamaica), *CVM Newswatch*, online video, August 1, 2013 [minute 25:27].

543 The Jamaica Star Online, *Cops Rescue Man In Girl Clothes, Save Him From Angry Mob*, August 14, 2013.

544 The Huffington Post Gay Voices, *Jamaica Mob Traps And Barricades 5 Gay Men In House*, August 26, 2013.

545 CVM TV (Kingston, Jamaica), *News at noon*, video, [minute 5:50] August 26, 2013.

546 The Jamaica Gleaner, "House Occupied By Gays Firebombed," October 10, 2013.

547 IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR's Executive Secretariat].

548 Permanent Mission of Jamaica to the OAS, Ref. 6/80/1, received November 12, 2013.

181. The Inter-American Commission has received information on mob attacks in other OAS Member States, such as Belize,[549] Haiti,[550] and Saint Lucia.[551] In Haiti, two men thought to be gay were beaten to death during an anti-gay march led by the Haitian Coalition of Religious and Moral Organizations (*Coalition Haïtienne des organisations religieuses et morales*). The march took place in July 2013, in Port-au-Prince, amidst a wave of violence against LGBT persons.[552] Further reports indicate that, in 2011, a mob attacked two gay men living in a camp for internally displaced persons, allegedly because they were engaged in romantic activity in their tent. Attackers ripped into their tent and beat the two men while accusing them of causing the 2010 earthquake.[553]

E. Medical Violence against Intersex Persons

182. As indicated in chapter two of this Report, the IACHR has received reports of generalized human rights violations carried out against intersex persons because their bodies do not physically conform to socially accepted standards for "female" and "male" bodies.[554] Intersex advocacy groups and organizations have indicated that human rights violations suffered by intersex persons are different from the human rights violations which lesbians, gays, bisexuals and trans persons typically suffer.[555] The IACHR has been informed that specific human rights violations commonly suffered by intersex persons include: irreversible sex assignment and genital "normalizing" surgeries; involuntary sterilization; being subjected to excessive genital exams, photography and display; human experimentation; lack of access to information and medical records or history; delayed birth registration, and denial of health care services or health insurance, among others.[556]

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549 Channel 7 News Belize, "Street Mob Attacks Transgender Vanessa Paris," April 9, 2014; Huffington Post, "Belize Transgender Woman Stoned And Beaten By Mob," 14 April 2014.

550 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS," received by the IACHR Executive Secretariat on November 25, 2013, pp. 1, 2.

551 Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 35.

552 IACHR, Press Release No. 54/13, *IACHR Condemns Recent Wave of Violence against LGTBI Persons in Haiti*, July 30, 2013; [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS," received by the IACHR Executive Secretariat on November 25, 2013, p. 1; Haiti Sentinel, *Haiti: Two assumed homosexuals beaten to death by protest mob*, July 19, 2013.

553 [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS," received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

554 Cabral, Mauro IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013.

555 Zwischengeschlecht.org, *Intersex Genital Mutilations: Human Rights Violations of Children with Variations of Sex Anatomy*, March 2014, p. 12.

556 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147 th Period of Sessions, March 15, 2013. See also, Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights,* 2013, p. 2-7. See also, Council of Europe, Commissioner for Human

183. In March 2013, an intersex trans man testified before the IACHR: "[t]he 41-year-old man sitting before you right now was once, a long time ago, a 14-year-old girl who, upon being told that she was born without a vagina or a uterus, was also told that it was necessary to cut part of her intestine in order to surgically 'create a vagina'. The purpose of that surgery was to ensure that I would grow up to become a woman who could be penetrated by a man. The failure of this procedure is obvious and after two surgeries and six years of vaginal dilations with a piece of metal called a "bougie," what I can attest to as a consequence of that intervention is the transformation of the healthy teenager that I used to be into the man that I am—someone who survives every day the experience of having been raped repeatedly, while asleep on an operating table."[557]

184. The IACHR has been increasingly receiving reports of sex assignment and genital surgeries practiced without informed consent on intersex children and adults, most of which are reported to be irreversible in nature and aimed at attempting to "normalize" the appearance of the person's genitals.[558] The IACHR has been informed of cases documented in Argentina,[559] Brazil,[560] Canada,[561] Colombia,[562] Costa Rica,[563] Chile,[564] El Salvador,[565] Mexico,[566] United States,[567] and Uruguay,[568] among others. Nevertheless, the IACHR has been informed that these interventions are standard practice in countries across the Americas.[569] The Commission notes

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Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015. See also, Montreal Gazette, *My Coming Out: The Lingering Intersex Taboo*, August 9, 2015.

557 Testimony given by Mauro Cabral (Argentina) at IACHR, Hearing on *Situation of Human Rights of Intersex* Persons in the Americas, 147th Period of Sessions, March 15, 2013.

558 IACHR, *Public Hearing: Human Rights Situation of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013. IACHR, Public Hearing on *Discrimination against Trans Persons in the Americas*, 153rd Period of Sessions, October 30, 2014.

559 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013.

560 IACHR, *Hearing on Situation of Human Rights of Intersex Persons in the Americas,* 147th Period of Sessions, March 15, 2013.

561 See articles by Janik Bastien-Charlebois (Université du Québec à Montréal).

562 See below, reference to a decision by the Colombian Constitutional Court.

563 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013.

564 IACHR, Press Release No. 131A/14, *Report on the 153rd Session of the IACHR*, December 29, 2014.

565 United Nations Development Program (UNDP) & "Procuraduría para la Defensa de los Derechos Humanos" (El Salvador), *Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*, 2013, p. 23.

566 See Eva Alcántara Zavala, "*Pobreza y condición intersexual en México: reflexiones y preguntas en torno al dispositivo médico*," in "Interdicciones: Escrituras de la Intersexualidad en Castellano" (Mauro Cabral, editor), Córdoba, February 2009.

567 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013.

568 Heinrich Böll Foundation (Ghattas, Dan Christian), *Human Rights between the Sexes: A preliminary study on the life situations of inter* individuals*, Vol. 34 Publication Series on Democracy, 2013, p. 46.

569 IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013.

that documentation and data around this problem is scarce,[570] which is addressed in more depth in Chapter 6 of this Report under the obligation of States to collect data.

185. Studies brought to the attention of the IACHR show that "genital-normalizing" surgeries –i.e., interventions with cosmetic purposes- have no medical benefits, because intersex presentations of the body, in the majority of cases, pose no danger to life or health.[571] Intersex organizations and activists refer to these surgeries as "cosmetic" because their only purpose is making bodies look like the dominant standard of what constitutes a "male" or "female" body. The "medical urgency" behind these surgeries during infancy stems from the alleged impossibility of parents, the medical community, the civil registry and society in general to accept sexual "uncertainty" because the infant cannot be easily and promptly classified as a girl or boy.[572] These interventions are carried out because variations in sex characteristics are generally considered obstacles to leading a "normal" life, not because they themselves pose a risk to the lives of intersex persons.[573] Indeed, organizations have reported that these surgeries are part of an attempt to prevent suffering later in life that is caused by "lack of conformity with binary sexual standards."[574] Given these implications, some intersex organizations and human rights defenders characterize these surgeries as culturally accepted forms of infant genital mutilation.[575]

186. These non-medically necessary surgeries and procedures have been reported to cause intersex children and adults great harm, including —but not limited to— chronic pain, life-long trauma, genital insensitivity, sterilization and diminished or lost capacity for sexual pleasure.[576] Reports indicate that most procedures do not consist of a single intervention, but instead involve multiple invasive surgeries (which repeatedly expose children to the inherent risks of anesthesia and surgery in infancy), recurrent use of dilation contraptions, or administration of hormones.

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570 This has been acknowledged by States. See, *e.g.* Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 received by IACHR Executive Secretariat on December 2, 2013, p. 2.

571 Tamar-Mattis, Anne *Exceptions to the Rule: Curing the Law's Failure to Protect Intersex Infants*" in *Berkeley Journal of Gender, Law & Justice*, Volume 21, Issue 1, September 2013, p. 99, citing: Ford, Kishka-Kamari, "First, Do No Harm, The Fiction of Legal Parental Consent to Genital-Normalizing Surgery on Intersexed Infants" in Yale Law & Policy Review, No. 19, 2001, p. 476; Beh, Hazel Glenn & Diamond, Milton, *An Emerging Ethical and Medical Dilemma: Should Physicians Perform Sex Assignment Surgery on Infants with Ambiguous Genitalia?* in *Michigan Journal of Gender and Law*, No. 7, 2000, p. 7.

572 Luciana Lavigne, "*La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes*" in "Interdicciones: Escrituras de la Intersexualidad en Castellano" (Mauro Cabral, editor), Córdoba, February 2009, at p. 55.

573 Luciana Lavigne, "*La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes*" in "Interdicciones: Escrituras de la Intersexualidad en Castellano" (Mauro Cabral, editor), Córdoba, February 2009.

574 Mulabi & International Gay and Lesbian Human Rights Commission (IGLHRC), *Situation of lesbian, bisexual, transsexual, transgender and intersex women in Costa Rica in regards to discrimination: Shadow Report*, July 2011, p. 9.

575 IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147th Period of Sessions, March 15, 2013;

576 IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas,* 147th Period of Sessions, March 15, 2013; IACHR, Annex to the Press Release Issued at the close of the 147th Period of Sessions, April 5, 2013.

During these processes, intersex children are usually exposed to abusive display and repeatedly examined for training or scientific purposes, which in turn humiliates them and may cause deep psychological harm.[577] For example, the Commission has been informed that regular vaginal dilation is often imposed on a child following vaginoplasty. This is achieved through the repeated forcing of an object into the vagina of a child, a practice which has been described as "extremely painful, highly traumatic, and comparable to sexual abuse in terms of the patient's experience."[578] The UN Special Rapporteur on the right to health has described it as "a painful and high-risk procedure with no proven medical benefits."[579]

187. An intersex person testified before the IACHR: "twenty six years ago a team of medical professionals discovered that I had "XY" chromosomes and internal testes, more commonly referred to today as "partial androgen insensitivity syndrome." Immediately after that, a surgery was scheduled to remove those internal testes, I was one then. When I was three, another surgery was performed. This time, it was to reduce the size of my clitoris, which was judged to be "half a centimeter too long." Then, when I was eleven and entering puberty, I underwent a third surgery. This time was to construct a "more acceptable" vagina via the method called "vaginoplasty." I was lied to and told that I had cancerous ovaries and that the doctors were saviors, and had saved me."[580]

188. Further, the IACHR was informed that these interventions are regularly carried out without the informed consent of intersex persons or that of their parents or legal guardians. In fact, the UN Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have expressed concern over the lack of informed consent for these surgeries.[581] The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted the importance of informed consent for intersex persons. Further, he recommended that health-care providers strive to postpone non-emergency invasive and irreversible

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577 Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical "Normalization" of Intersex People*, April 28, 2005, pp. 31, 43; Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 5.

578 Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 3.

579 UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, para. 49.

580 Testimony by Jen Pigeon Pagonis, IACHR, *Public Hearing on Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013.

581 Committee against Torture (CAT), *Concluding observations: Germany*, CAT/C/DEU/CO/5, December 12, 2011, para. 20; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 77; OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 57.

interventions until the patient is sufficiently mature to provide informed consent.[582]

189. The IACHR has been informed that medical protocols in force in several OAS Member States are still based on concepts that pathologize all intersex persons and all variations in sex characteristics and usually prescribe surgeries for "normalization" of the genitals. In some cases the consent of the patient may not even be legally required.[583] For example, it is reported that legal provisions in force in some OAS Member States, which allow doctors to make urgent decisions justifying interventions in cases of medical emergency, and which override parental consent have been applied in cases of surgeries that aim at "standardizing" the genitals of intersex children.[584] In other cases, doctors may consult parents but provide scarce or no information on the implications of procedures. A study conducted in the United States by the Human Rights Commission of San Francisco found that many parents choose "normalizing" medical interventions for their intersex children based on misinformation and/or coercion from doctors recommending such procedures.[585] Testimony at IACHR hearings has included that of intersex persons whose parents had asked doctors to do "whatever it takes" to make the intersex persons "normal."[586]

190. Moreover, a report issued by the United Nations Development Programme (UNDP) and the Office of the Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) in El Salvador noted that legal provisions in the Health Code of El Salvador do not prohibit "sex assignment surgeries" on intersex children and do not require free and informed patient consent, even in cases where the children are old enough to have the capacity to accept or reject such alterations to their bodies.[587] Chilean organizations have reported that in 2003, a 20-year-old man discovered through a series of medical tests that just after his birth, the doctor who had been authorized by his parents to treat an inguinal hernia had in fact removed the child's testicles and operated on his genitals. According to the report, the parents had neither given consent to gender reassignment nor were they informed after the surgery. Activists alleged that this is not an isolated case in the Chilean

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582 UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, para. 46.

583 IACHR, *PublicHearing on Discrimination against Trans Persons in the Americas*, 153rd Period of Sessions, October 30, 2014; IACHR, Public Hearing on *Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013.

584 IACHR, Public Hearing on *Discrimination against Trans Persons in the Americas*, 153rd Period of Sessions, October 30, 2014. Activists referred to the case of Article 46 of the Costa Rican Code of Children and Adolescents (Law No. 7.739): "Article 46: Denial of consent. If parents, legal representatives or guardians refused to consent, for any given reason, the urgent hospitalization, treatment or surgery of any of their children, the medical professional will be entitled to take the necessary steps to protect their life or their physical or emotional integrity, in accordance with Article 144 of the Family Code."

585 Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical "Normalization" of Intersex People*, April 28, 2005, p. 19.

586 Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical "Normalization" of Intersex People*, April 28, 2005, p. 42.

587 United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), *Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*, 2013, p. 23.

public healthcare system.[588] According to a researcher of intersex issues in Brazil, it is extremely rare that doctors decide not to conduct surgeries on intersex children at birth.[589]

191. In an inter-agency statement, several international UN human rights bodies and agencies have noted that these surgeries and procedures may result in the termination of all or some of the reproductive capacity of intersex persons.[590] Sex-assignment treatments often involve the removal of viable gonads or other internal and external reproductive organs, leaving intersex persons with permanent, irreversible infertility.[591]

192. The IACHR emphasizes that forced and involuntary sterilization of intersex persons represents a serious human rights violation. Involuntary sterilization has serious implications for the physical and psychological integrity, right to reproductive autonomy, and right to self-determination of intersex persons. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics should be reviewed and modified accordingly in order to ensure that intersex persons can effectively enjoy the highest attainable standard of health and other human rights.[592]

193. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that "medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned."[593]

194. The IACHR notes that the principle of free, prior and informed consent is of utmost importance and must be the guiding principle in every decision made in relation to surgeries, procedures, hormone treatments, or any other medical treatment of intersex persons. The Inter-American Commission on Human Rights recommends that OAS Member States make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person. Amendments must be

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588 Global Rights, IGLHRC, MOVILH, Organización de Transexuales Masculino, *Violations of the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Chile: A Shadow Report*, 2008, p. 12.

589 Information provided by Paula Sandrine Machado, *Public Hearing on Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013.

590 Office of the High Commissioner for Human Rights, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and the World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, p. 7.

591 Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 4.

592 Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, p. 9. Regarding the issue of "pathologization" of intersex persons, the IACHR takes note of a document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled *Intersex issues in the ICD: a revision*, drafted following a consultation held in Geneva onSeptember 8-9, 2014.

593 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 32; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* A/63/175, July 28, 2008, para. 47.

made to medical protocols to ensure the right to autonomy of intersex persons: intersex persons must decide for themselves whether they want to undergo surgeries, treatment or procedures.[594] Considering that the majority of these medical interventions are not medically necessary and given that, in general, there is a high risk that they will cause irreversible damage to the physical and mental health of intersex persons, those interventions can only be undertaken when the intersex child can provide his or her prior, free and informed consent. Surgeries and other medical interventions that are not medically necessary must be postponed until intersex persons can decide for themselves.

195. Finally, according to information provided by human rights defenders, activists and intersex persons during the March 2013 public hearing, the Inter-American Commission on Human Rights recommends OAS Members States to (i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitization campaigns at the national level on the short-term and long-term effects of "normalizing" interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in order to bring down stereotypes, stigma and invisibility surrounding intersex persons.

F. Other Forms of Violence in the provision of health services

196. According to reports received by the IACHR, mistreatment, harassment, and even physical violence are part of the experience of LGBT persons seeking medical attention in many OAS Member States. Echoing these reports, UN human rights bodies have expressed concern over cases of mistreatment suffered by LGBT persons when trying to access health care services.[595]

197. In a study carried out in the United States in 2009 by civil society organizations, almost 56% of lesbian, gay or bisexual respondents and 70% of transgender and gender-nonconforming respondents affirmed that they had experienced at least one of the following types of discrimination or aggression: being refused needed care; being blamed for their health status; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh

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594 IACHR, Public Hearing on *Human Rights Situation of Intersex Persons,* 147th Period of Sessions, March 15, 2013.

