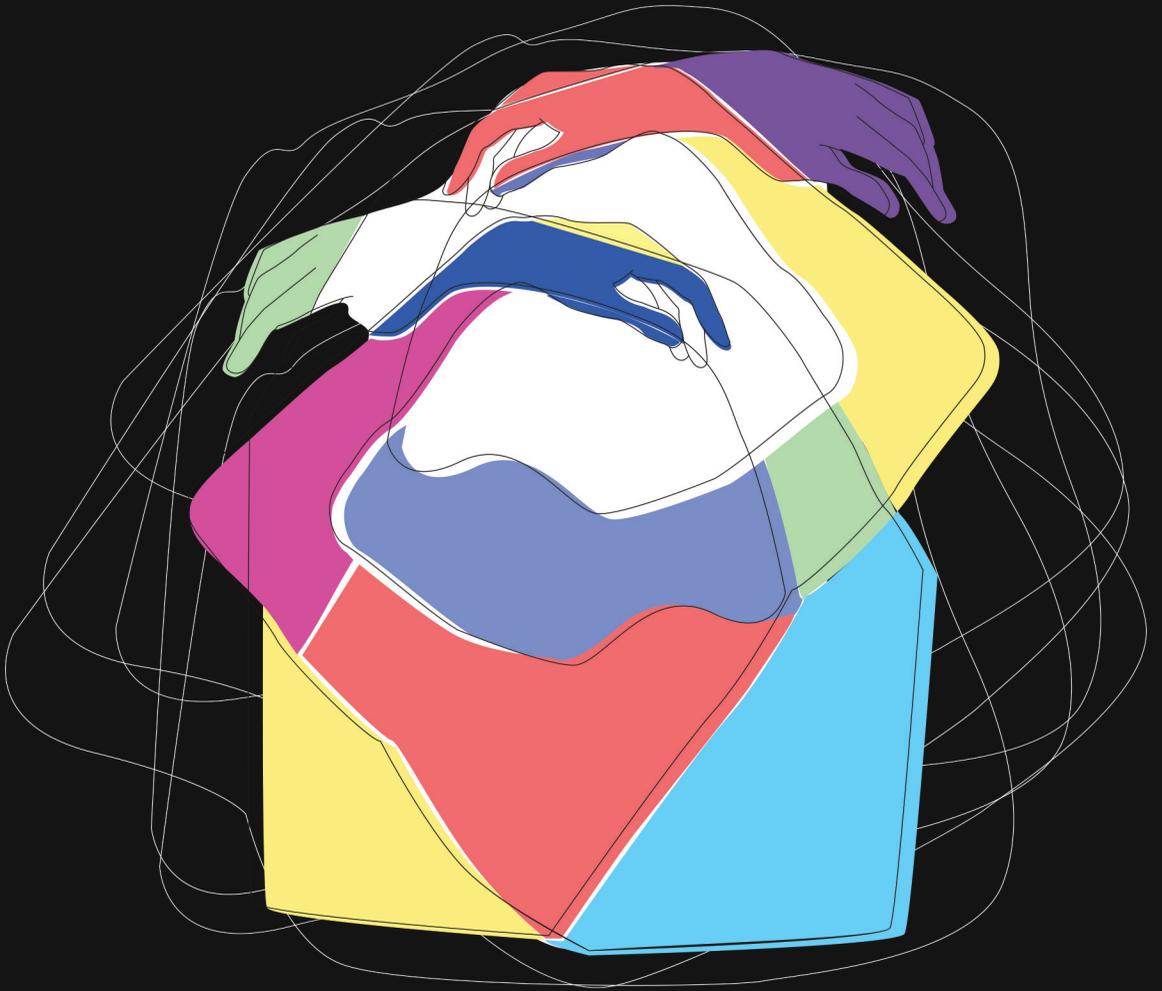
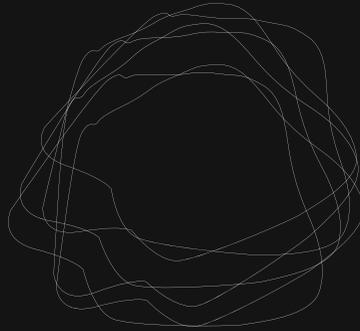


# Recognition of the Rights of LGBTI Persons



**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 LGBTBI 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.

Cover design: **Pigmali3n / IACHR**

OEA/Ser.L/V/II.170

Doc. 184

7 December 2018

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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

### **OAS Cataloging-in-Publication Data**

Inter-American Commission on Human Rights.