595 See *e.g.* [Chile] Human Rights Committee, *Concluding observations: Chile*, CCPR/C/CHL/CO/5, May 18, 2007, para. 16; [Costa Rica] Committee on the Elimination of Discrimination against Women, *Concluding Observations: Costa Rica*, CEDAW/CRI/CO/5-6, July 29, 2011, para. 40.

or abusive language; or health care professionals being physically rough or abusive.[596]

198. The State of Honduras even brought to the attention of the IACHR a report showing that medical professionals who are religious have been reported to mistreat LGBT patients, expressing to them that their existence is a "sin before God."[597] For its part, the State of Paraguay acknowledged that prejudice and violence against LGBT persons in medical environments was one of the reasons why LGBT persons refrained from seeking medical assistance.[598]

199. Besides mistreatment, civil society organizations have reported that LGBT persons are frequently refused care or treatment based on their sexual orientation, gender identity or appearance. This refusal may take the form of overt denial or of continuous referral of the patient to other professionals. There are reports of LGBT persons who have seen their health quickly deteriorate due to denial of health care and even cases of deaths that would have been preventable had appropriate treatment been afforded.[599] One extreme example of denial of medical treatment was the case of Robert Eads, a trans man from the United States who was diagnosed with ovarian cancer. It was reported that at least twelve medical professionals refused to treat him because they feared that "treating this case of gender variance would hurt the reputation of their medical practices."[600]

G. Violence related to attempts to "change" sexual orientation and gender identity

200. The IACHR has received reports of violence against LGBT persons, or those perceived as such —especially children, adolescents and young adults— that aims at attempting to modify their sexual orientation or gender identity. The information received points to instances in which LGBT persons or those perceived as such are subjected to purported psychotherapeutic treatment, internment in "clinics" or camps, and physical abuse. Further, women are also subjected to rape and other acts of sexual violence, with the purpose to punish

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596 Lambda Legal, *When Health Care Isn't Caring Lambda Legal's: Survey on Discrimination against LGBT People and People Living with HIV*, 2010, p. 10.

597 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Paraguay, No. 1079/13/MPP/OEA dated December 26, 2013, p. 2.

598 Response to the *IACHR Questionnaire on Violence against LGBTI Persons in the Americas* submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 17.

599 United Nations Development Programme (UNDP), *Discussion Paper: Transgender Health and Human Rights*, December 2013, p. 17; [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by "Fundación Manos que Construyen Paz," received by IACHR Executive Secretariat on 20 December 2013, p. 7; [Guyana] Carrico, Christopher, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 21; [United States] National Center for Transgender Equality and the National Gay and Lesbian Task Force, *National Transgender Discrimination Survey: Report on Health and Health Care*, October 2010, p. 6.

600 Ravishankar, Mathura, *The Story about Robert Eads* in *The Journal of Global Health*, January 18, 2013.

them because of their real or perceived sexual orientation and gender identity.[601] In a joint statement with UN independent experts and the UN Committee on the Rights of the Child, the IACHR found that "young LGBT persons are subjected to harmful so-called 'therapies' intended to 'modify' their orientation or identity. Such therapies are unethical, unscientific and ineffective and may be tantamount to torture."[602]

201. The Pan-American Health Organization (PAHO) and UN human rights experts have questioned purported psychotherapeutic treatment aimed at changing a person's sexual orientation or gender identity,[603] asserting that such treatments have "no medical indication and represent a severe threat to the health and human rights of the affected persons."[604] In this regard, PAHO has affirmed that "[b]esides the lack of medical indication, there is no scientific evidence for the effectiveness of sexual re-orientation efforts. While some persons manage to limit the expression of their sexual orientation in terms of conduct, the orientation itself generally appears as an integral personal characteristic that cannot be changed. At the same time, testimonies abound about harms to mental and physical health resulting from the repression of a person's sexual orientation."[605] Moreover, some OAS Member States,[606] as well as several professional health associations, have provisions either restricting or prohibiting these so-called "therapies."[607]

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601 In this regard, see previous section of this chapter which addresses rape and other forms of sexual violence against women.

602 Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa, and Commissioner for Human Rights of the Council of Europe. IACHR, Press Release No. 49/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

603 See, among others: Pan American Health Organization, *"Cures" for an Illness that does not exist,* 2012, p. 1; OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 2011, para. 56; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 76; UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/14/20, April 27, 2010, para. 23; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156,July 3, 2001, para. 24.

604 Pan American Health Organization, *"Cures" for an Illness that does not exist,* 2012.

605 Pan American Health Organization, *"Cures" for an Illness that does not exist,* 2012.

606 [Argentina] Law 26.657, Article 3(c) [Law on Mental Health] (forbids medical diagnosis on the basis of sexual choice or sexual identity); [Ecuador] Ministry of Health, Ministerial Agreement No. 767, June 2012 (prohibits the administration of any treatment aimed at "curing" sexual orientation or gender identity). [United States, California] California Business and Professions Code, Section 865-865.2 (in July 2013, the United States Supreme Court denied *certiorari* in a case in which this provision was questioned on several grounds, thereby confirming judicial decisions of lower courts which had established its constitutional validity) *See, among others*: The New York Times, *Supreme Court Declines Case Contesting Ban on Gay 'Conversion Therapy'*, June 30, 2014; [United States, District of Columbia] B20-0501, Conversion Therapy for Minors Prohibition, Amendment Act of 2013; [United States, New Jersey] Assembly No. 3371, State of New Jersey 215th legislature. Approved P.L.2013, c.150; [United States, Oregon] *Oregon governor signs bill banning conversion therapy for LGBT youth*, May 19, 2015. [United States, Illinois] On May 19, 2015, the Illinois state House approved a bill in this regard, which was sent to the Senate for approval.

607 [Brazil] Federal Council of Psychology, *Resolution 001/99*, March 22, 1999; [Canada] "Ordre des psychologues du Québec," "*Les interventions qui visent à changer l'orientation sexuelle,"* November 23, 2012; [Costa Rica] "Colegio Profesional de Psicólogos de Costa Rica", "*La homosexualidad no es una enfermedad"*, February 25, 2013 [Paraguay] "Sociedad Paraguaya de Psiquiatría", "*Comunicado de la sobre*

202. The IACHR has received information on the existence of centers for "treating" LGBT persons in Ecuador, Peru,[608] the Dominican Republic,[609] and the United States.[610] The person under "treatment" is confined to a center, a boarding school or "clinic," most times against their will or through deception, and subject to very strict regimes. These regimes usually include inhumane or degrading treatment and even sexual abuse as part of the "procedure" to attempt to change their sexual orientation or gender identity.

203. Since 2008, Ecuadorian civil society organizations have informed the IACHR about the existence of "*clínicas de deshomosexualización*." Local organizations have reported the existence of these clinics since at least 2002, and have alleged that the State has failed to take appropriate action to close them.[611] According to the information received by the Commission, these "clinics" are privately run but remain under the control of either the National Council for Narcotics and Psychotropic Substances ("Consejo Nacional de Estupefacientes y Sustancias Psicotrópicas," "CONSEP") or the Ministry of Health, or under the control of both entities simultaneously.[612] Reports indicate that authorities failed to control the appointment of professionals in these clinics, many of whom were not health professionals but religious extremists, failed to control housing conditions, and failed to supervise the legality of procedures through which "patients" were committed to residential clinics. When organizations tried to access information on the clinics, official data from different governmental agencies showed discordant information, incomplete or defective data, and lack of awareness of reports of mistreatment filed against several "clinics."[613]

204. Although there have been reports about young gay men or men perceived as gay being committed to these clinics,[614] civil society reports indicate that young

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la homosexualidad", May 17, 2011; [United States] American Pshychiatric Association, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, August 5, 2009.

608 Peru.com, "*Lima: Conoce la terapia de un centro para dejar la homosexualidad*," August 24, 2013. See also, Promsex, "*IV Informe Anual sobre Derechos Humanos de Personas Trans, Lesbianas, Gays y Bisexuales en el Perú*," 2011.

609 Advocate.com, *Abuse in the Name of Christianity*, October 10, 2013; Newsweek, *Where American Teens were Abused in the Name of God*, July 7, 2014. Information also presented in the context of a public hearing held on the human rights situation of LGBT persons in the Dominican Republic, 156th Period of Sessions. October 23, 2015.

610 National Gay and Lesbian Task Force Policy Institute, *Youth in the Crosshairs. The Third Wave of Ex-Gay Activism*, 2006, pp. 11-14; The New York Times, *Gay Teenager Stirs a Storm*, July 17, 2005.

611 Information submitted to the IACHR by "Taller de Comunicación Mujer," dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 1; Taller de Comunicación Mujer, *Situation of lesbian and trans and women in Ecuador: Shadow Report (CEDAW),* September 2008, p. 7.

612 IACHR, *Public Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133 Period of Sessions, October 23, 2008; Information submitted to the IACHR by "Taller de Comunicación Mujer," dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4.

613 Information submitted to the IACHR by "Taller de Comunicación Mujer," dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4; *See also*: Taller de Comunicación Mujer, "*Análisis estadístico de clínicas de 'rehabilitación' en el Ecuador"*, January 2012.

614 El Telégrafo, "*El maltrato reina en centros de 'deshomosexualismo'*," August 29, 2011 (available only in Spanish); El Universo, "*Ignorancia, silencio y ceguera sociales que aún destrozan vidas*," June 27, 2011 (available only in Spanish); El Universo, "'*Me declararon incapacitada mental y me torturaron porque soy*

women have been the main targets.[615] Family members try to have the victim institutionalized once becoming aware of his or her sexual orientation or gender identity. Family members often deceive or even kidnap the victim;[616] there have been cases in which victims were allegedly handcuffed or drugged so that they would not resist.[617] It has also been reported that family members have paid considerable amounts of money to these centers.[618]

205. Accounts of survivors indicate that once interned, they were: exposed to systematic verbal abuse, yelling, humiliation, and rape threats;[619] housed in overcrowded rooms;[620] held in isolation for long periods of time;[621] deprived of food for several days or forced to eat unsanitary food or drink water from wells infested with dead toads, cockroaches and other insects;[622] forced to "dress and behave like prostitutes to learn feminine behavior" and have sexual relations with other male interns by order of their "therapists;"[623] kept in handcuffs for more than three months or chained to toilets that were being used by other persons;[624] awakened with cold water buckets or urine being thrown on them;[625] subjected to

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lesbiana'," April 8, 2005 (available only in Spanish); Têtu, "*Equateur: les terribles «cliniques de guérison» pour homos n'ont pas fermé*," May 2012 (Available only in French).

615 IACHR, *Public Hearing on the Human Rights Situation of LGBTI Persons in the Andean Region*, 150th Period of Sessions, March 28, 2014; "Taller de Comunicación Mujer", *Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*, September 2009, p. 7.

616 Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador* [*Casos por discriminación a mujeres lesbianas en el Ecuador*], June 2005, p. 17; Taller de Comunicación Mujer, "*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra"*, September 2009, p. 7.

617 Taller de Comunicación Mujer,"*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*", 2014, p. 10; "Fundación de Desarrollo Integral ´Causana,´" "*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?"*, February 20, 2014, p. 2; Fundación Ecuatoriana Equidad, *Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*, 2013, p. 41.

618 PROMSEX, Fundación Ecuatoriana Equidad, Igualdad LGBT, "*Informe sobre la situación de derechos humanos de las personas LGBTI en la Región Andina*, March 2014, p. 10.

619 Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Económicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador* [*Casos por discriminación a mujeres lesbianas en el Ecuador*], June 2005, p. 18.

620 Taller de Comunicación Mujer, "*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra"*, September 2009, p. 9.

621 La Hora, "*30 clínicas 'contra' la homosexualidad fueron clausuradas,"* August 20, 2011 (Available only in Spanish).

622 Taller de Comunicación Mujer, "*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra"*, September 2009, p. 9; ExploRed, "*Deshomosexualización: nuevos casos*," July 18, 2013 (Available only in Spanish); Univisión Noticias, "*Ecuatoriana es internada por sus padres en centro anti-gay*," June 18, 2013 (Available only in Spanish).

623 Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador* [*Casos por discriminación a mujeres lesbianas en el Ecuador*], June 2005, p. 18.

624 CNN Mexico, "*Clínicas ecuatorianas violan derechos humanos para 'curar' a homosexuales*," January 30, 2012 (Available only in Spanish);.

625 Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador* [*Casos por discriminación a mujeres lesbianas en el Ecuador*], June 2005, p. 21.

electroshock therapy;[626] and touched, molested and even raped by custodial personnel.[627] There have also been reports of "clinics" in which victims were forced to feed livestock and operate a slaughterhouse.[628]

206. The IACHR has received information on the existence of these centers in Ecuador over the years.[629] In 2009 the UN Human Rights Committee urged the Ecuadorian State to take measures to prevent the detention of persons in these centers and to investigate and provide reparations.[630] According to estimates by civil society organization, at least 361 of these "clinics" had been identified between 2005 and 2014.[631]

207. It is reported that Clara was waiting to go home with her parents when three men approached her, grabbed her by her hands and told her that "anything she said could be used against her." Her mother was just behind them. Clara demanded to see an arrest warrant, but the men instead threw her into a car and tried to handcuff her. Clara's mother approached the car and told the men not to handcuff her. During the ride, Clara realized she was being "arrested" by her own family. Her father followed the car in a taxi behind them. She was in the backseat held at gunpoint by two men, each holding one of her legs. Minutes later they arrived at the "Julio Endara" psychiatric hospital. Clara saw her father and one of the men talking to a hospital guard. She was taken to a room where a female doctor injected a sedative which made her feel numb and incapable of reacting. She was then taken to a "clinic" in Chone, in the Ecuadorian province of Manabí, where she was locked up.[632]

208. In 2013 the State of Ecuador informed the IACHR that its Health Ministry was addressing the closure of these "clinics" and that by 2011 approximately 30 of them had been shut down. It also indicated that electroshock therapy and administration of medication were among the procedures carried out in these

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626 El Universo, "*Ignorancia, silencio y ceguera sociales que aún destrozan vidas*," June 27, 2011 (Available only in Spanish); El Tiempo, "*Liberan a 17 personas retenidas en clínica clandestina en Quito*," November 8, 2013 (Available only in Spanish).

627 Taller de Comunicación Mujer, "*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*," September 2009, p. 9; Fundación de Desarrollo Integral "Causana," "*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*", February 20, 2014, p. 3; ExploRed, "*Deshomosexualización: nuevos casos*," July 28, 2013 (Available only in Spanish).

628 Fundación de Desarrollo Integral "Causana," "*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*", February 20, 2014, p. 3.

629 See *e.g.*, IACHR, Press Release No. 23A/2013, "Annex to the Press Release issued at the close of the 147th Session," April 5, 2013.

630 Human Rights Committee, *Concluding observations by the Human Rights Committee: Ecuador*, CCPR/C/ECU/CO/5, November 4, 2009, para. 12.

631 Taller de Comunicación Mujer, "*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*," 2014, p. 5.

632 Taller de Comunicación Mujer, *"Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW),"* 2014, p. 10.

clinics.[633] The State of Ecuador created a special commission ("*Comisión Técnica Interinstitucional Nacional por la lucha de los Derechos Humanos*," "CTIN") to investigate clandestine centers. The membership of this commission comprises staff from the Ministry of Health, the Office of the Ombudsman, and the Attorney General's Office.[634] Additionally, according to the information received, the Ministry of Health issued Ministerial Agreement No. 767 prohibiting the administration of any treatment aimed at "curing" sexual orientation or gender identity. The IACHR recognized the State's efforts in this regard, and encouraged it to adopt all measures necessary to prevent the existence of these clandestine centers and to investigate them, as well as to punish those responsible.[635]

209. However, civil society organizations have alleged that once a few cases had gained notoriety through the media, these "clinics" no longer advertise their "services of modification" of sexual orientation, but instead began to run their programs under the façade of rehabilitation for alcohol or drug abuse.[636] They have also alleged that due to lack of effective State control, some of the "clinics" that had been shut down quickly reopened under different names and continued to operate freely;[637] others received the help of informants from the Ministry who leaked information about inspections and controls.[638]

210. The Inter-American Commission has been informed that most victims are extremely reluctant to come forward and officially report these brutal acts to the authorities, for a variety of reasons.[639] In many cases, this is either because family members were involved in the abductions, or because law enforcement officials were involved in the wrongdoing and victims feared reprisals. More generally, victims are deterred by lack of protections for those who report these crimes and a pervasive perception of impunity. In many cases the perpetrators were able to obtain written "consent" from the victims, and the victims believed that the existence of these documents precluded their possibilities of seeking justice.[640] According to information received by the Commission, at least 20 formal reports

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633 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 2, 9.

634 Defensoría del Pueblo de Ecuador, "*Aportes de la Defensoría del Pueblo de Ecuador a la elaboración de la Lista de Cuestiones Previa a la presentación del Sexto Informe Periódico de Ecuador al Comité de Derechos Humanos"*, January 28, 2014 p. 4.

635 IACHR, *IACHR expresses concern about violence and discrimination against LGTBI persons, particularly youth, in the Americas*, August 15, 2013.

636 IACHR, Public Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133rd Period of Sessions, October 23, 2008.

637 IACHR, Public Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133rd Period of Sessions, October 23, 2008.

638 Fundación de Desarrollo Integral "Causana," "*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?"*, February 20, 2014, p. 5.

639 Information submitted to the IACHR by "Taller de Comunicación Mujer," received by the Executive Secretariat on May 24, 2011, p. 3.

640 Information submitted to the IACHR by "Taller de Comunicación Mujer," dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 3.

were filed prior to November 2013,[641] and several writs of habeas corpus have been successful in releasing victims from involuntary internment.[642] However, there have also been reports of undue delays in releasing victims.[643] Further, in a 2013 case the CITN investigated one of the centers[644] and it was reported that the owner of the clinic was a public official working for the Ministry of Health.[645] According to the information received by the IACHR, the investigation finally concluded in February 2014. Three of the defendants —one of whom is reported to have fled the country in violation of court orders— were found guilty of hate crimes. All three were sentenced to ten days in prison and ordered to pay a fine.[646]

211. Since these "therapies" have no medical indication and represent a severe threat to the health and human rights of the affected persons, the IACHR recommends OAS Member States to adopt measures for the regulatory entity of the state health services to guarantee effective processes of regulation and oversight of doctors and health care professionals that offer these services. In general terms, practices that harm the physical, mental and social health should not be accepted as medical therapy. Further, the IACHR recommends that OAS Member States disseminate information based on scientific and objective evidence about the negative impact that these "therapies" have on health.