Advances and challenges towards the recognition of the rights of LGBTI persons in the Americas : approved by the Inter-American Commission on Human Rights on December 7, 2018.

v. ; cm. (OAS. Official records ; OEA/Ser.L)

ISBN 978-0-8270-6865-0

1. Human rights. 2. Gays rights. 3. Transsexuals. 4. Sexual minorities--Civil rights.

I. Title. II. Series.

OEA/Ser.L/V/II.170 Doc.184

OEA/Ser.L/V/II.170 Doc. 184

# **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

## **Members**

---

Margarette May Macaulay

Esmeralda Arosemena de Troitiño

Francisco José Eguiguren Praeli

Luis Ernesto Vargas Silva

Joel Hernández García

Antonia Urrejola

Flávia Piovesan

## **Executive Secretary**

---

Paulo Abrão

Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation

---

María Claudia Pulido

Chief of Staff of the Executive Secretariat of the IACHR

---

Marisol Blanchard Vera

Approved by the Inter-American Commission on Human Rights on December 7, 2018

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b>	9
<b>CHAPTER 1   INTRODUCTION AND METHODOLOGY</b>	17
<b>CHAPTER 2   INTER-AMERICAN STANDARDS ON THE RIGHTS OF LGBTI PERSONS</b>	25
<b>CHAPTER 3   RECOGNIZING THE RIGHTS OF LGBTI PERSONS: TOWARDS A COMPREHENSIVE PROTECTION</b>	33
<i>A. Data Collection: Making Rights Effective</i>	34
<i>B. The Consolidation of a Culture of Rights through the Need for Awareness Raising and Cultural Changes in Society at Large</i>	40
<i>C. Protection and Empowerment of LGBTI Persons with Regard to their Identity</i>	48
<i>D. The Right to Democratic and Political Participation</i>	64
<i>E. Right to Education</i>	70
<i>F. Right to Health</i>	80
<i>G. Personal Security</i>	85
<i>H. Access to Justice</i>	94
<i>I. Access to and Control of Economic Resources</i>	101
<b>CHAPTER 4   PERSISTENT CHALLENGES TO THE RECOGNITION OF THE RIGHTS OF LGBTI PERSONS IN THE REGION</b>	117
<b>CHAPTER 5   CONCLUSIONS AND RECOMMENDATIONS FOR THE EFFECTIVE PROTECTION OF THE RIGHTS OF LGBTI PERSONS</b>	127
<i>A. Recommendations</i>	129



# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. In recent years, the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission”, “Commission” or “IACHR”) has monitored the situation of the rights of persons with diverse or non-normative sexual orientations, gender identities and expressions, or whose bodies vary from the female/male body standard. During this period, the Commission learned about the challenges faced by lesbian, gay, bisexual, transgender and intersex (hereinafter “LGBTI”) persons in the Americas and, above all, the alarming reality of widespread violence against them. The IACHR, in addition to drawing attention to structural prejudice and discrimination in the societies of the region, also made a series of recommendations to the Member States of the Organization of American States (“OAS”), with the aim of protecting the physical and psychological integrity of LGBTI persons and promoting the recognition of their rights.
2. Three years after the launch of the report on *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015)<sup>1</sup>, the Inter-American Commission notes that the various types of physical, psychological and sexual violence identified in the region continue to be present. At the same time, the IACHR recognizes important changes in favor of the protection, recognition and guarantee of the rights of LGBTI persons in various countries of the hemisphere. These changes, which are taking place through legislative processes, judicial decisions and public policies, translate into greater recognition of the rights of LGBTI persons and advance the agenda of equality, inclusion and non-discrimination, ensuring that these persons live their lives free from all forms of violence, terror and suffering.
3. In this regard, the Inter-American Commission decided to draft this new report which combines the interdependence and universality of human rights with the vision of comprehensive safety aimed at LGBTI persons, a vision which includes not only protection against physical, psychological and sexual violence, but also the possibility for them to plan and strengthen their individual capacities. The new report contains guidelines for building a more just and inclusive society, with respect for sexual orientation, gender identity - real or perceived - and body diversity, based on the recognition of

---

<sup>1</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OEA/Ser.L/V/II.154, doc. 19, November 12, 2015.

specific rights that effectively embody the recognition of comprehensive protection and the guarantee of the right to a life in which LGBTI persons have the possibility of carrying out their life plans with full autonomy and respect for their will.

4. In the first two chapters, the Commission summarizes the standards on the rights of LGBTI persons and the progress made in relation to the recognition of the rights of people whose sexual orientation, real or perceived gender identity, and body diversity challenge the heteronormative and cisnormative<sup>2</sup> pattern of societies. However, the Commission considers that this recognition is not sufficient in areas in which the effective and practical application of these rights in people's lives is not verified. Within this framework, the Inter-American Commission calls upon all OAS Member States to respect and apply the standards contained in Advisory Opinion No. 24/17 of the Inter-American Court of Human Rights, referring to the right of persons to have their self-perceived gender identity recognized and to the rights of LGBTI persons to equal marriage.
5. The third chapter focuses on the comprehensive protection of the rights of LGBTI persons. In this regard, the IACHR has noted that, although various forms of discrimination and human rights violations against LGBTI persons continue to exist, various developments have taken place in the region in recent years for the benefit of this group. Such progress has been achieved through public policies, judicial decisions and draft laws, which have different levels of implementation in the different countries of the hemisphere. In particular, this report compiles the information received on data collection, the rights to democratic and political participation, education, health, personal security, access to justice and economic well-being. Although not exhaustive, these thematic points contain practices to guarantee existing rights in the different areas of the lives of LGBTI persons.
6. In the opinion of the IACHR, the lack of effectiveness of many measures adopted by States is mainly related to shortcomings in the design, elaboration and implementation of such measures, as well as the absence of effective mechanisms for evaluating them. For more effective progress in the protection of the rights of LGBTI persons, the Commission stresses the crucial importance for States to develop adequate data collection mechanisms with particular attention to the disaggregation of data regarding persons belonging to the acronym LGBTI, as well as taking into account the specific types of vulnerability to which they are subject. Furthermore, the IACHR recommends that States promote a culture of rights to combat social and cultural prejudices rooted in the societies of the

---

<sup>2</sup> For the definitions of heteronormativity and cisnormativity given by the see IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 31.