212. Finally, linked to the the attepts to change sexual orientation and gender identity, the Commission has been informed that sometimes attacks against LGBT persons are religiously motivated, particularly attacks targeting young gay men. For example, in Brazil, three men attacked a 19-year-old gay man. Two of the men punched the victim repeatedly while the third prayed for the victim to be saved from his "sins." Then, one of the attackers then wrapped the victim's arm in a cloth and set it on fire. The attackers allegedly abandoned the victim with a note in his pocket that read: "the fire of purification was set upon he who declared his bestial lover."[647] In the United States, five members of an evangelical church were charged

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641 Asociación Silueta X, "*Acceso a la Justicia y Derechos Humanos de los TILGB en Ecuador 2010-2013. Informe Complementario: Resultados del sondeo a medios de comunicación, fiscalía, comisaría y defensoría del pueblo*," November 2013, p. 10.

642 Fundación Regional de Asesoría en Derechos Humanos "INREDH," "*Análisis del Habeas Corpus: caso de privación de la libertad en clínicas o centros terapéuticos de "deshomosexualización,"* p. 2; Fundación Ecuatoriana Equidad, "*Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*," 2013, p. 40.

643 Asociación Silueta X, "*Acceso a la Justicia y Derechos Humanos de los TILGB en Ecuador 2010-2013*," November 2013, p. 86.

644 Taller de Comunicación Mujer, "*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*," 2014, p. 8.

645 Fundación Ecuatoriana Equidad, "*Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*," 2013, p. 43; El Universo, "*Comisaria implicada en un centro ilegal de rehabilitación*," July 20, 2013 (Available only in Spanish); Diario la Hora, "*Clínica de caso Zulema es de una funcionaria de Salud, dice ministra Vance*," July 19, 2013 (Available only in Spanish); Diario El Telégrafo, "*En 2012 el MSP registró 123 centros de rehabilitación legales en Ecuador*," July 19, 2013 (Available only in Spanish).

646 Taller de Comunicación Mujer, "*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*", 2014, p. 9.

647 O Tempo, "*Homossexual é agredido em ritual de 'purificação de gays',"* September 20, 2014 (Available only in Portuguese); O Tempo, "*Polícia investiga motivação religiosa em agressão a gay,"* September 26, 2014 (Available only in Portuguese).

with the kidnapping and assault of a young gay man. According to available information, the victim stated that the attack "was meant to rid him of homosexual demons."[648]

H. Hate Speech and Incitement to Violence[649]

213. The Inter-American Commission has received information that indicates that violence against LGBTI persons in the region is fueled by the dissemination of "hate speech" targeted at this community in different contexts, including through public debate, manifestations against events organized by LGBTI persons, such as pride parades, the media and the internet. Although there is a need for further study this phenomenon, evidence shows that when crimes against LGBTI persons occur, they are frequently preceded by a context of heightened dehumanization and discrimination.

214. In a democratic society, States should protect freedom of expression while also guaranteeing equality and the safety of others.[650] In this complex task, States are called to, on the one hand, identify and adequately respond to these incidents, with a view to effectively guaranteeing the rights to personal integrity and security of LGBTI persons. On the other hand, all measures must be respectful of the right to freedom of expression, according to Article 13 of the American Convention. Similar to Article 13.1 of the American Convention, Article IV of the American Declaration establishes that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." Unlike the American Convention, this provision does not include the conditions to be met by any restriction to this right. However, the Commission has historically interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, since this instrument was first adopted, and with due regard to other rules of international law applicable to members states.[651]

215. In recent years, several countries in the Americas have proposed legal initiatives to promote equality, sanction discrimination and prohibit "hate speech." However, the IACHR has received information that in many cases these legislations do not meet the principle of legality. Some of the definitions are vague, which could

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648 Daily News, *Indictment for 5 members of North Carolina's Word of Faith Fellowship for alleged 2013 attack on gay man*, December 11, 2014.

649 The Office of the Special Rapporteur on Freedom of Expression drafted this section of the Report.

650 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012. Para. 2. See also, *e.g.*: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013. Par. 45; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 43; Article 19. Responding to Hate Speech against LGBTI People. October 2013; Article 19. The Camden Principles on Freedom of Expression and Equality. April 2009.

651 IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* United States, July 21, 2011, para. 118.

compromise the effective enjoyment of the right to freedom of expression on issues of public interest. Hence, the growing need to ensure that measures adopted to discourage intolerance and respond to hate speech against LGBTI persons, are part of a policy aimed at promoting the right to freedom of expression of everyone, without discrimination.

216. In order to elaborate on these points, this section of the report provides an overview of the Inter-American legal framework concerning hate speech and incitement to violence. This section also identifies and analyses various non-legal measures and good practices that can contribute to prevent and counter hate speech. The overall goal of this section is to establish the basis for an understanding of the scope of hate speech and allow for the development and implementation of effective responses. This report primarily addresses the obligations of States, but additionally examines the significant role that media can play in the implementation of varied strategies to prevent and combat hate speech.

1. Freedom of expression and equality

217. Pursuant to the American Convention, all human beings are entitled to equal enjoyment and exercise of all rights, without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, birth, or any other social condition. As has been recognized by the Inter-American Court, the prohibition of discrimination due to sexual orientation should include, as protected rights, "the conduct associated with the expression of homosexuality."[652] The Commission and the Office of the Special Rapporteur for Freedom of Expression are of the opinion that this rationale also applies to the expression of one's gender identity. The IACHR's Office of the Special Rapporteur for Freedom of Expression has stated that Article 13 of the American Convention encompasses the right to express one's own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.[653]

218. The rights to equality and freedom of expression are "mutually supportive"[654] and have an "affirmative relationship," as they make a "complementary and essential contribution to the securing and safeguarding of human dignity."[655] In this regard, the Inter-American Commission and the Inter-American Court have systematically

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652 I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24,2012. Series C No. 239, para. 139.

653 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 54-57; I/A Court H. R., *Case of López-Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 169.

654 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 3; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate* speech. CERD/C/GC/35. September 26, 2013, para. 45.

655 Article 19. The Camden Principles on Freedom of Expression and Equality. April 2009.

reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination.[656] This importance stems from the role of freedom of expression both in its own right and as an essential tool for the defense of all other rights, and as a core element of democracy.[657]

219. The right to freedom of expression is key in the redress by vulnerable groups of the balance of power among the components of society.[658] Further, this right is useful in promoting intercultural understanding and tolerance, deconstructing stereotypes, facilitating the free exchange of ideas, and offering alternative views and counterpoints.[659] Inequality results in the exclusion of certain voices from the democratic process, undermining values of pluralism and diversity of information. The individual members of the social groups that have been traditionally marginalized and discriminated against, or that are in a situation of helplessness, are systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions, or to be informed of the issues that affect them. This process of exclusion has simultaneously deprived the rest of society of knowledge of the interests, needs, and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.[660] When members of vulnerable or marginalized groups are excluded from public debate, "their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalization."[661]

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656 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 1-4; I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 50; IACHR, *Annual Report 1994*. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V.

657 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 6-10; I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70; I/A Court H. R., Case of *Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 112; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 82; I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116.

658 United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

659 United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

660 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 36.

661 Article 19. The Camden Principles on Freedom of Expression and Equality. April 2009, at "introductory statement."

220. According to report examining the media in five countries in the Caribbean region, media outlets tend to completely ignore LGBTI persons and their specific issues in their coverage. When reported, matters related to LGBTI persons are frequently covered in a "sensationalized and demeaning" way. Further, according to the information received, in some of the countries included in that report, "the generalized ridicule of LGBTI persons," in combination with threats and violence against LGBTI activists and supporters, leads to a limited pool of individuals willing to be publicly associated with promoting non-discrimination and an end to violence. According to this study, this results in the general public having a distorted view of LGBTI individuals and reinforces an erroneous belief that not many people are willing to publicly defend their rights. Moreover, the report concludes that this situation in turn "has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contributes directly to an environment that encourages discrimination and violence."[662]

221. In light of the above, the Commission and the Office of the Special Rapporteur for Freedom of Expression reiterate that the promotion and protection of the right to freedom of expression should coincide with efforts to combat intolerance, discrimination, hate speech, and incitement to violence. Particularly, with the promotion of proactive public policies to ensure social inclusion in the media, as a means to guarantee that LGBTI persons and communities can exercise their right to freedom of expression, without discrimination. All these efforts should be in strict conformity with international human rights law in general, and freedom of expression standards in particular.

2. Definition of Hate Speech

222. While the Inter-American System of Human Rights has developed certain specific standards, there is no universally accepted definition of "hate speech" under international law. According to a recent UNESCO report that surveyed different definitions of hate speech in international law, the concept of hate speech usually refers to "expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target's being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks."[663]

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662 International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

663 UNESCO. Countering Online Hate Speech. 2015, pp. 10 -11.

223. In its report UNESCO states that, notwithstanding the aforementioned, the concept of hate speech does not consist of broad and abstract ideas, such as political views and ideologies, faiths, or personal beliefs. Nor is it correct to automatically label as hate speech any insult or derogatory or inflammatory expression regarding an individual. When the concept is defined vaguely, the prohibition of hate speech can be easily manipulated to encompass expressions that are deemed offensive to others, particularly those in power, leading to misapplication of the law in attempts to curb dissenting and critical speech. Further, hate speech needs to be differentiated from "hate crimes" based on expressive conducts, such as threats and sexual harassment, which are outside of the protection of the right to freedom of expression.

224. A lack of clear definition of hate speech is also evident in terms of national legislation. In this regard, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed concern about the "continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices."[664] These laws are characterized by vague and overbroad legal provisions prohibiting incitement to hatred, and are abused in order to censor discussions that are in the public interest.

225. As explained below, under the principles established under the inter-American human rights system, States are only *mandated to prohibit* hate speech in certain circumstances, this is, when the speech constitutes "incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin." (Article 13(5) of the American Convention).

226. In other cases, even though the inter-American legal framework *allows* States to limit by legal measures the right to freedom of expression, under strict compliance with the requirements of legality, necessity and proportionality (Article 13(2) of the American Convention), the IACHR considers it necessary to highlight that censorship of the debate of controversial issues will not address structural inequalities and prejudice that affect LGBTI persons in the Americas. On the contrary, as a principle, instead of restricting, States must encourage more and richer debates as a means of exposing and addressing negative stereotypes.

3. Freedom of Expression and the prohibition of hate speech: Inter-American Law and Standards

227. In principle, all forms of speech are protected by the right to freedom of expression, independently of the content and the degree of government and social acceptance of the speech in question. The State has a primary duty of content-neutrality and, as a consequence, it must guarantee that there are no persons,

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[664] United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 42.

groups, ideas or means of expression that are excluded *a priori* from public debate.[665] Particularly important is the rule according to which freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population. This is necessary to protect and foster the pluralism, tolerance and spirit of openness without which a truly democratic society cannot exist.[666]

228. Notwithstanding this strong protection of free speech, the right to freedom of expression is not an absolute right and can be subject to limitations. Such limitations are specifically established in Articles 13(2) and 13(5) of the American Convention. First, the American Convention establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights of other persons. Article 13(2) of the American Convention prohibits prior censorship, but allows for the subsequent imposition of liability. The establishment of such limitations must be exceptional in nature, and in order to be permissible must be subject to three basic conditions, also set forth in Article 13(2) of the American Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

229. Further, Article 13(5) of the American Convention states that "[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law." The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the view that, according to general principles of treaty interpretation, "advocacy of hatred" that is directed against individuals on the basis of their sexual orientation, gender identity, or bodily diversity, and that constitutes incitement to lawless violence or "to any other similar action," falls within the scope of this provision and is therefore a violation of Article 13 of the American Convention.[667]

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665 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 36.

666 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 31; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 69; I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V.

667 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. IACHR, *Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report*, para. 238.

230. There is a distinction between Articles 13(2) and 13(5) of the American Convention. In interpreting Article 13(5) of the American Convention, the Commission has indicated that States *are required* to adopt legislation to punish advocacy of hatred that constitutes "incitement to lawless violence or to any other similar action,"[668] while also noting the limits to these sanctions, as explained below. In contrast, as per Article 13(2) of the American Convention other intolerant expressions or comments that do not strictly amount to "incitement to violence," *could* be subject to the imposition of subsequent liability to ensure the rights to dignity and non-discrimination of a particular group in society, including LGBTI persons. The International Covenant on Civil and Political Rights (ICCPR) provides a similar approach.[669] The United Nations "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" ("UN Rabat Plan of Action"), adds a third type of speech that while not punishable, raises a concern in terms of tolerance and civility. As such the UN Rabat Plan of Action establishes that it is important for States to make a clear distinction between: (i) expressions that constitute a criminal offence, (ii) expressions that are not criminally punishable but may justify a civil suit or administrative sanctions, and (iii) expressions that are not legally punishable "but still rais[e] a concern in terms of tolerance, civility and respect for the rights of others."[670]

231. In interpreting similar standards in the universal human rights system, the UN Special Rapporteur on minority issues, Rita Izsák, has expressed that "in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech. As experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate speech."[671] Indeed, several United Nations human rights bodies[672] have highlighted that the application of criminal sanctions on hate

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668 IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 58.

669 In the universal human rights system, "expression labelled as 'hate speech' can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) on different grounds, including respect for the rights of others, public order, or even sometimes national security. States are also obliged to 'prohibit' expression that amounts to 'incitement' to discrimination, hostility or violence" under article 20.2 of the ICCPR. *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.* October 5, 2012, para 14.

670 United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 20, 25; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 32; *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 11.

671 UN, Human Rights Council, *Report by the Special Rapporteur on Minority Issues, Rita Izsák, A/HRC/28/64*, January 5, 2015, para. 54.

672 In 2011 and 2012, the United Nations Office of the High Commissioner for Human Rights (OHCHR) held four regional expert workshops focused on the relationship between freedom of expression and hate speech. The goal was to "conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for

speech should be seen as a last resort measure to be applied only in "strictly justifiable situations," in accordance with the requirements set out in Article 20.2 of the ICCPR.[673]

232. To combat hate speech, experts have suggested that "civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and other remedies should also be considered, including those identified and put in force by various professional and regulatory bodies."[674] The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the opinion that expressions that openly denigrate, stigmatize, or discriminate against a person or a group of persons on the grounds of perceived or actual sexual orientation or gender identity, but that do not reach the threshold of *advocacy of hatred that incites lawless violence* according to Article 13(5) of the American Convention ("hate speech"), *may be* subject to the imposition of subsequent sanctions of a civil or administrative nature, or to remedies such as the right of correction and reply. Notwithstanding this, the IACHR and its Office of the Special Rapporteur for Freedom of Expression highlight that such sanctions cannot be aimed at inhibiting or restricting the dissemination of information and ideas concerning issues of public interest. Further, as with any other restriction on freedom of expression, the imposition of subsequent sanctions must satisfy the requirements set forth in Article 13(2) of the American Convention and be applied by an independent state entity.

233. Negative or derogatory portrayal and other expressions that stigmatize LGBTI persons are certainly offensive and hurtful and they increase the marginalization, stigmatization, and general insecurity of LGBTI persons. However, the IACHR is of the opinion that the legal prohibition of this type of speech will not do away with the stigma, prejudice, and hatred against LGBTI persons that is deeply rooted in the societies of the Americas. In many contexts, given the structural social inequalities, discriminatory views and prejudice in public discourse cannot be eradicated through legal sanctions. As will be explained below, more should be done to promote a comprehensive approach that goes beyond legal measures and includes preventive and educational mechanisms and measures implemented by States, media, and society in general.

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freedom of expression as protected by international human rights law." The workshops resulted in the "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence," a document containing a series of recommendations to States, United Nations bodies and other stakeholders on implementing the prohibition of incitement to discrimination, hostility or violence contained in Article 20 of the International Covenant on Civil and Political Rights. The Rabat Plan of Action was subsequently supported and adapted by other international bodies in the fulfillment of their mandates.

673 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 20 - 22; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech. CERD/C/GC/35*. September 26, 2013, para. 12.

674 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 14 - 19.

234. The Commission and its Office of the Special Rapporteur for Freedom of Expression deem of particular importance that States take action to guarantee the exercise of the right to freedom of expression of LGBTI persons and to empower those affected and made invisible by hate speech. As observed by the Office of the Special Rapporteur for Freedom of Expression, "speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less."[675] However, in order to enable a vigorous debate it is necessary to guarantee that members of groups affected by hate speech can fully exercise their freedom of expression, which includes fostering greater diversity and pluralism in access to the media.[676]

235. In light of the foregoing, the Commission has stated that the imposition of sanctions under the charge of advocacy of hatred that constitutes "incitements to lawless violence or to any other similar action"– as defined and prohibited by Article 13(5) of the American Convention – requires a high threshold. Such sanctions must be backed by truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had: (a) the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons; and (b) the *capacity* to achieve this objective and create an *actual* risk of harm to LGBTI persons.[677]

236. Complementary requirements or "threshold tests" have been proposed by different international bodies and civil society organizations in order to clearly differentiate between speech that constitutes "incitement to lawless violence or to any other similar action," allowing for the separation of speech warranting the imposition of criminal sanctions from speech that is intolerant or offensive.[678] For instance, the UN Rabat Plan of Action sets forth the following criteria that should be taken into account by legislators, prosecutors and judges when assessing expressions which are criminally prohibited: (i) the social and political context

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675 IACHR, *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 50.

676 IACHR. *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 50; IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras. 24-37. IACHR. *Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II.134. Doc. 5. February 25, 2009. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression), para. 100.