American continent and continue to develop comprehensive protection of the rights of LGBTI persons.

7. Among the comprehensive protection measures - despite the fact that the adoption or modification of legislation in itself does not necessarily result in the establishment of conditions that guarantee the free and full exercise of the human rights of LGBTI persons - the IACHR has received information on various measures adopted by the States of the region that guarantee the protection of the right to identity and the recognition of sexual orientation, gender identities - real or perceived - and gender characteristics different from those accepted by society. The Commission recommends to States that the recognition of the gender identity of all persons should be based on informed consent - without requirements that may amount to pathology - and should be rapid and effective.
8. The IACHR also received information on good practices in the region concerning the democratic and political participation of LGBTI persons. The IACHR believes that the effective participation of LGBTI persons is essential to ensure the effectiveness of legislation, policies and programs aimed at improving the conditions for the full enjoyment and exercise of their human rights. One of the most positive ways in which the IACHR considers that States can promote the democratic participation of LGBTI persons in state actions is through their effective participation in the areas and decision-making bodies of the respective public policies, in order to ensure that their own vision is considered with respect to inclusion and respect for their rights.
9. The IACHR has also been informed of various measures taken by the States of the region with a view to guaranteeing the full development of the personality of LGBTI persons and recognizing their right to participate effectively in a democratic and pluralistic society through the right to inclusive and non-discriminatory education. However, the IACHR notes with concern the persistence of violence and discrimination against LGBTI students and professionals in the education sector, and the need to establish effective prevention, protection and reporting mechanisms. In this regard, the IACHR urges States to assume their role as guarantors of a society free of all forms of prejudice, discrimination and violence, and to undertake efforts aimed at the development of an adequate educational project in formal educational settings, while at the same time promoting a process of cultural change in all sectors of society in general.
10. In relation to the right to health in the report, the IACHR has systematized the information received on measures adopted in some States of the region, including those aimed at guaranteeing comprehensive access to health for LGBTI persons and special care for trans and intersex persons. In addition,

the Commission notes that several countries submitted information on the recognition of the right to health solely or principally linked to the issue of the Human Immunodeficiency Virus (hereinafter "HIV"). In this regard, the Commission warns that it is not "being LGBTI" that facilitates HIV infection; on the contrary, it is the discrimination and vulnerability faced by the LGBTI population that makes them more vulnerable to contamination. The IACHR urges States to design and implement comprehensive measures to guarantee the right of LGBTI persons, or those perceived as such, to access to health services without being subjected to discrimination or violence.

11. With regard to personal security, the IACHR remains concerned about the high levels of violence against LGBTI persons in the region, or those perceived to be so, as well as the lack of an effective state response to this problem. Nevertheless, in the report the Commission recognizes that several OAS Member States have adopted measures to address violence against LGBTI persons, based on an understanding that such violence is social and contextualized, and that the motivation of the perpetrators is complex and multi-causal, and that these are not individual or isolated situations. In this sense, several States in the region have adopted legislation that specifically criminalizes targeted violence against LGBTI persons, or that establishes aggravating circumstances for crimes committed against this population. The IACHR reiterates the importance that the States of the American continent undertake efforts towards the realization of the recommendations issued by the Commission on violence against LGBTI persons.
12. Access to justice for LGBTI persons on the continent continues to face major barriers and challenges, but some States have put forward measures to change this situation. One of the concrete measures that States in the region are taking in order to provide an effective judicial response to violations of the human rights of LGBTI persons is the creation of specialized investigation units and the training of officials of the justice administration system. However, the Commission warns that raising the awareness of justice officials is only an initial step towards effective access to justice for LGBTI persons, which depends on the existence of rapid and effective remedies, the creation and practical application of specific protocols for due action, as well as serious and impartial investigations. Consequently, in this report, the IACHR urges States to act with due diligence to prevent, investigate, prosecute, punish, and redress human rights violations perpetrated by state or private actors against LGBTI persons, through comprehensive and effective measures that promote rigorous investigation and ensure effective access to justice for LGBTI persons, particularly those subjected to acts of violence and discrimination.
13. Finally, with regard to the recognition of the rights of LGBTI persons, the IACHR has addressed the measures taken by States to ensure access to and

control over economic resources. The Commission has emphasized that the discrimination affecting LGBTI persons in the societies of the region places them in a cycle of exclusion that tends to culminate in poverty due to lack of access to services, opportunities and social benefits. In order for people to have access to and control over economic resources, the IACHR urges States to adopt comprehensive measures to effectively address discrimination and violence faced by LGBTI persons living in poverty, and to continue to dedicate efforts and resources to eradicate poverty.