677 IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

678 See, *e.g.*: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 15 - 16; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 45; Article 19. Responding to Hate Speech against LGBTI People. October 2013, p. 27.

prevalent at the time the speech was made and disseminated;[679] (ii) the position or status of the speaker in the society, including the individual's or organization's standing in the context of the audience to whom the speech is directed; (iii) the intent of the speaker;[680] (iv) the content or form of the speech, which may include "the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed;" (v) the extent of the speech, including elements such as the reach of the speech, its public nature, magnitude and the size of its audience;[681] and (vi) the likelihood, including imminence, that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.[682]

237. It is important to recognize that any limit on freedom of expression, especially limits that could bring serious sanctions such as prison sentences, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch and that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must be accompanied by sanctions that are proportional. In any case, as has been repeatedly held by the Inter-American Commission and the Inter-American Court, any restriction imposed on the right to freedom of expression should be established in advance, expressly, restrictively, unambiguously and clearly in law – in the formal and material sense.[683] The restriction must also serve compelling

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679 "Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. Adopted on October 5, 2012, para. 22.

680 "Negligence and recklessness are not sufficient for an article 20 situation which requires 'advocacy' and 'incitement' rather than mere distribution or circulation. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech as well as the audience." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

681 "Further elements are whether the speech is public, what the means of dissemination are, considering whether the speech was disseminated through one single leaflet or through broadcasting in the mainstream media or internet, what was the frequency, the amount and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

682 "Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless some degree of risk of resulting harm must be identified." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

683 IACHR, *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 51; Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, paras. 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment dated November 22, 2005. Series C No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 117; IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of "Desacato" laws

objectives as set out in the American Convention, be necessary to serve the compelling objectives pursued in a democratic society, be strictly proportionate to the objective pursued, and be appropriate to serve said compelling objective.[684]

238. When limits on freedom of expression are established by criminal law, the Court has established that they must further satisfy the principle of strict legality. The Court has held that should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the principle of legality. The Court has indicated that this principle is understood as the requirement to use strict and unequivocal terms, clearly restricting any punishable behavior, which in turn requires "a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures."[685]

239. With regard to implementation of Article 20.2 of the ICCPR, the "Rabat Plan of Action" recommends that definitions of hate speech, especially of a criminal nature, incorporate robust definitions of key terms used, for example: hatred, incitement, and advocacy.[686] Similarly, the Camden Principles on Freedom of Expression and Equality, developed by a civil society organization on the basis of discussions involving a group of high-level UN and other officials, as well as civil society actors and academic experts, recommend that "[n]ational legal systems should make it clear, either explicitly or through authoritative interpretation, that: (i) The terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; (ii) The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group; (iii) The term 'incitement' refers to statements about national, racial or [religious] groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups."[687]

240. The IACHR and its Office of the Special Rapporteur for Freedom of Expression believe that independent "watchdog" bodies can serve an important role in identifying and reporting hateful content and promoting the application of the

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with the American Convention on Human Rights. Title IV. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. *Report No. 11/96. Case No. 11.230. Francisco Martorell.* Chile. May 3, 1996, para. 55; IACHR, Arguments before the Inter-American Court in the case of Ricardo Canese v. Paraguay. Transcripts available at: InterAmerican Court, *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. a). Further, in this respect, the definition of the Inter-American Court in its Advisory Opinion OC-6/86 is applicable. It states that the term "laws" does not mean any legal provision, but rather general legal provisions established by the legislative body that is constitutionally provided for and democratically elected, according to the procedures established in the Constitution, hewing to the common good.

684 IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 62 and ff.

685 I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs.Judgment of November 20, 2009. Series C No. 207, para. 55; IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 73.

686 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, p. 14.

687 Article 19. The Camden Principles on Freedom of Expression and Equality. April 2009.

highest ethical standards. While doing so, however, they must adhere to international human rights standards. Examples of non-punitive administrative remedies employed by independent "watchdog" bodies can be found in measures recently adopted by the Ombudsperson of the Audience of Broadcasting Services in Argentina [*Defensoría del Público de Servicios de Comunicación Audiovisual*] to promote the right to equality and non-discrimination on broadcasting services programming.[688] For instance, in December 2014 the Ombudsperson of the Audience recommended that a certain radio station adopt a code of ethics or style manual incorporating guidelines on the principle of non-discrimination that reflect progress made by national legislation in this regard. The Ombudsperson also mandated that its own legal department "process, prepare and distribute a guide on responsible press coverage of sexual diversity in the audiovisual media services."[689]

241. Finally, the IACHR recognizes that other international and regional human rights instruments and treaties prohibit "promotion or incitement of hatred" with different implications for conceptualizing and defining the varied forms of hate speech. The IACHR notes the adoption in June 2013 of the Inter-American Convention against All Forms of Discrimination and Intolerance, which as of the date of release of the instant report is yet not in force[690]. Once this Convention enters into force, the Inter-American Commission and Court are called to, in accordance to international law principles, interpret the relationship between this Convention and the American Convention.

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688 According to Article 3(m) of the Act 26.522 of Audiovisual Communication Services, broadcasting media should "promote the protection and safeguarding of equality between men and women, and a plural, equal and non-stereotypical coverage, avoiding discrimination by gender or sexual orientation." Congreso de la Nación Argentina. Act 26.522. Servicios de Comunicación Aduiovisual. October 10, 2009.

689 Ombudsperson of the Audience (Defensoría del Público). Resolución N° 141/2014. December 29, 2014.

690 For example, Article 4 of the Inter-American Convention against All Forms of Discrimination and Intolerance establishes that "[t]he states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including: i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that: a. advocate, promote, or incite hatred, discrimination, and intolerance; b. condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts; […] Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions, based on any of the criteria set forth in Article 1.1 of this Convention." OAS General Assembly, *Inter-American Convention against all Forms of Discrimination and Intolerance*, adopted on June 5, 2013 at the 43rd Regular Session. Further, The International Convention on the Elimination of All Forms of Racial Discrimination obligates States to condemn "all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination" (art. 4). Further, three situations constitute offences punishable by law: (a) all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) organizations, organized and all other propaganda activities which promote and incite discrimination—which must be declared illegal and prohibited—, and participation in such organizations or activities; (c) promotion or incitement of racial discrimination by public authorities or public institutions, national or local. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly on December 21, 1965 (entered into force January 4, 1969).

4. Hate Speech and Public Officials

242. The Inter-American Court has established that even when official speech might not have authorized, instructed, or directly incited violence, it may often put potential victims of violence in a situation of greater vulnerability before the State and some sectors of society.[691] The Inter-American Commission and the Court have reiterated that given the State's obligations to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored.[692]

243. In this regard, the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding LGBTI persons.[693] For example, the IACHR received information regarding the use of expressions of stigmatization and intolerance by the President of the Human Rights Commission of the House of Representatives in Brazil in 2013. According to the information received, he has publicly indicated that LGBT people "want to impose a gay dictatorship in the country, in order to expel God out of Brazil" and that "the putrefaction of gay feelings leads to hate, crime and rejection."[694] Similarly, in 2013 the President of the Human Rights Commission of Congress, in Costa Rica, made a series of intolerant and discriminatory remarks regarding the congressional debate of a bill to protect LGBTI people from discrimination. He reportedly said to the press "[b]ut who is bothering them? Who is bothering them? We cannot tell who they are. If they are not 'fruity' and they do not declare themselves 'as such', in reality one does not know who they are."[695]

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691 I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 138; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157; IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 208.

692 I/A Court H. R., *Case of Apitz-Barbera et al. ("First Court of Adminstrative Disputes") v. Venezuela.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008 Series C No. 182. para. 131. See also (related): IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 204; I/A Court H. R., *Case of Ríos et al. v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. vs. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 151; IACHR, *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA /Ser.L/V/II.149 Doc. 50. December 31, 2013, para. 44.

693 IACHR, Press Release No. 37/13. *The IACHR Calls Member States to Ensure Respect of the Rights of LGTBI Persons by Public Officials*. May 17, 2013.

694 FELGTB. "*La FELGTB denuncia la homofobia del presidente de la Comisión de Derechos Humanos de Brasil*". April 15, 2013 (Avaliable in Spanish only); Tribuna da Bahia. "*Marco Feliciano põe o projeto sobre a "cura gay" para ser votado na Câmara*." May 2, 2013 (Avaliable in Portuguese only).

695 The original quote in Spanish: "*si a ellos no se les ve el plumero y no se declaran así, en realidad uno no sabe quiénes son*." Dos Manzanas. *"Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas"*. March 4, 2013 (Avaliable in Spanish only); El

244. In similar terms, a Councilman in La Candelaria, Bogotá, Colombia, indicated in 2013 that LGBT people "are involved with the judges and they are perverse or perverted .... [they] sleep with 5, 20 or 30 people. They sleep with children. They sleep with girls ... because the ones who are buying children are judges of the Republic, senators and magistrates. And we have a big problem. People run for office and they do not say whether or not they are LGBTI. Gay and bisexual men are being elected, but if the voters knew what kind of people [they are], they would not vote for them. But here, people are being lied to."[696] Colombian civil society organizations have claimed that the Inspector General has also publicly expressed negative and demeaning views of LGBTI people. For example, the Inspector General considers same-sex relationships or couples to be "aberrations," and equates them to bestiality.[697] Along these lines, on August 13, 2013, a Member of the House of Representatives for the Partido Socialista Unido de Venezuela (PSUV), used homophobic slurs while in a parliamentary session, when he referred to a State governor as "*maricón*" [Spanish equivalent to "faggot"] and a "homosexual."[698]

245. Further, the Commission calls on authorities to not only refrain from disseminating hateful messages against LGBTI people but also to contribute decisively to the building of a climate of tolerance and respect in which all people, including LGBTI persons and those who defend their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.[699]

246. Likewise, the UN Special Rapporteur on Freedom of Expression has warned that when high-level officials engage in hate speech, "they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy." Consequently, States should "take appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials."[700]

247. In this regard, the UN Special Rapporteur on Freedom of Expression has noted that public officials have a special responsibility to clearly and formally denounce hate speech.[701] Similarly, the UN Rabat Plan of Action affirms the crucial role of political

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PeriodicoCR, "*Comentarios homofóbicos de diputado Orozco causan indignación en las redes sociales.*" February 22, 2013 (Avaliable in Spanish only).

696 El Espectador. "*Edil de Bogotá, en líos por posible discriminación*". May 2, 2013 (Avaliable in Spanish only).

697 Colombia Diversa, *"Todos los Derechos, Pocos los Deberes," "Situación de Derechos Humanos de Lesbianas, Gay, Bisexuales y Transgeneristas en Colombia 2008-2009,"* p. 11; citing Ordoñez, Maldonado Alejandro, *Ideología de Género: Utopía Trágica o Subversión Cultural.* 2006, pp. 108 and 153. This information has also been submited by civil society organizations to the IACHR. IACHR, *Public Hearing Situation of Human Rights Defenders of Reproductive Rights in Colombia*, 147th Period of Sessions, March 14, 2013, video available in Spanish only at www.iachr.org.

698 Noticias24, *Pedro Carreño a Capriles: "Acepta el reto, mari…"* (video), August 13, 2013 (Avaliable in Spanish only).

699 IACHR. Press Release No. 37/13. *The IACHR Calls Member States to Ensure Respect of the Rights of LGTBI Persons by Public Officials*. May 17, 2013.

700 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 67.

701 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 64.

and religious leaders in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.[702] For its part, the UN Committee against Racial Discrimination has found that the formal rejection of hate speech by high-level public officials and the condemnation of hateful ideas expressed can work as a preventive measure to combat incitement to violence and discrimination.[703]

5. Non-legal measures to counter hate speech

248. The Commission and its Office of the Special Rapporteur for Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.[704] As previously stated by the Office of the Special Rapporteur on Freedom of Expression, these types of measures strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism and tolerance.[705]

249. In this context, preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice on the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

250. Education and awareness-raising measures should include the promotion of digital and media "literacy". The IACHR and its Office of the Special Rapporteur on Freedom of Expression have stated that in order to ensure access to the internet, educational measures intended to promote the training of all users in the autonomous, independent, and responsible use of the internet and digital technologies is needed. This is because "full access to information and communications technologies, particularly the Internet, is closely related to the

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702 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 24.

703 United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech. CERD/C/GC/35*. September 26, 2013, paras. 37 and 38.

704 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 11; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 33.

705 IACHR. *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 48.

capacity to make effective use of these tools."[706] The IACHR views as positive that in Argentina, the National Institute against Discrimination, Xenophobia and Racism (*INADI*, in Spanish) established the "Platform for an Internet Free of Discrimination." The initiative aims to promote digital literacy among children, teenagers, and parents in order to guarantee that the Internet remains a space free from discriminatory violence that affects the rights of groups, communities, and individuals.[707] The Platform provides information to enable users to identify and report discriminatory language on the web. Civil society also plays a role in addressing hate speech against LGBTI persons, through education and awareness-raising efforts. In Canada, for example, the non-profit organization *Media Smarts* is dedicated to the promotion of media and digital "literacy". It launched an initiative on diversity, non-discrimination, and hate online that provides practical tools for a diverse audience of Internet users, including parents, teachers, and children, for identifying and facing hate speech.[708]

251. A preventive policy should include the collection and analysis of data and information on hate speech. In most countries in the region, such data is not collected and analyzed. The goals of data collection and analysis could include the assessment of the various forms of hate speech; the perpetrators involved; the circumstances under which hate speech emerges; and the audiences reached or targeted. Other areas of assessment should include the impact of existing hate speech laws and the extent to which they comply with international norms, as well as the effects of counter-speech/counter-narrative techniques.[709]

252. Another important measure is the promotion of proactive public policies for social inclusion in the media to ensure that LGBTI individuals and communities can realize their right to freedom of expression without discrimination.[710] The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to "address and redress the indirect censorship, powerlessness and/or alienation felt by many groups and individuals," especially those that have been frequent targets of severe harassment and intimidation by both State and non-State actors, since "explicitly or implicitly, through such actions an illusion is created that only those with the requisite authority can speak on particular issues," resulting in a culture of fear that

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706 IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 48.

707 National Institute against Discrimination, Xenophobia and Racism [*INADI*], "*Plataforma por una Internet Libre de Discriminación*".

708 For more information visit: www.mediasmarts.com.

709 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 23 to 29; UN, Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech. CERD/C/GC/35*. September 26, 2013, paras. 34-36; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, paras. 58-69.

710 The UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Universality and the Right to Freedom of Expression*. May 6, 2014.

hampers public debate and violates the right to freedom of expression.[711] Therefore, States should "proactively facilitate counter-speech of individuals belonging to groups that are systematically targeted by hate speech."[712]

253. One example of good practice is the strengthening of the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community and promote awareness of LGBTI issues. Another example is the reservation of parts of the radio spectrum for community media outlets operated by LGBTI groups, together with the establishment of special procedures to assist those sectors in obtaining radio licenses. Efforts should also be made to provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and voice needs of LGBTI groups. These are examples of measures that are aimed toward generating equal opportunities and real equality in the exercise of the right to freedom of expression.[713]

254. It is important to emphasize the role of media as channels of information, ideas, and opinions. This role is fundamental to the development of narratives that value diversity and condemn arbitrary discrimination.[714] In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons.[715] The Office of the Special Rapporteur for Freedom of Expression has expressed concern over the promotion by media outlets of openly discriminatory content that could incite violence against LGBTI persons, especially when those messages come from shapers of public opinion.[716]

255. The IACHR welcomes a recent joint study by several civil society organizations monitoring media in five countries in the region (Belize, Grenada, Guyana, Jamaica

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711 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 62.

712 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 62.

713 IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras 37 and 96 *et seq*. IACHR. *Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, para. 155.

714 IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 46.

715 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

716 IACHR, *Annual Report 2014*: Follow-up to the 2012 Jamaica Report, para. 183. IACHR. *Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, para. 351; IACHR. Annual Report 2013. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA /Ser.L/V/II.149 Doc. 50. December 31, 2013, paras. 560-563; IACHR. Annual Report 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. Similarly, see: United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 43.

and St. Lucia). According to this study, many media outlets reinforce negative stereotypes that can lead to violence against LGBTI persons, and overall, they create an "unbalanced, inaccurate and largely unflattering picture" of LGBTI persons. The study also found that stories depicting LGBTI persons engaged in positive activities, or important stories regarding policy issues or concerns about discrimination and exclusion, were largely ignored by the media.[717] Further, the study indicated that because much of the coverage consisted of depictions of LGBTI persons purportedly engaged in criminal activity, or negative depictions of LGBTI persons more generally, the coverage contributed to a heightened risk of violence against these persons.[718]

256. Coincidently, the IACHR has expressed concern over the "systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community" in 2013 and 2014 in Jamaica.[719] For example, the IACHR noted[720] that on March 23, 2014, the *Jamaica Observer* newspaper reportedly published a cartoon indicating "the invasion of Jamaica by homosexuals" [*homos over run Jamaica*], which was alleged to be comparable to the increase in crime and government corruption.[721] On July 1, 2014, an article was published under the headline "Local churches vow to prevent homosexuality from dominating society," which contained phrases such as "The local church community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society."[722] On July 13, 2014, it published the article "Police hunt gay murder suspect," which contained statements like "The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment," and "Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community."[723] On July 16, 2014, the same newspaper published an editorial entitled "Homosexuality: the long, painful search for workable rules of engagement," apparently justifying that "[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination," but also calling for tolerance and non-violence.[724]

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717 International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

718 International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 2.

719 IACHR, *Annual Report 2014*: *Follow-up to the 2012 Jamaica Report,* May 7, 2015, para. 236.

720 IACHR, *Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere),* OEA/Ser.L/V/II.Doc. 13, March 9, 2015, para. 657.

721 Maurice Tomlinson. March 23, 2014. *More Anti-gay material from the Jamaica Observer*. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

722 Jamaica Observer. *Local churches vow to prevent homosexuality from dominating society*. July 1, 2014.

723 Jamaica Observer. *Police hunt gay murder suspect*. July 13, 2014.

724 Jamaica Observer. *Homosexuality: the long, painful search for workable rules of engagement*. July 16, 2014.

257. In its 2014 Report to follow-up to the 2012 Report on the human rights situation in Jamaica,[725] the IACHR indicated that in the framework of the hearing "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica" held on October, 28, 2014, the Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression received information on the constant stigmatizing and hate speech reproduced by the media regarding LGBTI persons. According to civil society organizations, State authorities have omitted promoting positive views to reduce the discrimination and stigma against LGBTI persons. The State reported that the government is aware of the debate in Jamaica on the rights of LGBTI persons and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State indicated that takes the position that these are issues covered by the right to freedom of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government's control.[726] The Office of the Special Rapporteur for Freedom of Expression of the IACHR has warned that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.[727]

258. The Commission recalls that principle 6 of the Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State. The IACHR notes that the adoption of voluntary professional codes of conduct for the media and journalists can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of media outlets furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.[728] Similarly, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that "media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism".[729] Further, that media outlets and journalists should establish "independent and self-regulatory bodies to elevate standards of journalism and to ensure the accountability of all media professionals."[730]

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725 IACHR, *Annual Report 2014: Follow-up to the 2012 Jamaica Report*, para. 237.

726 IACHR, *Public Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,"* 153rd Regular Sessions, October 28, 2014.

727 In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. *Cross-dressing teenager murdered in Jamaica*; Huffington Post/AP. August 11, 2013. *Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report*. IACHR, *Annual Report 2014*: Chapter V: *Follow-up to the 2012 Jamaica Report*, para. 237.

728 IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014. See also: *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.* Adopted on October 5, 2012. Recommendations to other stakeholders.

729 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 74.

730 United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 74.

259. Indeed, media should play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have suffer from historical discrimination (including LGBTI persons), and by giving members of these groups an opportunity to speak and to be heard.[731] This is consistent with the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, which recommend that "mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues."[732]

260. In sum, in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, stigmatizing, or offensive speech. Further, States should adopt legislation prohibiting any advocacy of hatred that constitutes incitement to violence or other similar action. The imposition of sanctions under the charge of advocacy of hatred – as defined in and prohibited by Article 13(5) of the American Convention – requires a high threshold. This is because, as a matter of fundamental principle, prohibition of speech must remain an exception. Restrictions on speech must be backed by actual, truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons, along with the *capacity* of achieving this objective and creating an *actual* risk of harm being committed against persons who are part of these groups. These elements should be made clear by national legal systems, either explicitly in the law or through authoritative interpretation by the judiciary. In other words, criminal sanctions should be seen as last resort measures, only to be applied in strictly justifiable situations, according to Article 13(5) of the American Convention. Civil and administrative sanctions and remedies should also be considered, along with the right of correction and the right of reply.

261. Further, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy. Consequently, States should adopt appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials. The media also plays an important role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by adopting voluntary professional codes of conduct.

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[731] The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Universality and the Right to Freedom of Expression*. May 6, 2014.

[732] *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, p. 36*. March 2007.

Tab 7

APRIL 23, 2020

Letter to the President of Panama calling for the protection of transgender people during the quarantine

Published in

Washington, D.C., April 23, 2020

H.E. Laurentino Cortizo Cohen
President of the Republic
Panama City – Panama

Dear Your Excellency,

We respectfully write to express our concern over some cases of discrimination that have recently occurred on the part of police and private security guards against transgender people in the context of Panama's gender-based quarantine currently in force.

Transgender people have a gender identity or expression that may not match the "female" or "male" sex marker on their identification document. Because the quarantine measures implemented by the Ministry of Health on April 1 require women and men to remain quarantined on alternating days, transgender people are being singled out for profiling by both police and private security guards, and have in some cases been arrested and fined or prevented from buying essential goods.

Since documenting an early incident of discrimination on April 1, in which a transgender woman was detained and fined for going out on a day designated for women, Human Rights Watch has interviewed more transgender people who have experienced discrimination under the quarantine regime over the past 22 days.

In the majority of cases, we found that discrimination occurred even though individuals left their homes for essential needs on the day that accorded to the sex marker in their national identification card, in compliance with the rules established by the Ministry of Health. These people opted not to go out on the day that accorded to their gender identity to avoid conflicts with authorities. Some of the cases we documented include those of:

- **Mónica**, a transgender woman in Panama Province, who was detained by police when she attempted to enter a supermarket on a day designated for men. Police inappropriately touched her on the breasts and mocked her about being a man during a body search at Casa de Justicia Comunitaria de Paz Pedregal (*Human Rights Watch interview with Mónica, April 10, 2020*);
- **Heber**, a transgender man in Colón Province, who was denied entry into a supermarket by police officers on a day designated for women. The officers ridiculed him by explaining that they would not explain to other women in the queue "what he was" and laughed at him (*Human Rights Watch interview with Heber, April 7, 2020*);
- **"Sofía"** (pseudonym), a transgender woman in Panama Province. When she attempted to enter a supermarket on a day designated for men, a police officer told her in front of male customers that she would not be allowed in because she is "too feminine" (*Human Rights Watch interview with "Sofía," April 8, 2020*);
- **Adriana**, a transgender woman in Panama Province. While she was waiting in a queue to enter a bank on a day designated for men, a private security agent told her that she was "dressed inappropriately" for the day and that she had to speak with another security agent, an employee, and a manager before being allowed to complete her transaction (*Human Rights Watch interview with Adriana, April 9, 2020*);
- **Ariah**, a transgender woman in Los Santos Province. When she attempted to enter a supermarket on a day designated for men, a police officer questioned her in front of other customers about whether she was a man or a woman and told her that she should have gone out on a day designated for women (*Human Rights Watch interview with Ariah, April 14, 2020*);
- **Li**, a transgender man in Panama Province, who was denied entry to a supermarket on a day designated for women. A security guard told him that women in the store would think Li was "a pervert" if allowed inside and that he should "try his luck" on a day designated for men (*Human Rights Watch interview with Li, April 15, 2020*);
- **Pamela**, a transgender woman in Panama Province, who was denied entry to a supermarket on two separate occasions on days designated for men, once by a police officer and once by a private security agent, on the grounds that she is "too feminine" (*Human Rights Watch interview with Pamela, April 16, 2020*).
- **Miranda**, a transgender woman in Panama Province. While she waited to enter a supermarket on a day designated for men, two private security agents told her to go home and, when she showed them her identification, one of them said, "You [transgender people] just want to come to the supermarket every day" (*Human Rights Watch interview with Miranda, April 21, 2020*);
- **Danny**, a transgender man in Panama West Province. While he was shopping in a supermarket on a day designated for women, an employee accused him of "wanting to be man" (*Human Rights Watch interview with Danny on April 21, 2020*).

Human Rights Watch has also documented three cases of transgender people who suffered discrimination when they left their homes on days in accordance with their gender identity (rather than with the gender

marker on their national identity card). Our research therefore suggests that transgender people face discrimination irrespective of whether they adhere to the sex marker on their national identification, or their gender identity. On April 16, 2020, Panama's Ombudsman's Office acknowledged reports of such discrimination.

Contrary to international human rights norms, in Panama, modifying legal gender on official documents requires sex reassignment surgery, placing transgender people in Panama in a particularly precarious and vulnerable situation. All the individuals mentioned above, as well as trans activists, have expressed to Human Rights Watch profound fear of humiliation, discrimination, and arrest if they leave their homes for groceries, medicine, or other essential services. Some have opted not to leave their homes at all, instead relying on friends or paying couriers to do their essential shopping.

International human rights standards recognize that in the context of serious public health threats and public emergencies, like Covid-19, governments are legally justified in restricting some rights, including the freedom of movement if necessary to respond to the emergency. However, governments should not allow law enforcement or private entities to use emergency measures as an excuse to discriminate against individuals on the basis of their gender identity or expression. The harms of such discrimination are even more acute when they deprive transgender people of life-sustaining necessities like food and medicine.

Regarding this issue, there are other governments in the region that have approved measures to prevent discrimination on the basis of gender identity and expression. For example, in Peru, the decree establishing a gender-based quarantine had a non-discrimination clause and President Martín Vizcarra followed that up with trans-inclusive statements. Peru has since scrapped the gendered measures, claiming they were ineffective. In Bogota, the decree establishing the gender-based quarantine explicitly included trans-sensitive provisions, and the head of the Bogota Metropolitan Police affirmed that transgender people could comply with the quarantine in accordance with their gender identity. Until now, authorities in Panama have not adopted any measures or issued any statements to prevent discrimination against transgender people.

We respectfully urge your government to adopt policies consistent with Panama's international legal obligations, aimed at protecting the dignity of transgender people in Panama. Such policies should be publicly announced and include the following points:

- **Authorization for Panamanians to comply with the gender-based quarantine in accordance with their gender identity or expression;**
- **A directive for law enforcement agents reiterating the obligation to respect Panamanians' gender identity and expression, and the same for private entities and their security agents; and**
- **An official complaints procedure for Panamanians to report incidents of discrimination on the basis gender identity or expression committed by state agents or private entities that would lead to sanctions for perpetrators.**

Thanking you in advance for your attention to this matter, and we wish to take the opportunity to express to you our highest consideration and esteem.

José Miguel Vivanco
Executive Director
Americas Division
Human Rights Watch

Graeme Reid
Director
LGBT Rights Division
Human Rights Watch

Related Content

Letter to the President of Panama calling for the protection of transgender people during the quarantine

Region / Country

- Americas
- Panama

Topic

- LGBT Rights

Source URL: *https://www.hrw.org/news/2020/04/23/letter-president-panama-calling-protection-transgender-people-during-quarantine*

Tab 8

Freedom House

FREEDOM IN THE WORLD 2019

Panama

FREE

84 /100

Political Rights	36 /40
Civil Liberties	48 /60

LAST YEAR'S SCORE & STATUS

83 /100 Free

Global freedom statuses are calculated on a weighted scale. See the methodology.

Overview

Panama's political institutions are democratic, with competitive elections and orderly rotations of power. Freedoms of expression and association are generally respected. However, corruption and impunity are serious challenges, affecting the justice system and the highest levels of government. Discrimination against racial minorities is common, and indigenous groups have struggled to uphold their legal rights with respect to land and development projects.

Key Developments in 2018

- Corruption remained a serious problem across state institutions, with multiple investigations opened and accusations made against officials during the year.
- Former president Ricardo Martinelli, who faced corruption and wiretapping charges in Panama, was extradited from the United States in June. His trial was set to begin in 2019.

Political Rights

A. Electoral Process

A1 0-4 pts

Was the current head of government or other chief national authority elected through free and fair elections?	**4**/4

The president is elected by popular vote for a single five-year term. In 2014, incumbent vice president Juan Carlos Varela of the Panameñista Party (PP) won the presidency with 39 percent of the national vote. Former housing minister José Domingo Arias of Democratic Change (CD) won 31 percent, and former Panama City mayor Juan Carlos Navarro of the Democratic Revolutionary Party (PRD) won 28

TOP

percent, with four other candidates splitting the remaining votes. International observers considered the elections generally free and fair, though the Organization of American States and the International Republican Institute criticized executive interference in the electoral process, including through the misuse of public resources, and noted that campaign financing was poorly regulated.

A2 0-4 pts

Were the current national legislative representatives elected through free and fair elections?	**4**/4

Members of the 71-seat unicameral legislature, the National Assembly, are elected for five-year terms. The 2014 elections were held concurrently with the presidential vote, drawing the same assessment from international monitors. The United for Change alliance—formed by the CD and the Nationalist Republican Liberal Movement (MOLIRENA)—won 32 seats, followed by the PRD with 25, the PP with 12, and the Popular Party with 1; an independent candidate also won a seat.

A3 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?	**4**/4

The country's electoral framework is generally fair and impartially implemented. The Electoral Tribunal of Panama (TE) is responsible for reviewing the electoral code after each election and submitting any reforms to the National Assembly. In 2017, the legislature adopted reforms proposed by the TE in 2016 that included tighter regulation of campaign donations, spending, and advertising. The 2019 elections will be held under the new rules, including a cap on public and private funding for presidential and National Assembly campaigns and reduced campaign periods for primary and general elections.

TOP

B. Political Pluralism and Participation

B1 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?	**4**/4

Political parties are free to form and compete in Panama's multiparty system, and since the 2014 elections, candidates have also been able to register as independents. The electoral regulations adopted in 2017 reduced the number of signatures an independent needs to run for office. However, the 2019 presidential race had multiple independent contenders as of 2018, and the reforms stipulate that only the three with the most signatures will qualify. The main political parties formally registered their 2019 electoral coalitions in December 2018.

B2 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?	**4**/4

Elections are competitive in practice, and orderly transfers of power between rival parties have been the norm since the end of de facto military rule in 1989.

B3 0-4 pts

Are the people's political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means?	**4**/4

TOP

Voters and candidates are generally free from undue interference by groups outside the political system, though the threat that improper donations by drug traffickers and other powerful interests could influence the political process remains a concern, even after the campaign finance reforms introduced in 2017.

B4 0-4 pts

Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities?	**3**/4

The law does not limit the political rights of any segment of the citizen population. Women are free to participate in politics, and women's advocacy organizations have campaigned to improve their representation in elected offices. The electoral code requires gender parity in internal party primary systems, but in practice this has not led to more women winning general elections. Less than 20 percent of National Assembly seats went to women in the 2014 elections.

The country's racial minorities and LGBT (lesbian, gay, bisexual, and transgender) community continue to face obstacles to the full exercise of their political rights, which are equal under the law. In 2017, activists created a new progressive party, Creemos, with a platform that included legalization of same-sex marriage, but it has failed to gain traction and was not expected to participate in the 2019 elections. The constitution establishes five indigenous territories—three at the provincial level and two at the municipal level—and these are duly represented in the system of constituencies for the National Assembly, but the interests of indigenous people, who make up about 11 percent of the population, remain inadequately addressed by the political system as a whole.

C. Functioning of Government

TOP

C1 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government?	**4**/4

The elected government and legislature generally determine and implement laws and policies without interference, though evidence of official corruption has raised concerns about the possibility that unelected entities could unduly influence governance.

C2 0-4 pts

Are safeguards against official corruption strong and effective?	**2** / 4

Safeguards against official corruption are relatively weak and ineffective, due in part to irregular application of the laws and a lack of resources for the judicial system. Investigations have revealed extensive corruption in previous administrations. The current government has been criticized for inaction on this issue, though the president remains publicly supportive of anticorruption efforts. In 2018, the legislature continued to hold up several proposed reforms designed to strengthen protections against official malfeasance and money laundering; at least one measure approved by lawmakers during the year was vetoed by the president.

Two ministers from the administration of former president Martinelli were arrested in 2017 for alleged money laundering in connection with the Odebrecht case, a massive corruption scandal centered on a Brazilian construction firm that has affected much of Latin America. President Varela has admitted to receiving donations for his 2009 vice-presidential campaign from an individual with ties to Odebrecht, but said the funds were received legally and reported to the TE. Martinelli, who has faced multiple investigations himself, was arrested in the United States in 2017 and extradited to Panama in June 2018. He was set to be tried in 2019. Despite the scandal surrounding Odebrecht, the company continued to be awarded government contracts.

TOP

A number of officials from the current administration and members of the National Assembly have resigned after being implicated in corruption and other wrongdoing. The Public Ministry reported in October 2018 that over 1,100 people had been

charged in high-profile cases since 2014, and the Special Anti-Corruption Prosecutor's Office reported that over 700 corruption cases, many related to financial crimes, were opened between January and April 2018. However, prosecutors have failed to secure convictions in many such cases.

C3 0-4 pts

Does the government operate with openness and transparency?	**3**/4

The law provides mechanisms for public access to government information, and while the government does not always operate with transparency in practice, the National Authority for Transparency and Access to Public Information (ANTAI) has reported increasing institutional compliance with a 2002 transparency law in recent years. In its monitoring report for December 2018, the authority found that 66 percent of the public entities evaluated were fully compliant. The government adopted a new open data policy through an executive decree in late 2017 and a resolution issued in January 2018, instructing public institutions to make data accessible to the public in clear, open, and machine-readable formats.

Score Change: The score improved from 2 to 3 because government agencies have gradually increased compliance with an existing transparency law, among other positive steps.

Civil Liberties

D. Freedom of Expression and Belief

TOP

D1 0-4 pts

Are there free and independent media?	**3**/4

News consumers have access to a wide variety of private media outlets that present a range of views, but the constitutional guarantee of freedom of the press is not consistently upheld. Libel is both a civil and a criminal offense, and cases are filed against journalists in practice. Independent, critical journalists and outlets reportedly face editorial pressure from the government, and some journalists have experienced harassment when covering stories and opinions unfavorable to the government.

D2 0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?	**4** / 4

The constitution recognizes Roman Catholicism as the majority religion and requires general "respect for Christian morality and public order," but freedom of religion is otherwise guaranteed and broadly upheld in practice. Catholic religious instruction is offered but not mandatory in public schools.

D3 0-4 pts

Is there academic freedom, and is the educational system free from extensive political indoctrination?	**4** / 4

The government generally honors academic freedom, and the schools are free from political indoctrination.

D4 0-4 pts

Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?	**4** / 4

Private discussion is free and vibrant, and use of social media platforms for the expression of personal views, including views on political or social issues, is generally not restricted.

TOP

E. Associational and Organizational Rights

E1 0-4 pts

Is there freedom of assembly?	**4**/4

Freedom of assembly is generally respected, and peaceful demonstrations are common, though protests that block roads and highways often result in arrests and altercations with police.

E2 0-4 pts

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work?	**4**/4

Nongovernmental organizations operate freely, but some activists—particularly those focused on environmental issues and indigenous rights—have complained of harassment and intimidation, including through lawsuits by private companies.