14. Given the importance of contextualizing the effective measures vis-a-vis the recognition of rights identified in this report, in the overall situation affecting LGBTI persons, Chapter IV observes and analyses the challenges that continue to impede the full exercise of their rights. Although progress has been identified in relation to the protection of LGBTI persons in the region on a number of aspects, the IACHR has expressed its concern at the persistence of challenges in the recognition these rights. The Commission recalls that there are still States on the continent that criminalize consensual relations between adults of the same sex and the use of clothing socially attributed to another gender. In this regard, while the IACHR recognizes the general lack of implementation of these laws, the Commission reaffirms that their mere existence fosters a culture of violence, hostility, discrimination, and grave violations of rights. The Commission regrets that these laws remain in force in violation of States' international obligations regarding the right to equality and non-discrimination, and urges States to review existing norms and repeal or render ineffective legal provisions that constitute discrimination on the basis of sexual orientation, gender identity, gender expression, or body diversity.
15. Finally, the IACHR expresses its concern about the expansion of anti-LGBTI rights sectors in the region, including within the powers of the State, which translates into the adoption of laws and other state measures contrary to the rights of LGBTI persons. Likewise, the Commission also notes with caution the proliferation of disinformation campaigns and demonstrations promoted by sectors opposed to the recognition of the rights of LGBTI persons throughout the continent.
16. Likewise, the IACHR recognizes the importance of the progress highlighted in this report. However, it urges States to act with due diligence to prevent existing challenges from resulting in incomplete protection of the rights of LGBTI persons in the region. In this regard, at the end of this report, the Commission will issue recommendations to OAS member states regarding the comprehensive protection of persons of sexual orientation - real or perceived - gender identity, or body diversity in the hemisphere.



CHAPTER 1  
INTRODUCTION AND  
METHODOLOGY



## INTRODUCTION AND METHODOLOGY

17. The Inter-American Commission on Human Rights has recognized that people with diverse or non-normative sexual orientations, gender identities and expressions, or whose bodies vary from the binary female and male body standard, live in contexts where physical, psychological, and sexual violence is common, where their political incidence is low, where their claims to justice face a framework of impunity, and where they are confronted with “barriers to having adequate access to health, employment, justice, and political participation”.<sup>3</sup>
18. The Commission has also noted that, in the Americas, violence, prejudice, stereotyping, and intolerance prevent lesbian, gay, bisexual, transgender and intersex (hereinafter LGBTI) persons from fully exercising their human rights and from developing their life plans with autonomy, dignity, and freedom from all forms of discrimination. Indeed, the IACHR considers that the lack of recognition and subsequent human rights violations perpetrated against LGBTI persons have specific and negative repercussions on the enjoyment and exercise of all their human rights, including their civil, political, economic, social and cultural rights.
19. In its Report on *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015), the IACHR determined that “wide-spread discrimination and intolerance regarding diverse sexual orientations, gender identities, gender expressions and persons whose bodies defy socially body presentations”; and that States, “through their action and inaction, enable this discrimination and intolerance, and in some instances even fuel it.”<sup>4</sup> International norms and standards require States to make efforts to guarantee and respect the rights of LGBTI persons in an integral and indivisible manner, considering in an articulated manner the universality of the rights inherent to all human beings.
20. At the same time as the situation of human rights violations against LGBTI persons and the subsequent impunity for perpetrators has been confirmed,

---

<sup>3</sup> IACHR, Press Release No. 115/11, “[IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons](#)”, November 3, 2011. See also IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 517-518.

<sup>4</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 517.

the Inter-American Commission is also aware that in recent years there have been a number of developments in the Americas with regard to the recognition of the rights of LGBTI persons,<sup>5</sup> and has highlighted an “increasing number of public policies and other measures, [...] that have been adopted in the past ten years by OAS Member States in favor of LGBTI persons”,<sup>6</sup> which is an important tool for the full protection of people of sexual orientation and gender identity - real or perceived – diverse or non-normative, or whose bodies differ from the binary pattern accepted by societies.

21. In view of the above, the IACHR considered it necessary to prepare a new report on the subject of the rights of LGBTI persons, which analyzes the recognition given to the rights of these persons in the light of legislative actions, judicial decisions, policies and programs adopted by the States of the region to date, to recognize, respect and guarantee their human rights. In this sense, the Commission has undertaken to carry out this analysis guided by various perspectives. A fundamental perspective is the indivisibility and interdependence of civil, political, economic, social and cultural rights,<sup>7</sup> and the holistic nature of State interventions in this area, considering the particular risks faced by LGBTI persons in exercising all their human rights,<sup>8</sup> as well as intersectionality with other criteria such as ethnicity, sex, gender, race and socio-economic status.
22. A second perspective is guided by the principle of human security developed by the United Nations Organization (“UN” or “United Nations”), which consists of “the right of people to live in freedom and dignity, free from poverty and despair [... recognizing] that all individuals, in particular those vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential”.<sup>9</sup> In this regard, the Inter-American Commission considers

---

<sup>5</sup> See inter alia, IACHR and I/A Court H.R., First Forum of the Inter-American Human Rights System. Discussion Panel “Progress and setbacks in the protection of the rights of LGBTI persons in the Americas”, held on December 4, 2017, at OAS Headquarters, Washington, DC; IACHR, Press Release No. 28/2017, “[IACHR Hails Regional Progress on Human Rights of LGBTI persons in the Americas](#)”, March 10, 2017; and IACHR, Press Release No. 116/2016, “[IACHR Welcomes Progress on Human Rights of LGBTI Persons](#)”, August 16, 2016.