E3 0-4 pts

Is there freedom for trade unions and similar professional or labor organizations?	**3**/4

The law generally protects workers' rights to unionize, bargain collectively, and engage in legal, peaceful strikes. However, enforcement of labor protections is inadequate, and labor-related protests frequently feature clashes with police. Public employees are allowed to form associations to engage in collective bargaining and strike activities, but their rights are not as robust as those of unions; legislation that would give public-sector workers the right to form unions was under consideration at the end of 2018.

TOP

F. Rule of Law

F1 0-4 pts

Is there an independent judiciary?	**2**/4

The country's judicial system is plagued by corruption and inefficiency. Public disagreements between the attorney general's office and judges over rulings that impeded major corruption cases in recent years have raised doubts about whether such cases would be heard impartially. The Varela administration was criticized during 2018 over allegations that the National Security Council had interfered with corruption investigations that should have been handled by law enforcement bodies and the judiciary.

F2 0-4 pts

Does due process prevail in civil and criminal matters?	**2**/4

Due process is constitutionally guaranteed but inconsistently upheld in practice. The justice system features extensive use of lengthy pretrial detention, with pretrial detainees accounting for a majority of prison inmates. In 2017, the attorney general claimed that prosecutors working on corruption investigations had received threats and pressure from powerful elites. In July 2018, the attorney general's office reported that it had broken up a network of corrupt prosecutors in Azuero. Police and other security forces have also been implicated in criminal activity in recent years.

F3 0-4 pts

Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?	TOP **3**/4

The country is free from major threats to physical security such as war and insurgencies. However, police have been accused of beatings and other forms of excessive force, including while dispersing protests. The prison system is marked by overcrowding, lack of security, and poor health conditions.

The illegal drug trade and related criminal violence remain problems, though the homicide rate is well below those of most countries in the region. The number of homicides rose slightly to 439 in 2018, from 412 in 2017, according to statistics from the attorney general's office.

F4 0-4 pts

Do laws, policies, and practices guarantee equal treatment of various segments of the population?	**3**/4

Discrimination based on gender, race, and other such categories is prohibited by law, but sexual orientation and gender identity are not covered, and racial minorities—including indigenous people, Panamanians of African descent, and certain immigrant groups—face some discrimination in practice. Indigenous communities enjoy a significant degree of autonomy and self-government, but many live in poverty and lack equal access to basic services.

An influx of migrants and asylum seekers from Venezuela, Cuba, and other troubled countries in the region has stoked anti-immigrant sentiment in recent years. During 2017, the government took several steps to curb illegal immigration, tightening restrictions on the length and renewal of tourist visas for some countries and stepping up the deportation of migrants without documentation. In 2018, thousands of residence permits were canceled due to evidence that they were obtained fraudulently.

G. Personal Autonomy and Individual Rights

TOP

G1 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education?	**4**/4

The government generally respects freedom of foreign travel and internal movement, including the freedom to change one's place of residence, employment, or education.

G2 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?	**3**/4

Individuals can own private property and establish businesses freely under the law, but there are some practical impediments to defending property rights and operating businesses, including corruption and interference from organized crime.

Although indigenous groups have substantial land rights under the law, implementation has been problematic. Such groups have long protested the encroachment of illegal settlers on their lands, government delays in the formal demarcation of collective land, and large-scale development projects that proceed despite dissent within indigenous communities. During 2018, indigenous groups protested against the Ministry of Environment for delays in the issuance of their collective land titles.

G3 0-4 pts

Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?	

TOP

Personal social freedoms are largely unrestricted. However, domestic violence is a concern; according to official statistics, over 15,000 domestic violence cases were registered in 2018. Abortion is permitted in cases of rape or incest or to preserve the

life or health of the woman, though there are significant procedural obstacles as well as potential penalties for abortions that do not meet the legal standard.

In a January 2018 advisory opinion, the Inter-American Court of Human Rights ruled that member states should recognize same-sex marriage, adding to existing pressure on Panama to legalize such unions.

G4 0-4 pts

Do individuals enjoy equality of opportunity and freedom from economic exploitation?	**2**/4

Human trafficking for sexual exploitation and forced labor remains a serious problem despite some government efforts to combat it. Both Panamanian and migrant workers in certain sectors—including the agricultural sector, where many workers are indigenous people—are subject to exploitative working conditions. Enforcement of basic labor protections is weak in rural areas and among informal workers.

On Panama

See all data, scores & information on this country or territory.

See More

Country Facts

Global Freedom Score

84/100 **Free**

TOP

Other Years

2020

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Tab 9

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Prevalence of HIV, Syphilis, and Other Sexually Transmitted Infections among MSM from Three Cities in Panama

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Abstract

Respondent-driven sampling (RDS) was used to conduct a biobehavioral survey among men who have sex with men (MSM) in three cities in the Republic of Panama. We estimated the prevalence of HIV, syphilis, and other sexually transmitted infections (STIs), sociodemographic characteristics, and sexual risk behaviors. Among 603 MSM recruited, RDS-adjusted seroprevalences (95 % confidence intervals) were: *HIV*—David 6.6 % (2.2–11.4 %), Panama 29.4 % (19.7–39.7 %), and Colon 32.6 % (18.0–47.8 %); *active syphilis*—David 16.0 % (8.9–24.2 %), Panama 24.7 % (16.7–32.9 %), Colon 31.6 % (14.8–47.5 %); *resolved HBV infection*—David 10.0 % (4.8–16.8 %), Panama 29.4 % (20.0–38.3 %), and Colon 40.6 % (21.9–54.4 %); *herpes simplex virus type 2*—David 38.4 % (27.9–48.9 %), Panama 62.6 % (52.8–71.0 %), and Colon 72.9 % (57.4–85.8 %). At least a third of MSM in each city self-identified as heterosexual or bisexual. HIV prevalence is concentrated among MSM. Preventive interventions should focus on increasing HIV and syphilis testing, and increasing promotion of condom awareness and use.

Keywords: HIV, Syphilis, Sexually transmitted diseases, Sexual behavior, Respondent-driven sampling, Sampling hidden populations, Panama

Introduction

Panama has a population of 3,405,813 people[1] and since the first HIV diagnosis in 1984, has had 12,313 cases of HIV. The country has the third highest HIV prevalence in Central America, which is estimated at 0.8 % in the general population,[2] a male/female ratio of 3:1, and a death rate of 67.1 %. The main mode of transmission reported is through heterosexual contact followed by homosexual and bisexual. However, for a third of the cases, the mode of transmission is unknown.[3,4]

In Panama and Central America, a situation analysis of stigma and discrimination related to homophobia, transphobia (prejudice expressed against transgender people), the sex trade, and people living with HIV, reported that health centers are still places of discrimination.[5] A group of experts from the Americas who met in 2009 to address the health promotion and health care needs of men who have sex with men (MSM) reported that the MSM population postponed clinical attention for extensive periods of time or chose not to disclose their sexual orientation in previous visits to health care facilities. Such barriers to care make categorizing the type of transmission that affects the country difficult.

Research shows that MSM are at higher risk of contracting HIV than the general population, even in countries with generalized epidemics. Most data on the relative contribution of MSM to the HIV epidemic as a whole has been generated in high-income countries, including the United States, Australia, and Western European countries.[6,7] In Central America, HIV prevalence among MSM range from approximately 6 % in Honduras to 17 % in Mexico which is similar to HIV prevalence in South America which range from 9 % in Uruguay to 20 % in Chile.[8] The last sero-survey among MSM in Panama, conducted more than 10 years ago, reported an HIV prevalence of 8.9 % and low prevalence of other sexually transmitted infections (STIs).[9] Current HIV and other STI prevalence estimates among MSM subgroups are unknown. According to UNAIDS/WHO, surveillance studies can provide valuable information for the design of specific interventions where HIV is concentrated in subgroups that have high-risk behavior,[10] but these interventions should be carried out according to the sociocultural characteristics of each group. We conducted a survey to estimate the prevalence of HIV and other STIs, and high risk behaviors among MSM.

Materials and Methods

Design and Setting

This cross-sectional biological and behavioral survey took place in three major cities in the Republic of Panama—David, Panama, and Colon. Panama, a port city and the capital and home to 50 % of the total population of the country, is located south of the Panama Canal on the Pacific coast and is a high transit area due to tourism and commerce. Colon, also a port city, located on the north of the Panama Canal on the Atlantic coast, is the second most important economic center in the country because of the presence of the Duty Free Trade Zone. However, it has high unemployment and low income populations unlike other cities. David, the smallest of the three cities and representative of rural areas of the country, is the capital city of the province of Chiriqui, which borders Costa Rica on the country's western border.

Population

Respondent-driven sampling (RDS) methods [11,12] were used to recruit males who (1) self-identified as MSM (homosexual, bisexual, or transgender), (2) were 18 years and older, (3) had engaged in sex with another man or men in the last 12 months, and (4) who lived and/or worked in the survey city or in

surrounding areas for at least 6 months and presented to the study site with a valid coupon. The RDS method was chosen as it allows recruitment of hidden populations such as MSM, drug users, and sex workers[11–15] and has been used in 120 studies in more than 20 cities and with more than 32,000 individuals.[16,17] The target sample size per city was determined by sample size calculations, estimates of MSM in each city reported by key informants, the extent of networking among this population, and budgetary and logistical feasibilities of recruitment of MSM. Target sample sizes of 300 in Panama and 200 each in David and Colon were calculated to estimate an HIV prevalence of 10 % with a precision of ±2.65 % and a minimum design effect of 1.5. The interviewers and "seeds" were selected before recruitment began. Additional seeds were chosen later to boost recruitment. Recruitment occurred from January 1 to October 14, 2011 in David, from January 28, 2011 to January 6, 2012 in Panama, and from July 5 to December 12, 2011 in Colon.

Procedures

Several local organizations that work with MSM and transgendered persons provided valuable information about site locations, schedules, seed candidates, possible incentives, questionnaire validation and local population slang, and the selection of the personnel who work comfortably with MSM populations. Study procedures involved (1) interviews of candidate seeds and selection, (2) interview and blood collection from recruits.

Seeds were selected from candidates based on size of self-reported social and geographic networks of MSM, likelihood of referring three participants to the study, diversity of demographic characteristics, sexual identity, education level, employment status, nongovernmental organization/NGO membership, place of residence, and availability for participation in the study.

Coordinators at study sites screened recruits who presented with a valid coupon for eligibility and provided information about the study. Coordinators used a form to record responses to the eligibility criteria and their perceptions about the recruits' sexual orientation. Each city had a different coupon code, thereby preventing participants in one city to be part of the survey in another. After recruits provided written informed consent, interviewers administered two questionnaires (one on risk assessment and another on social networks), provided pre- and posttest HIV counseling, performed a HIV rapid test via fingerstick, and collected a 10-mL blood sample. A recruit who met eligibility criteria and participated received three coupons and an incentive for participation. A participant also received an incentive for recruitment. Incentives included water bottles, baseball caps, and fanny packs. In Colon, additional incentives were provided in order to increase the recruitment rate. Male condoms and lubricants were always distributed in addition to incentives.

Prior to receiving test results, participants were offered posttest counseling for STIs, prevention education on the importance of correct and consistent use of condoms and lubricants, hepatitis B vaccination, the risk of intravenous drug use, and prompt treatment for syphilis. If applicable, participants were referred to health institutions for medical attention. Also at this visit, participants were asked to provide the age, relationship, and reason for rejection for potential recruits who chose not to participate in the study, i.e., rejected coupons.

Ethical Considerations

The Institutional Review Boards of the Walter Reed Army Institute of Research (Washington, D.C., USA) and the National Bioethics Committee (Republic of Panama) reviewed and approved the study protocol. Written consent was obtained from all participants prior to enrollment in the study. Recruitment code numbers were used to track RDS recruitment, and names were not collected; the written consent form could be signed with a real or fictitious name.

Laboratory Measures

Blood collection, transfer, testing, and laboratory assays used in this survey have been described previously in a survey of female sex workers.[18] In brief, blood samples were evaluated for HIV [antibody to HIV (anti-HIV) and p24 antigen], antibody to hepatitis C virus (anti-HCV), hepatitis B surface antigen (HBsAg), antibody to hepatitis B core antigen (anti-HBc), antibody to herpes simplex type 2 virus (anti-HSV2), and syphilis. All serological tests, except HIV rapid tests, syphilis, and anti-HSV2 testing were conducted on an AxSYM (Abbott, Wiesbaden, Germany) using microparticle enzyme immunoassay (MEIA) technology and were repeated in duplicate if initial testing was reactive. Syphilis testing was performed using rapid plasma reagin (RPR) and anti-HSV2 using enzyme-linked immunoassay (ELISA). For HIV, samples were repeated in duplicate irrespective of the initial MEIA result.

Positive screening results were confirmed for HIV (Western Blot), HCV (recombinant immunoblot assay/RIBA), and syphilis (Treponema pallidum hemagglutination assay/TPHA). HIV infection and HCV seropositivity were defined as a repeat reactive MEIA confirmed by a positive Western blot for HIV or a positive RIBA for HCV. Participants who tested HBsAg positive and anti-HBc negative were considered HBV infected. Resolved HBV infection was defined as a positive anti-HBc and negative HBsAg. Active syphilis infection was defined as positive results for both RPR and TPHA assays.

Data Analysis and Management

The recruiter-recruit relationship was tracked by using Coupon Manager V 3.3 software which facilitates tracking of recruitment, coupon numbers, and respondent compensation. Each coupon had its unique code that linked participants to their recruiters. The eligibility screening and/or interview questionnaires elicited information on age, education, employment status, income, other demographics, social networking, sexual orientation, sexual behavior, in the prior 2 months with each partner type and focused on number of sexual partners, regular female or male partnerships, preference of oral, vaginal or anal sex, insertive or receptive intercourse, condom use, drug, and alcohol use. Network size was determined by responses in increasing order of preference to three social network questions on the social network questionnaire (1) “How many MSM or trans persons do you know who live in this city?” (2) “How many of these persons you know are over the age of 18 years?” (3) “How many of these persons over 18 years have you seen or spoken to in the last 30 days?”

Unadjusted sample proportions and measures of central tendency for continuous variables were calculated excluding nonrandomly sampled seeds. We used respondent-driven sampling analysis tool (RDSAT) version 6.0 to generate adjusted population proportions and 95 % confidence intervals, to estimate within-group recruitment (or homophily), and to calculate the number of waves required to reach sample equilibrium for key variables reported here. RDSAT population estimates adjust for each participant’s network size and differential recruitment patterns or homophily. Questionnaire and laboratory results were double-data entered into a FileMaker Pro database. Responses to eligibility criteria captured by interviewers were double-data entered into Excel 2007 spreadsheets. All data management and unadjusted analyses were performed with SAS 9.2 (SAS, North Carolina, USA).

Results

Recruitment Characteristics

Of the MSM recruited from three cities in Panama, the numbers of seeds and waves they generated varied by city. Six seeds in David, 9 seeds in Panama, and 6 seeds in Colon generated 22, 12, and 6 maximum waves, respectively (Fig. 1a–c); one seed in Panama was nonproductive. Seeds in Panama had the largest average network size (295.3, interquartile range/IQR 25.0–100.0) followed by Colon (46.7, IQR 20.0–80.0) while seeds in David had the smallest (21.7, IQR 12.0–30.0). Similar to seeds in

Panama, recruits also had the largest network size (mean, IQR: Panama 48.8, 4.0–20.0; David 18.6, 5.0–20.0; Colon 17.3, 4.5–20.0). Thirty-three percent of recruits who were issued coupons participated in the survey. All variables of interest met equilibrium in all three cities except for sex worker status in Colon; seven waves were needed for equilibrium to be reached while only six waves were attained in the longest chain (Fig. 1c). The final unadjusted analyses excluded the nonrandomly sampled seeds and included 204 recruits from David, 306 from Panama, and 93 from Colon for a total of 603 participants. Five recruits who presented to the study site were excluded from analysis for not having a coupon. Recruits reported "interested in this subject" as the most common reason for enrolling in the study (David 66.0 %, Panama 62.0 %, Colon 68.0 %) followed by wanting to know their HIV status (David 22.0 %, Panama 36.0 %, Colon 20.0 %) and if "I have sexually transmitted disease" (David 39.0 %, Panama 31.0 %, Colon 19.0 %).