<sup>6</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 429. For some measures previously highlighted by the IACHR, see the same document, for example, paragraphs 412, 419-421, and 430-432.

<sup>7</sup> IACHR, [Report on Poverty and Human Rights in the Americas](#), September 7, 2017, para. 3.

<sup>8</sup> It is also important to take into account the connection of this report with the strategic objectives of the IACHR in a comprehensive manner. In this sense, this report is linked to Strategic Objective SO3 of Strategic Plan 2017-2021 (IACHR, [Strategic Plan 2017-2021](#), March 20, 2017, p. 65); and to the Sustainable Development Goals (or Agenda 2030) of the United Nations ([Agenda 2030](#), adopted on September 25, 2015, which includes a set of global goals to eradicate poverty, protect the planet, and ensure prosperity for all, with specific goals to be achieved in 15 years, i.e., by 2030).

<sup>9</sup> United Nations, [Resolution adopted by the General Assembly 60/1. 2005 World Summit Outcome](#), October 24, 2005, para. 143.

as a central idea that it is essential to “protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment”,<sup>10</sup> without any distinction based on gender, race, ethnicity, age, religion, creed or sexual orientation, gender identity or expression, or gender characteristics. Thus, from a human security perspective, the IACHR will seek to analyze the main elements that make up the life project of an LGBTI person and the institutional measures that are necessary to exercise and support the advancement of these rights.<sup>11</sup> The concept of human security is also useful to promote not only the protection, but also the effective participation of LGBTI persons, through their empowerment, or development of emancipation potential, in the design of legislation, public policies and programs aimed at improving the conditions for the full enjoyment and exercise of their human rights, and the realization of their life projects.

23. In this context, therefore, the central purpose of this report is to follow up on the Inter-American Commission’s Report on *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015) by analyzing national experiences and identifying the effective recognition, enjoyment and exercise of the human rights of LGBTI persons. These measures, however, have also produced a strong reaction from sectors opposed to the guarantee and recognition of rights in the States of the region, intolerant movements that continue to constitute a major obstacle to the protection and guarantee of human rights in general, and of LGBTI persons in particular. The influence of these groups has led to clear setbacks in the rights of LGBTI persons through legislative initiatives that seek to prohibit, criminalize and/or penalize people on the basis of their sexual orientation, gender identity - real or perceived; or whose bodies challenge socially accepted characteristics,<sup>12</sup> exposing them to a continuum of violence and exclusion.
24. In addition, the IACHR will examine current state actions in the Americas from a gender perspective and the forms of discrimination and stereotypes that have contributed to the inferior treatment of LGBTI persons in their societies, and the intersection of factors such as sex, ethnicity, race, age, and economic status as determinants for the enjoyment and exercise of their human rights. Considering these perspectives, the report will promote

---

<sup>10</sup> Inter-American Institute of Human Rights (IHR), [Human Security in Latin America](#); citing United Nations, Commission on Human Security, [Human Security Now](#), 2003, p. 4.

<sup>11</sup> United Nations, [Human Security in Theory and Practice](#), 2009, p. 12.

<sup>12</sup> See, inter alia, IACHR and I/A Court H.R. First Forum of the Inter-American Human Rights System. Roundtable discussion “Gains and setbacks in protecting the rights of LGBTI persons in the Americas”, held on December 4, 2017, at OAS headquarters, Washington, DC; IACHR, Press Release No. 37/2017, “[IACHR Condemns Alarming Numbers of LGBTI Killings in the Region So Far this Year](#)”, March 23, 2017; and IACHR, Press Release No. 33/2017, “[IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States](#)”, March 15, 2017.

recommendations for state action to ensure not only the full respect and guarantee of the human rights of LGBTI persons, but also their personal development, their equal inclusion in society, and the possibility of free and informed decision-making on all aspects of their lives and future.

25. Therefore, this report on the *Recognition of the Rights of LGBTI Persons in the Americas* will identify important actions by the American States to effectively and practically guarantee the rights of LGBTI persons, as well as the main challenges faced in the recognition of their rights, and will analyze them in the light of the Inter-American human rights instruments, as well as from the perspective of indivisibility and interdependence of human rights. The report will conclude with recommendations to OAS member states to promote the adoption of legislation, public policies, and programs aimed at the comprehensive protection of LGBTI persons in line with the international obligations assumed by the American States.
26. In terms of methodology, the information presented in this report is based on primary and secondary sources. With respect to primary sources, the Inter-American Commission has received information from States, civil society and specialists in the field, through the various activities carried out in the discharge of its mandate, such as, for example, public hearings and working meetings held before the Commission, as well as through the system of cases and precautionary measures, and other related activities.
27. For the preparation of this report, on August 16, 2017, the IACHR published a consultation questionnaire on “Progress and constructive efforts in respecting and guaranteeing the rights of LGBTI persons in the Americas”, which was sent to all OAS Member States, and to the network of civil society contacts and human rights specialists maintained by the Commission.<sup>13</sup> Fourteen States responded to the questionnaire: Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Peru.<sup>14</sup> The IACHR received contributions

---

<sup>13</sup> IACHR, [Questionnaire for the Report on the progress and the constructive efforts regarding the respect and the guarantee of the rights of LGBTI persons in the Americas](#).

<sup>14</sup> Response of Argentina. Notes No. 193, 196 and 207 of the Permanent Mission of Argentina to the OAS, of September 15, September 20, and October 11, 2017, respectively; Response of Belize. Note from the Ministry of Foreign Affairs, October 13, 2017; Response of Bolivia. Notes by the Permanent Mission of Bolivia to the OAS, September 14-15, and October 11, 2017; Response of Brazil. Note No. 244 of the Permanent Mission of Brazil to the OAS, October 12, 2017; Response of Colombia. Note No. 1044 of the Permanent Mission of Colombia to the OAS, November 1, 2017; Response of Costa Rica. Note from the International Affairs and Cooperation Unit of the Office of the Ombudsperson, October 4, 2017; Response of Ecuador. Note No. 4-2-243-2017 of the Permanent Mission of Ecuador to the OAS, October 16, 2017; Response of El Salvador. Note No. 071/2017 of the Permanent Mission of El Salvador to the OAS, October 2, 2017; Response of Guatemala. Note by the Permanent Mission of Guatemala to the OAS, September 14, 2017; Response of Honduras. Note by the Permanent Mission of Honduras to the OAS, September 16, 2017; Response of Mexico. Note by the Permanent Mission of Mexico to the OAS, September 15, 2017; Response of Nicaragua. Note by the Permanent Mission of Nicaragua to the OAS, September 11, 2017; Response of Panama. Note No. 8-467 of the Permanent Mission of Panama to the OAS, September 18,

from several autonomous entities of the Member States.<sup>15</sup> It received information from civil society organizations in more than 16 (sixteen) countries in the region.<sup>16</sup> The Commission stresses that the information provided through the replies to the consultation questionnaire was invaluable in the preparation of this study and welcomes the contributions of the participating actors.

28. In addition, with regard to secondary sources, the report is based on official public information obtained from State sources; reports, resolutions and

---

2017; and Response of Peru. Notes of the Ministry of Foreign Affairs and the Ministry of Women and Vulnerable Populations of September 29, and October 11, 2017, respectively.

<sup>15</sup> Response of the Office of the Public Defender for Audiovisual Communication Services (Argentina), September 15, 2017; Response of the Office of the Public Defender for Audiovisual Communication Services (Argentina), September 11, 2017; Response of the Office of the Public Defender for the Autonomous City of Buenos Aires (Argentina), September 14, 2017; Response of the Public Prosecutor's Office (Argentina), September 18, 2017; Response of the Rio de Janeiro Ombudsperson (Brazil), September 18, 2017; Response of the Ombudsperson (Guatemala), 22 September 2017; Response of the Human Rights Commission of the Distrito Federal (Mexico), September 14, 2017; Response of the Human Rights Ombudsperson (Nicaragua), September 14, 2017.