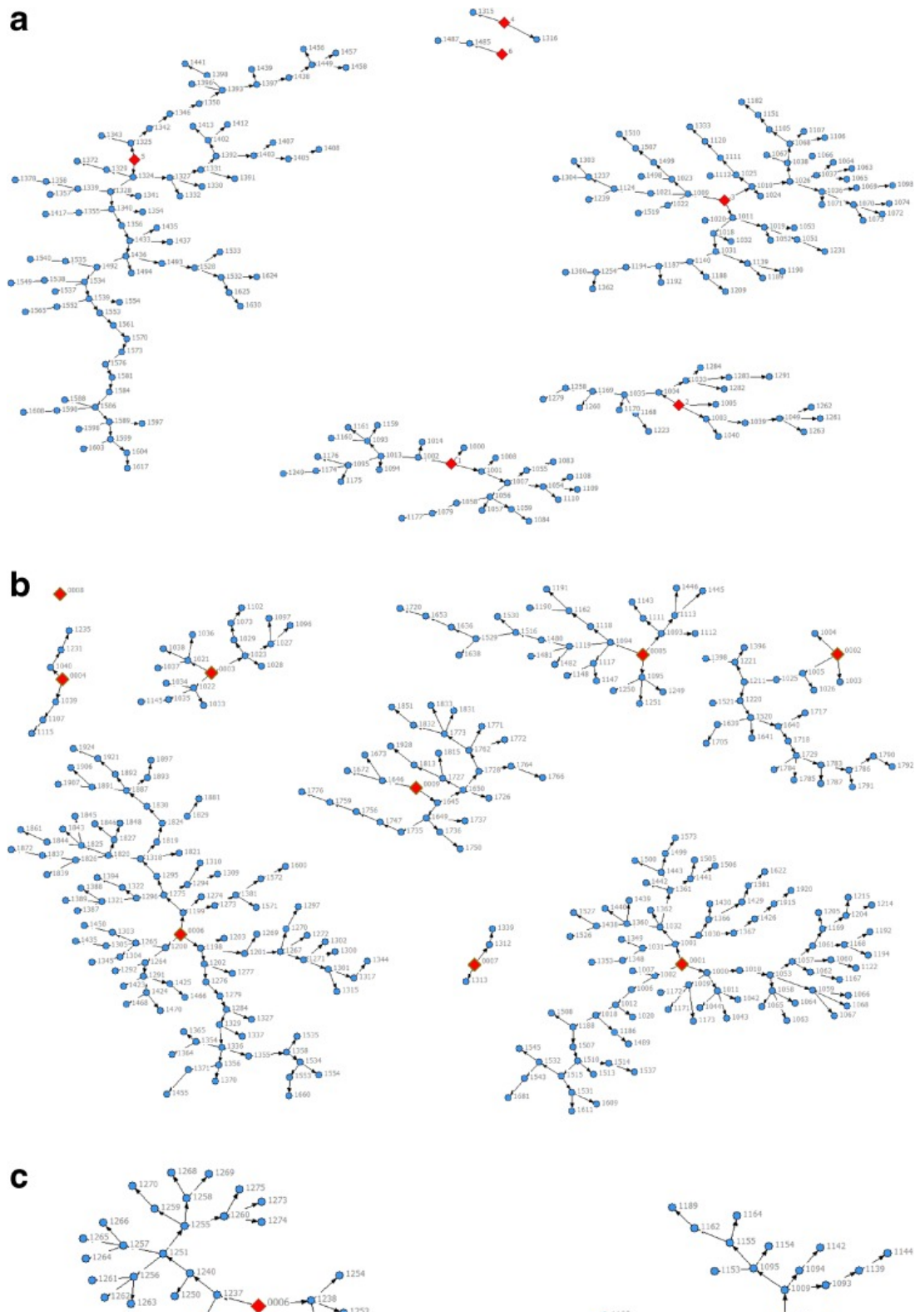

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FIG. 1

Recruitment chains among participants in David, Panama, and Colon. Nonrandomly sampled seeds are indicated as diamond shapes. Recruits are indicated as *circles*. **a** David. **b** Panama. **c** Colon.

RDS-Adjusted HIV, Syphilis, and Other Viral STI Prevalence

HIV prevalence varied by city, from the lowest of 6.6 % in David, 29.4 % in Panama to the highest of 32.6 % in Colon (Table 1). These differences were mirrored by active syphilis infection rates (David 16.0 %, Panama 24.7 %, Colon 31.6 %) and HSV-2 seropositivity rates (David 38.4 %, Panama 62.6 %, Colon 72.9 %) (Table 1). Hepatitis B infection prevalence was highest in Panama (3.4 %) whereas resolved HBV infection prevalence was highest in Colon (40.6 %) (Table 1). Only two recruits (0.8 %, 95 % C.I. 0.0–1.2 %) were HCV-seropositive and both were from Panama; RDSAT estimates could not be generated for David and Colon.

TABLE 1

Prevalence of HIV and other sexually transmitted infections among men who have sex with men from three cities, Panama, 2011–2012

Sexually transmitted infections	City									
	David, *N* = 204				Panama, *N* = 306				C	
	N	Unadjusted prevalence %	Adjusted prevalence %	(95 % C.I.)	*N*	Unadjusted prevalence %	Adjusted prevalence %	(95 % C.I.)	*N*	Unadjus prevale %
HIV										
Infected	16	8.0	6.6	(2.2–11.4)	76	25.0	29.4	(19.7–39.7)	32	34.0
Uninfected	187	92.0	93.4	(88.6–97.8)	230	75.0	70.6	(60.3–80.3)	59	63.0
Missing	1	0.0	–[a]	–[a]	0	0.0	–[a]	–[a]	2	2.0
Syphilis										
Infected	35	17.0	16.0	(8.9–24.2)	77	25.0	24.7	(16.7–32.9)	29	31.0
Uninfected	168	82.0	84.0	(75.8–91.1)	229	75.0	75.3	(67.1–83.3)	62	67.0
Missing	1	1.0	–[a]	–[a]	0	0.0	–[a]	–[a]	2	2.0
HSV-2										
Seropositive	74	36.0	38.4	(27.9–48.9)	182	59.0	62.6	(52.8–71.0)	63	68.0
Seronegative	129	63.0	61.6	(51.1–72.1)	123	40.0	37.4	(29.0–47.3)	28	30.0
Missing	1	0.5	–[a]	–[a]	1	0.3	–[a]	–[a]	2	2.0
HBV										
Infected	1	0.5	2.2	(0.0–4.7)	14	5.0	3.4	(1.3–6.3)	0	0.0
Resolved	19	9.0	10.0	(4.8–16.8)	86	28.0	29.4	(20.0–38.3)	30	32.0
Uninfected	183	90.0	87.8	(81.5–94.1)	206	67.0	67.3	(58.2–76.7)	61	66.0
Missing	1	0.5	–[a]	–[a]	0	0.0	–[a]	–[a]	2	2.0

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C.I. confidence interval

[a]Indicates no results were generated

RDS-Adjusted Sociodemographic and Behavioral Characteristics

A majority of MSM reported being single (76.8-87.6 %), employed (52.4-69.6 %), and of Panamanian nationality (96.8-99.9 %) (Table 2). Age, income, and education attained at the time of the survey differed by city (Table 2). Recruits from David were younger (median age 24 years, IQR 20–30 years), earned less (median income USD 300, IQR 75–416), and were more educated (over half had attended technical schools or university) whereas recruits from Colon were more similar to those from Panama in age (median age 26 years, Colon IQR 22–38, Panama IQR 22–32), income (median income (IQR), Colon USD 400 (250–700); Panama; USD 450 (IQR 300–700)), and education (attended/completed secondary school, Panama 55.6 %; Colon 53.4 %)(Table 2).

TABLE 2

Summary of sociodemographics and prevalence of sexual behaviors among men who have sex with men from three cities, Panama, 2011–2012

Characteristics	City							
	David, *N* = 204				Panama, *N* = 306			
	N	Unadjusted prevalence %	Adjusted prevalence %	(95 % C.I.)	*N*	Unadjusted prevalence %	Adjusted prevalence %	(95 % C.I.)
Sociodemographic								
Age								
24 or less	110	54.0	61.0	(47.8–69.3)	130	42.0	38.0	(28.2-47.4)
25–30	44	22.0	15.7	(9.5–24.9)	83	27.0	31.9	(23.1-41.0)
31+	49	24.0	23.4	(15.6–34.6)	92	30.0	30.1	(21.3-40.4)
Missing	1	0.0	–[d]	–[d]	1	1.0	–[d]	–[d]
Highest level of education								
Attended/completed primary	10	5.0	7.7	(2.3–13.7)	8	3.0	2.6	(0.3–6.6)
Attended/completed secondary	74	36.0	37.7	(28.1–51.1)	148	48.0	55.6	(46.1-65.1)
Technical/University	119	58.0	54.6	(41.7–65.7)	149	49.0	41.8	(32.4-51.9)
Missing	1	1.0	–[d]	–[d]	1	1.0	–[d]	–[d]
Marital status[a]								
Single	171	84.0	81.3	(71.9–89.6)	263	86.0	87.6	(80.7-93.2)
Nonsingle	32	16.0	18.7	(10.4–28.1)	41	13.0	12.4	(6.8–19.3)
Missing	1	0.0	–[d]	–[d]	2	1.0	–[d]	–[d]
Nationality[b]								
Foreign national	1	0.0	0.1	(0.0–0.1)	12	4.0	3.2	(1.0–6.2)

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C.I. confidence interval

[a]Nonsingle marital status included participants who were married, or divorced, or widowed, or cohabiting

[b]RDSAT estimates could not be generated since recruitment was from a single group

[c]Statistics are not presented for those who did not check the response

[d]Indicates no results were generated

While a majority of participants from the three cities self-identified as homosexual (49.8–55.8 %), at least a third in each city self-identified as heterosexual or bisexual (33.0–47.5 %)(Table 2). At least one among five participants (19.8–39.9 %) reported a sexual preference for both men and women or women only (Table 2). In each city, a majority of participants reported having had two or more sexual contacts with different persons within 2 months of the interview (3 cities, median, 2 (IQR1-3)). Up to three-quarters of participants (56.7–71.3 %) reported engaging in receptive anal intercourse with men. Less than half of participants in Panama and Colon, and a little over half in David, reported always using a condom for anal sex with men who were not regular partners. Self-reported prior sexual contact with person(s) from other countries was highest in Panama (46.4 %).

Discussion

We conducted a cross-sectional biobehavioral survey among MSM in the Republic of Panama and utilized respondent-driven sampling for recruitment in three cities over a span of approximately 6–12 months. Among the MSM in the three cities we surveyed who were young (median of 24–26 years), RDS-adjusted HIV, syphilis, and HSV-2 prevalences were high. We found HIV prevalence was 8–40 times higher than the 2011 overall estimate of 0.8 % among the general population in Panama aged 15–49 years, and considerably higher than an overall estimate of 8.9 % reported by the last study conducted among MSM in the cities of Panama and Colon, which used convenience sampling.[9] Syphilis infection rates, ranging from 16–32 %, were at least 16 times higher than the prevalence of approximately 1 % reported among MSM in the last study. A survey among another high risk group—female sex workers (FSWs) who were recruited by venue-based, time-space sampling in the three cities—revealed an HIV prevalence of 2–4.2 %.[9,18] HSV-2 seropositivity rates in Panama (62.6 %) and Colon (72.9 %) were higher than 44.3 % reported previously among MSM by Soto et al. Our survey among FSWs sampled from Panama and Colon in 2009–2011 revealed HSV-2 seropositivity rates of 71.2 and 76.7 %, respectively.[18]

Although estimates in populations generated by methodologically different surveys may not be comparable due to varying precision, HIV prevalence among MSM in two of the three Panamanian cities we studied ranked highest when compared to estimates from reporting countries in the Western hemisphere cited in the UNAIDS 2012 Global Report[8]; prevalence in Central American cities ranged from approximately 6–17 % and in South American cities from 9–20 %. In 2012, the highest prevalence among MSM in the range of 31–37 % was reported among Central African countries. Compared to other countries in the world, Panama is reported to provide good treatment coverage and moderately high levels of testing among MSM; of those eligible for treatment, 40–59 % were reported to have been receiving antiretroviral treatment at the end of 2011 and level of HIV testing among MSM was 50–74 % in 2011, a level comparable to the United States.[8] However, given the top reasons for participation in the survey, it is probable participants did not know their status. The high HIV rates we observed indicate young sexually active MSM populations in the three Panamanian cities continue to experience concentrated epidemics, defined as a prevalence >5 % in a high risk subpopulation and <1 % in the general population.[19]

Targeting HIV preventive efforts to high risk subpopulations is recommended for concentrated epidemics.[10] An understanding of the drivers of ongoing HIV transmission is necessary to design effective prevention programs. In this survey, 33–47 % who participated self-identified as heterosexual or bisexual despite having met the eligibility criteria of having had sex with a male within the previous 12 months. Other studies among MSM in the region have reported similar findings.[20,21] Creswell et al. in 2012 reported over 40 % of MSM self-identified as heterosexual or bisexual in a RDS study reporting adjusted HIV prevalences of 8.8 and 10.8 % in two cities of El Salvador.[20] Tabet el al. found

29.2 % of MSM in Peru self-identified as heterosexual or bisexual in a cross-sectional study which used snowball sampling for recruitment.[21] It is possible our findings reflect the discrimination MSM experience which may be associated with HIV transmission. Homophobia has been recognized as a driver of the HIV epidemic among MSM in that it prevents men from accessing HIV prevention programs such as HIV and STI testing, counseling, and free condom, mental health, and education services.[22] Future studies clearly are needed in order to define whether or not this is a specific driver of the epidemic in Panama.

At most, 55 % reported always using a condom for anal sex with nonregular partners. While Panama places in the upper third quartile for condom use among MSM among reporting countries in the world,[8] higher condom use among young MSM should remain a target for prevention programs to interrupt further secondary transmission of HIV and STI among this population and to prevent transmission to women. At least one in five participants reported having sex with men and women or women only. Furthermore, results of this survey indicate bridging to MSM from other countries; almost a quarter to half of participants in the three cities reported prior sexual contact with a person or persons from other countries. Phylogenetic analysis of HIV subtypes isolated from MSM and other risk groups recruited in prior and ongoing biobehavioral surveys may provide an understanding of the extent of connections within and between groups. However, prevention programs should continue to target increased HIV testing and more condom use among young MSM and their partners to decrease secondary transmission and decrease the potential for HIV transmission from MSM to other populations.

There were limitations to this survey. We did not elicit information as to whether participants who tested HIV positive in the survey had known their status nor did we estimate whether infections diagnosed in the survey were prevalent or incident. Consequently, it is difficult to determine whether high prevalence of HIV infection we observed were due to a high incidence from transmission among MSM who were unaware of their infection or good treatment coverage of HIV-positive individuals who were aware of their infection status and had been linked to care before participation in the survey. MSM who participated in this survey were young and sexually active. Our results may not be representative of older MSM who were not recruited by RDS perhaps due to factors such as a reluctance to disclose their behavior possibly from the prevalent stigma and discrimination against MSM in Panama,[5] knowing their HIV status, or being more established economically which precluded having time to participate in the survey, or being attracted by remuneration for participation. While RDS has been used widely for reasons of being an effective data collection method for inaccessible populations and being logistically easy to implement, estimates and confidence intervals generated from RDS have received criticism for not being representative of the target population and for being insufficiently precise.[23]

Our findings reveal several potential targets for preventive intervention programs. Prevalence of resolved or natural immunity to hepatitis B was comparatively lower in Panama and David and more than half of the participants we surveyed were HBV uninfected. These rates indicate an opportunity for intervention with HBV vaccination among MSM in these cities who are generally at higher risk of infection. A majority of participants reported interest in the survey as the primary reason for participation followed by HIV testing and wanting to know their STI status. Other preventive measures include increased sexual health programs for MSM which include HIV and STI testing and counseling, condom distribution, and risk reduction.

Conclusions

HIV prevalence was high among young sexually active MSM we surveyed in three cities in Panama. The HIV and syphilis epidemics are concentrated in men who have sex with men in these cities. Prevention programs should target increased testing and treatment for HIV and STI, condom awareness and use among MSM.

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Disclaimer

The views expressed are those of the authors and should not be construed to represent the positions of the Ministry of Health, Panama, the Instituto Conmemorativo Gorgas de Estudios de la Salud, or the U.S. Department of Defense.

Footnotes

SH and GA contributed equally to the manuscript

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Tab 10

Panama under pressure to make same-sex marriage legal after four years of delays (https://www.gaystarnews.com/article/panama-under-pressure-to-make-same-sex-marriage-legal-after-four-years-of-delays/)

03 JUN 2020

→ Panama is sandwiched between Costa Rica and Colombia which both now have marriage equality.

LGBT+ campaigners are calling for Panama to introduce marriage equality after stalling on the issue for four years.

Panama is now sandwiched between two nations which both have legal same-sex marriage. Colombia, to the south, passed its equal marriage law in 2016 (https://www.gaystarnews.com/article/colombia-legalizes-sex-marriage/). Meanwhile Costa Rica's first same-sex couples wed last month (https://www.gaystarnews.com/article/this-is-the-moment-the-first-lesbian-couple-married-in-costa-rica/).

Carlos González Ramírez, lawyer for Morgan and Morgan, is representing people in all four cases.

He said 'we have no explanation' why the cases have dragged on so long.

Meanwhile a decision by the Inter-American Court of Human Rights said all the court's member nations should allow same-sex marriage. However, Panama has still failed to act.

Iván Chanis is president of Panama human rights organization Fundacion Iguales, and an LGBT+ campaigner. He said (translated):

'Panama also damages its international image and international commitments regarding human rights.

'Following the decision of the Inter-American Court of Human Rights, both Ecuador and Costa Rica complied in recognizing civil marriages for same-sex couples. Panama stands out, but it does it in a negative way, by ignoring this decision.'

'Against God's plan'

Panama's LGBT+ campaigners have already had a long battle to try to secure marriage equality.

In 2004, the Asociacion Hombres y Mujeres Nuevos de Panama, proposed civil unions to give basic rights to same-sex couples in the country.

However, the Roman Catholic Church mounted a vicious campaign against the proposal. The church claimed the idea was 'against God's plan' and 'detrimental to the family'.

As a result, the proposal never went ahead.

Then, five out of seven candidates in the 2014 presidential election signed a document promising to protect the 'traditional family'.

It stated 'the country should guarantee freedom of religion' and change the law to ensure marriage is 'defined as the union of a man and a woman'.

In May that year, Panama banned same-sex marriage and said it wouldn't recognize such marriages from other countries.

Moreover, the National Assembly voted in 2019 to put a constitutional ban on marriage equality. It will have to vote on the issue again this year before putting it to a referendum.

Meanwhile, in 2016, a couple who had married abroad went to the Supreme Court to demand Panama recognizes their marriage.

Another lawsuit in March 2017 also appealed against Panama's law against same-sex marriage. And a lesbian couple joined the legal battle in 2018.

The court has agreed to hear the cases (https://www.gaystarnews.com/article/panama-activists-start-new-push-marriage-equality/) but has failed to take action.

One Supreme Court justice has published a draft ruling rejecting the cases (https://www.gaystarnews.com/article/panama-judge-rules-sex-marriage/). But the court subsequently withdrew that ruling. Lawyers expected it to rule again in December 2018 and have been waiting ever since.

Panama must follow court ruling and allow equal marriage

However, in the meantime, the Inter-American Court of Human Rights has ruled in favor of marriage equality (https://www.gaystarnews.com/article/costa-rica-marriage-equality/).

It's ruling covers all member states, including Panama, and has already led to Costa Rica equalising its marriage laws.

Isabel Saint Malo, was Panama's vice president at the time. She announced the country would fully abide by the ruling.

Moreover, the attorney general has announced that the country cannot ignore the court's ruling as it is fully binding on Panama.

But while the Supreme Court has indicated it will bear in mind the Inter-American court's decision, it has still not acted.

The court's unwillingness to rule on the case may be because Panama's people remain opposed to marriage equality.

Again the Catholic Church (https://www.gaystarnews.com/article/panamas-lgbti-rights-activists-protest-outside-church-during-popes-visit/) and other religious groups have led the way in whipping up opposition to equality.

But a 2017 poll showed 78% of Panamanians opposed same-sex marriage and only 22% support it. That's a figure that hasn't shifted since at least 2013.

The Inter-American Court's decision also applies to Barbados, Bolivia, Chile, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru and Suriname.

Meanwhile the court's other member countries Argentina, Brazil, Costa Rica, Colombia, Ecuador and Uruguay now offer same-sex marriage.

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Straight guys reveal the gayest experience they've ever had

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Jada Pinkett Smith Revealed How She Really Felt After Her Son's Sudden Decision

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Signs of Ankylosing Spondylitis Could Be Easy to Ignore. Research Ankylosing Spondylitis

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After Her Weight Loss, Celine Dion Confirm What We Knew All Along

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17 Actors You Didn't Know Were Gay - No. 8 Will Shock Women

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Tab 11

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TRANS

Transgender people in Panama alarmed by gender-based coronavirus quarantine rules

VIC PARSONS | APRIL 6, 2020

Police at Panama's 15th Gay Pride Parade in Panama City on June 29, 2019. (MAURICIO VALENZUELA/AFP/Getty)

Panama has brought in gendered social-distancing regulations to tackle the coronavirus crisis, causing alarm and dread for the trans community.

Under near-total lockdown Panama has already closed its schools and borders, with citizens allowed outside for two hours per day.

Under the new rules, implemented on April 1, men and women are only allowed out of the house on specific, separate days – and police are checking the gender on the ID cards of people on the streets.

LGBT+ rights organisations immediately warned that the new rules – which will remain in place until at least April 12 – would affect trans people.

Trans woman stopped by police and accused of not being a woman.

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The Association of New Men and Women of Panama, an LGBT+ rights organisation, said the measures had caused "dread".

"There are still police patrols who use the argument that God only created Adam and Eve," association president Ricardo Beteta told *AFP*.

"What does a transgender person do in this situation?"

These fears were immediately realised when – on the first day of the new gendered social-distancing rules – a trans woman called Bárbara Delgado was stopped by police on her way to work.

Police saw the male gender marker on her ID card and took her to the police station, where she was accused of not being a woman, held for three "humiliating" hours and then released with a fine, according to Human Rights Watch.

Panama only recognises trans people's gender after surgery.

In Panama, trans people can only change the gender marker on their ID documents if they can prove they have had gender-confirmation surgery.

Ali, a 25-year-old trans man and tattoo artist, has an ID card that still says he's a woman.

"My biggest fear, obviously, is the police, who aren't trained or sensitised to this subject and I don't know what attitude they will take with me," he told *AFP*.

"I'm 100 per cent sure I'll be stopped in the street and seeing as I don't fit the mould … I don't know if they'll be aggressive. That's what scares me," Ali added.

As of yesterday, Panama had 1,988 confirmed cases of COVID-19, with 54 deaths.

"No country will be fully prepared to fight the virus, if the population does not assume responsibility for protecting the individual and collective health of its inhabitants," the country's health ministry warned last week.

Under the lockdown rules, women are allowed to go shopping for food on Mondays, Wednesday and Fridays, while men are allowed to leave home and go shopping on Tuesdays, Thursdays and Saturdays. No one is allowed outside on Sundays in Panama.

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Tab 12

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COMMENTARY (/COMMENTARY)

How Panama Sits at World's Crossroads of LGBTQ Rights

LGBTQ people have little protection against discrimination under the law, and the police consider their existence a grave offense.

BY ADOLFO BERRIOS RIAÑO (/AUTHORS/ADOLFO-BERRIOS-RIANO)
NOVEMBER 01 2019 8:46 AM EDT

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Una versión en español de este artículo está disponible ***aquí*** *(https://www.advocate.com/commentary/2019/11/12/panama-un-pais-dividido).*

Indi Lucia can't use the women's bathroom. Last time she did, someone filmed her. A previous time, a coworker reported her to Human Resources. She is a trans woman in Panama, a nation that until 2008 considered "sodomy" a criminal offense.

ADVERTISING

Panama City faces the Pacific Ocean. Waves gently come into the bay area, crashing at the foot of monumental skyscrapers. Seen from above, dozens of ships freckle the seascape as they set course toward the Panama Canal. It will take them less than a day to complete their journey into the Atlantic Ocean and carry their wares to the other side of the world.

This is what my country is known for. A canal, a bridge between oceans, a point of transit and exchange. It is a diverse, vibrant country. It also has an extreme prejudice against LGBTQ people, especially transgender people. They are, in effect, second class citizens. Worse, the law supports this discrimination.

Panama, one of the most thriving economies in Central America, currently has some of the most backward legislation on LGBTQ rights in the continent. LGBTQ people have little protection against discrimination under the law, and the police consider their existence a

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It all starts with the Constitution. Panama's magna carta doesn't contemplate any specific protection for citizens with different sexual identities or orientation. The Family Code, a legal text that dictates family issues, specifically stipulates that marriage is the union between a man and a woman. So same sex marriage is illegal.

Adoption is also not an option for same-sex couples. In one case, a gay couple married overseas and adopted a child. They are fighting so their son can get Panamanian citizenship, since the law doesn't recognize them as his legitimate parents.

Right now, Panama is in the process of massive Constitutional reforms. Among the proposals is to incorporate the definition of marriage as solely the union between a man and a woman into the Constitution, not just the Family Code. Another would stipulate that International Law should never be considered superior to Panama's own laws.

This last bit comes from the fear by many conservative and religious groups that have observed the worldwide trend in which Supreme Courts of many countries such as the United States, Mexico and Colombia have ruled in favor of same sex marriage. There are three lawsuits before the Supreme Court in Panama regarding this very issue and a lot of anticipation about the final ruling.

Indi Lucia is a 3D animator and graphic designer working for La Cascara, a comedy tv show made up of skits about popular Panamanian tropes. Homophobic slurs are played for laughs. There are even sound effects to mock someone for being effeminate.

When she started working there, Indi Lucia used her birthname and hadn't started socially transitioning yet. "Locker room talk" was common, and it was not rare to hear jabs at her about some piece of clothing she was wearing, or the time she put on makeup to go to the office.

Finally, she told her boss, one of the biggest "jokers," that she was a woman and wanted to come to the office dressed as such.

The laughs stopped. Surprisingly, for all the poor taste jokes, her boss was supportive. But not everyone in the office was. Female coworkers complained to Human Resources about her using the bathroom, sneers and mocking laughs could be heard behind her back.

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Indi Lucia entered a room, silence ensued, followed by the buzz of gossip. There is barely any legal protection for Indi Lucia. Anti-Discrimination policies to protect LGBTQ people are left in the hands of each private company. If she tried to present a claim to the Labor Ministry, she'd have to provide ample documented evidence of blatant hate and discrimination. Most likely, a devout Catholic or Evangelical clerk would be responsible for accepting or dismissing the claim. It's a Sisyphean task, a seemingly pointless endeavor requiring immense strength and fortitude.

Discrimination routinely endangers the lives of LGBTQ people in Panama. Though there are no statistics regarding hate crimes, trans women femicides, sexual-identity-motivated rapes, or workplace harassment, there is plenty of testimony.

Venus Tejada, leader of the Panamanian Association of Trans Persons, has reported testimony about police officers using pepper spray against trans women on the streets. Some cases were documented on video and shared through social media. According to the official internal manual of the National Police, being homosexual is a "grave offense" that merits immediate employment termination. So, if Indi Lucia or any LGBTQ person in Panama feels unsafe, there is no guarantee they'd get help from the police. In fact, they may end up being sent arbitrarily to jail for temporary custody.

This is not a hypothetical. Less than a couple of months after starting her transition, Indi was harassed in a public bus, and even by an Uber driver who saw her as an opportunity to fulfill his sexual fantasy and explicitly told her so.

Where do you go when the police consider your existence a "grave offense"? Who do you turn to when the church points at you as a perverter of values and preaches your eternal damnation? When your government representatives bow down before of a cross and vow to protect "traditional families," where can you turn to safeguard your rights, your safety, your dignity?

The first question President Laurentino Cortizo was asked when he received the election results was whether he would stand by traditional families. He looked up, opened his arms toward his wife and daughters and replied: "Look at me. Laurentino Cortizo is a family man."

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She is a friend, a daughter, a hard-working, tax paying professional who every day makes Panama an amazing country, a bridge between worlds, between hearts. She deserves better.

Adolfo Berrios Riaño *is a Panamanian journalist working on Human Rights issues in Panama*

TAGS: COMMENTARY (/COMMENTARY)

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15 Gay Founding Fathers and Mothers

LATEST FROM PRIDE MEDIA

Tab 13

savannahnow
Savannah Morning News.

Homosexuality in Central America (Part One)

By By: Isaiah Singleton, Savannah State University

Posted Jul 31, 2018 at 1:24 PM
Updated Jul 31, 2018 at 1:24 PM

In February of 2008, Luis Alberto Rojas Marin's life changed forever.

According to CNN reporter, Marilia Brocchetto, the 26-year old Peruvian was arrested by police officers while heading home a little after midnight. During the six hours that he was detained, Luis reported that he was stripped naked, raped with a police baton and verbally assaulted by the officers simply because of his sexuality.

People across the globe face severe consequences including beatings, verbal and physical abuse, torture, and even death for embracing their sexuality. They face inequality and discrimination for how they look, who they love, and, in particular, because of who they are.

Although horrifying, Luis' case is not isolated. CNN reports that an estimated 600 people died across Central America from anti-LGBT violence in the 15 months between January 2013 and March 2014.

Al Jazeera journalist, Nina Lakhani, reported that, in 2015 Aldo Alexander Peña was brutally beaten on his way home after he marched in a Gay Pride parade in San Salvador, El Salvador.

Peña was born in a women's body but he was excited to march through the capital for the first time since taking male hormone therapy. Things took a turn for the worst when the bus driver would not stop at Peña's desired destination. They began arguing and the bus driver called the police.

According to Lakhani, Peña said "There were eight or nine national police officers waiting for me when the bus stopped. They wouldn't let me speak. They started insulting me, calling me a lesbian, and put me in a headlock."

Peña is an activist with the non-governmental organization (NGO)- El Salvador Generation of Transgender Men. Fortunately, another member of the activist group witnessed the beating and alerted others, who brought a lawyer and other representatives to the police stations. Unfortunately, by the time they arrived, Peña had been severely beaten. His eyes were bloodshot. Blood was coming out of his nose and mouth and he suffered a fractured eye socket and broken jaw.

In another case from Lima, Peru, 19-year old Joel Morelo's unrecognizable corpse was found in a ditch on November 22, 2013. His throat had been cut. His fingers, toes, and genitals were sliced off, and his remains were stuffed into a straw mattress, then set on fire. Police were only able to identify him by his bracelet.

These stories illustrate the extreme dangers that Latino lesbians, gays, bisexuals, and transgenders face on a daily basis.

Central America is composed of seven countries- Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Guatemala, and Belize. This region has some of the world's highest rates of violence against the LGBT community. But, ironically, it also has some of the most progressive laws promoting LGBT equality and protection. Gay rights include, but are not limited to, same-sex marriage, same-sex adoption, and sexual/romantic relationships.

Although LGBT persons may experience certain legal issues that their non-LGBT counterparts do not face, same-sex relationships are legal in Panama. Homosexuality was legalized in July of 2008 following the repeal of a 1949 law that prohibited it.

Before the law was repealed, same-sex couples faced from three months to a year in prison plus a fine of $60-$500 fine.

Even though the gay community in Panama is growing, gays do not have official rights, which means that same-sex relationships, marriages, and civil unions are not recognized by the government. This makes homosexual couples ineligible for certain protections and civil rights enjoyed by heterosexual couples.

Only about 12 percent of Panamanians support the legalization of same-sex marriage according to blogger, Omar Fuentes, who runs the blog, Casa de Montana.

According to CNN's Brocchetto, "while many LGBT rights in the United States are tied up in legal wrangling in individual states, in Latin America, laws about same-sex marriage and adoption, changing gender on national ID cards, and anti-discrimination laws all went into effect in the past decade- many of them before the US Supreme Court legalized same-sex marriage."

Born and raised in Panama City, Panama, Ricardo Beteta Bond, 59, has experienced a lifetime of discrimination and violence because of his sexuality. For the last fourteen years, Bond has been a Human Rights Activist in Panama fighting for equality and social justice.

"When I was a child, I was very subjective (about gender)," said Bond. "When I

was a teenager, I used to dance in ballet. This created a lot of issues in my family, at school, and even my neighborhood. I was bullied several times and raped twice."

Along with the physical threats, Bond has also been exposed to verbal abuse via social media.

"It is not easy," Bond said. "14 years ago, I decided that enough was enough and became an activist fighting for social justice and gay rights. People are afraid. They have a reason to be afraid because we have no protection under the law."

Bond runs a Gay, Lesbian, Bisexual, and Transgender (GLBT) organization called, "Asociación Hombres y Mujeres Nuevos de Panamá (AHMNP)" or the Association for New Men and Women of Panama GLBT which was founded in 1996. In 2008, this group convinced the former Panamanian President, Martín Erasto Torrijos, to sign the Presidential Decree No. 332 which repealed the anti-homosexuality laws enacted in 1949. It also established the legal age of consent at 18.

AHMNP became the first nationally recognized GLBT organization in Panama.

"We are the first ones to be legalized in Central America because, before us, many organizations would hide under the assumption that they were (health) organizations that fought HIV/AIDS because they could not become legalized as a GLBT organization," Bond said. "This debate went on for about five years while the authorities argued that our organization of homosexuals was detrimental to the morals and values of the society."

This legalization made it possible for AHMNP to conduct the first study of HIV in Panama among gay men which linked the prevalence of the disease to the stigma of homophobia and a lack of medication.

"When we did the second study of HIV prevalence, we found out that in less than nine years, HIV prevalence in gay men has gone from 10.6 percent to 23 percent," Bond said.

HIV (Human Immunodeficiency Virus) attacks the immune system. AIDS (Acquired Immune Deficiency Syndrome), which is not a virus, refers to a variety of symptoms caused by HIV. Homophobia or the irrational hatred, intolerance, and fear of lesbian, gay, bisexual, and transgender (LGBT) people has a huge connection to HIV/AIDS.

Worldwide HIV outbreaks has always been linked to negative attitudes towards the LGBT community, especially targeting men who have sex with other men (MSM) and are affected by both diseases.

The LGBT community has experienced specific barriers to treatment including violence, human rights violations, stigmas, and discrimination. Social homophobia, which is the criminalization of same-sex relationships or gender impersonation, prevents the LGBT community from having full access to vital HIV prevention measures such as testing, treatment, and care services. As a result, some people infected with HIV remain undiagnosed or are diagnosed later after HIV has become more aggressive and harder to treat.

According to AVERT, a charity geared towards sharing important HIV/AIDS information, "Research has shown that men who have sex with men may exhibit less health-seeking behavior and have greater levels of depression, anxiety and substance misuse because of the stigmas they face."

As a result, AHMNP presented a complaint to the United Nations Human Rights committee that the Panamanian government was violating its right of free assembly. Also, other international health organizations wanted to study HIV prevalence in Panama but, because of homophobia, the police would not allow it.

"The national authorities do not recognize our population," Bond said. "We have problems with the national police where they enact social cleansing. You cannot even walk around the street holding hands or kissing in public."

The Panamanian National police force, who act as the official law enforcement arm of the government, has a chapter in its bylaws prohibiting members of the GLBT community from joining their ranks.

Most police officials are either evangelicals or pastors, so the question of protecting the morals of the Panamanian society is geared "to police and tourists who are more exposed to that kind of atmosphere," Bond said. "This worries me because some people come to Panama because it is characterized as being gay-friendly."

According to Bond, politicians in Panama seek to inhibit gender ideology by promoting the idea that the LGBT community wants to harm the country and erode "family moral values". He continues, "I do not think it's fair to the country, the activists, or to the tourists who come to Panama."

Gay Pride month is celebrated each June. In Panama, there are a number of pride events and marches throughout the month. AHMNP was the first organization to create a gay pride parade in Panama but Bond said the celebration of Pride month in Panama was not created for the gay community living there, but for tourist visitors.

"There's this group that wants to make Casco Viejo, which is the most expensive

part of town with all the expensive restaurants and bars, for tourists," he said. "A lot of people from Panama cannot afford to go to Casco Viejo."

He also said there are people in Panama who want to sell tourist packages to Americans, especially when bars and clubs are depicted as "gay-friendly" when they really are not. "Americans tend to believe this and come to Panama only to be detained while showing public displays of affection such as holding hands and kissing."

(The second part of this story will be continued next month.)