<sup>16</sup> Response of ABOSEX - Abogados por los Derechos Sexuales (Argentina), September 27, 2017; Response of XUMEK - Asociación para la Promoción y Protección de los Derechos Humanos (Argentina), September 18, 2017; Response of the Universidad Nacional de Cuyo, Mendoza (Argentina), July 4, 2017; Response from BGLAAD - LGBTIQ Public Advocacy and CADRES - Political and Social Research Organisation (Barbados), September 17, 2017; Response of United Belize Advocacy Movement (Belize), September 19, 2017; Response of Fundación Diversencia (Bolivia, Mexico and the United States), September 18, 2017; Response of CDC - Training and Citizens' Rights (Bolivia), September 15, 2017; Response of ABIA - Associação Interdisciplinar de AIDS (Brazil), September 15, 2017; Response of Faculdade de Direito da Universidade Federal de Pernambuco/Grupo de Pesquisa-Ação Robeyoncé (Brazil), September 15, 2017; Response of Aliança Nacional LGBTI (Brazil), September 18, 2017; Response of RHRN Caribbean Platform (Caribbean), September 15, 2017; Response of Sindicato de Trabajadoras Sexuales Amanda Jofre (Chile), October 2, 2017; Response of the Asociación OTD (Chile), September 29, 2017; Response of Isaac Ravetlat Ballesté (Chile), September 19, 2017; Response of Agrupación Lésbica - Rompiendo el Silencio (Chile), September 15, 2017; Response of the Social Organization Manos Solidarias/Colectivo Verde Equilibrante/Universidad de Cuenca (Chile); Response of the Corporación Caribe Afirmativo (Colombia), September 15, 2017; Response of the PAHS Team (Colombia), September 15, 2017; Responses of the University of San Buenaventura, Cartagena (Colombia), September, 1-4, 2017; Response of Colombia Diversa (Colombia), September 16, 2017; Response of Adriana Padrón (Colombia), September 15, 2017; Response of Merly Zabaleta (Colombia), August 31, 2017; Response of the Ecuadorian Organization of Lesbian Women/Hivos/Sendas (Ecuador), September 20, 2017; Response of ALFIL (Ecuador), September 18, 2017; Response of the Amor y Fortaleza Foundation (Ecuador), September 14, 2017; Response of Sexuality Policy Watch (Ecuador), September 14, 2017; Response of Adelante - Sexual Diversity (Ecuador), September 14, 2017; Response of Verde Equilibrante (Ecuador), September 14, 2017; Response of Fundación Ecuatoriana Equidad (Ecuador), September 15, 2017; Response of Fundación PAKTA (Ecuador), September 3, 2017; Response of Quitogay Revista (Ecuador), August 15, 2017; SAGE - Services and Advocacy on GLBT Elders (United States), December 19, 2017; Response of Synergía - Initiatives for Human Rights (United States), September 15, 2017; Response of KOURAJ (Haiti), September 12, 2017; Response of Cattrachas (Honduras), September 12, 2017; Response of HIVOS (Honduras), September 15, 2017; Response of LEDESER - Strategic Litigation on Sexual and Reproductive Rights, A.C. (Mexico), September 15, 2017; Response of Genesis Rafael López Ramírez (Mexico), September 15, 2017; Response of Brújula Intersexual (Mexico), September 11, 2017; Response of the Party of the Democratic Revolution (Mexico), September 11, 2017; Response of the LGBTIQ Sexual Diversity Thematic Network of Nicaragua (Nicaragua), September 15, 2017; Response of Aireana (Paraguay), September 15, 2017; Response of Demus (Peru), September 28, 2017; Response of PROMSEX (Peru), September 18, 2017; Response of Guayana (Venezuela), August 17, 2017; Response of Fundació Pro Bono Venezuela (Venezuela), October 5, 2017; and Response of Asociación Civil Venezuela Igualitaria (Venezuela), September 26, 2017.

rulings of intergovernmental bodies; studies by national and international non-governmental organizations; academic research; and information published by the media.

CHAPTER 2

INTER-AMERICAN STANDARDS  
ON THE RIGHTS OF LGBTI  
PERSONS



## INTER-AMERICAN STANDARDS ON THE RIGHTS OF LGBTI PERSONS

29. The Inter-American Commission on Human Rights has repeatedly established that the principle of non-discrimination is one of the pillars of any democratic system and one of the fundamental foundations of the human rights protection system instituted by the Organization of American States.<sup>17</sup> Indeed, the principles of non-discrimination, equality before the law, the right to life and personal integrity are founding principles of the regional and universal human rights system, with legal duties that are of particular importance to lesbian, gay, bisexual, trans, and intersex (hereinafter “LGBTI”)<sup>18</sup> persons in the Americas.
30. These principles and obligations are included in the international human rights instruments of the Inter-American System (hereinafter referred to as the “Inter-American System” or “IASHR”), which pursue equality, autonomy, identity and dignity of all persons, and refer to the duty of all States to act with due diligence to prevent, investigate, punish and remedy all violations of human rights. Indeed, according to the jurisprudence of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), “at the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *ius cogens*. The whole legal structure of national and international public order rests on this premise and it permeates every legal system”.<sup>19</sup>
31. The American Declaration of the Rights and Duties of Man (hereinafter “the Declaration” or “the American Declaration”) states that “all [human beings]

---

<sup>17</sup> IACHR, The Situation of People of African Descent in the Americas, December 5, 2011, para. 1; citing IACHR, 1999 Annual Report, Chapter VI, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-discrimination.

<sup>18</sup> On the complexity and diversity of sexual orientations, gender identities and the bodies of different groups of people covered by the acronym “LGBTI” used by the IACHR; see IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, paras. 11, 12 and 15. Likewise, as in the previous report on the subject, the IACHR will use the acronym “LGBTI” when referring to lesbian, gay, bisexual, transgender and intersex people; while when referring only to the situation of lesbian, gay, bisexual and transgender persons, the IACHR will use the acronym “LGBT”.

<sup>19</sup> See, *inter alia*, 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. 61.

are born free and equal, in dignity and rights”,<sup>20</sup> and that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor”.<sup>21</sup> In addition, the American Convention on Human Rights (hereinafter referred to as “the Convention” or “the American Convention”) provides that States Parties undertake to respect and to guarantee the human rights enshrined therein, “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”.<sup>22</sup> In addition, the Convention states that, “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law”.<sup>23</sup>

32. Ever since the Case of Atala Riffo and daughters v. Chile, the IACHR has explained that the fact that sexual orientation and gender identity are considered protected categories under Article 1.1 of the Convention implies that any difference in treatment based on such criteria must be considered “suspect”, and therefore “presumed to be incompatible with the American Convention”.<sup>24</sup> This standard was also consolidated by the Inter-American Court in the subsequent cases of Flor Freire v. Ecuador and Duque v. Colombia, both reaffirming that sexual orientation is a prohibited criterion of discrimination under article 1.1 of the Convention.<sup>25</sup> In relation to the expression of gender, according to the Inter-American Court, “the prohibition to discriminate on the grounds of gender identity is understood not only with regard to the real or self-perceived identity, but also in relation to the identity perceived externally, regardless of whether or not that perception corresponds to the reality. Thus, it should be understood that any

<sup>20</sup> [American Declaration of the Rights and Duties of Man](#), April 30, 1948, Article II (Right to equality before the law).

<sup>21</sup> [American Declaration of the Rights and Duties of Man](#), April 30, 1948, Article II (Right to equality before the law).

<sup>22</sup> [American Convention on Human Rights](#), November 22, 1969, Article 1.1. In identical terms, see also Article 3 of the [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights](#).

<sup>23</sup> [American Convention on Human Rights](#), November 22, 1969, Article 24.

<sup>24</sup> IACHR, [Report 103/09. Case 12.508. Karen Atala and daughters v. Chile](#), December 18, 2009, para. 100.

<sup>25</sup> See, generally, I/A Court H.R. [Duque v. Colombia. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of February 26, 2016. Series C No. 310; I/A Court H.R. [Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs](#). Judgment of August 31, 2016. Series C No. 315; IACHR, [Report No. 81/13. Case 12.743. Merits. Homero Flor Freire v. Ecuador](#), November 4, 2013; and IACHR, [Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque v. Colombia](#), April 2, 2014. See also 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, paras. 70 and 71.

expression of gender [also] constitutes a category protected by Article 1(1) of the American Convention.”<sup>26</sup>

33. Although not expressly mentioned in the above-mentioned instruments, the obligation of States not to discriminate against persons on the basis of their sexual orientation and gender identity has been recognized at the international level.<sup>27</sup> The organs of the Inter-American System, both the IACHR and the Inter-American Court have interpreted the American Convention as incorporating sexual orientation and gender identity as a protected category under Article 1.1 of the Convention.<sup>28</sup> In the Court’s view, the specific criteria by virtue of which discrimination is prohibited, according to Article 1.1 of the American Convention, “do not constitute an exhaustive or limitative list, but merely illustrative. Indeed, the wording of said article leaves open the criteria with the inclusion of the term ‘another social condition,’ allowing for the inclusion of other categories that have not been explicitly indicated [...] in the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law”.<sup>29</sup> Through this reasoning, the Inter-American Court concluded that sexual orientation and gender identity constitute categories in respect of which discrimination under Article 1.1 of the Convention is prohibited.<sup>30</sup>
34. In its most recent ruling on the matter, the Inter-American Court is of the categorical opinion that:

sexual orientation and gender identity, as well as gender expression, are categories protected by the Convention. Accordingly, the Convention proscribes any discriminatory law, action or practice based on the sexual orientation, gender identity or gender expression of the individual. Consequently, no provision, decision or practice under domestic law, either by state authorities or private individuals, can reduce or

---

<sup>26</sup> 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. 79.

<sup>27</sup> United Nations High Commissioner for Human Rights, 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. United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, para. 23.

<sup>28</sup> See IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 39; and I/A Court H.R. Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239.

<sup>29</sup> I/A Court H.R. Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239, para. 85.

<sup>30</sup> I/A Court H.R. Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239, para. 91.

restrict in any way the rights of a person on the grounds of their sexual orientation, their gender identity and/or their gender expression.<sup>31</sup>

35. For its part, various United Nations bodies have reached similar conclusions, recognizing the right of individuals to live without discrimination on the basis of their sexual orientation and/or gender identity.<sup>32</sup> In this regard, it has been pointed out that “[t]he equality and non-discrimination guarantee provided by international human rights law applies to all people, regardless of sex, sexual orientation and gender identity or ‘other status’”.<sup>33</sup> The IACHR considers that the term “other status” also includes body diversity, commonly associated with intersex persons.<sup>34</sup> Consequently, in accordance with international human rights law, sexual orientation, gender identity and body diversity are among the prohibited grounds of discrimination, and this means that it is unlawful to make any distinction in terms of the rights of individuals on the ground that they are lesbian, gay, bisexual, trans or intersex, as it is also on the basis of skin color, race, sex, religion or any other status.<sup>35</sup>
36. In addition, the Inter-American Commission has had the opportunity to summarize the standards relating to the right to equality and non-discrimination and, on that occasion, reiterated that, in order to justify a restriction based on a prohibited or “suspicious” category, compelling reasons must be given and that the burden of proof must fall on the State, considering that there is a “presumption of invalidity” of the restriction based on those categories. Similarly, the Commission reiterated that such

---

<sup>31</sup> 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. 78.

<sup>32</sup> United Nations, Statement on human rights, sexual orientation and gender identity, A/63/635, December 22, 2008; Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015; OHCHR, Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (New York, United Nations, 2012); and Economic and Social Council (CESCR), General Comment No. 20: Non-discrimination and economic, social and cultural rights (Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, E/C.12/GC/20, para. 32.

<sup>33</sup> United Nations High Commissioner, “International Human Rights Law and Sexual Orientation & Gender Identity”, Fact Sheet Free and Equal Campaign.

<sup>34</sup> Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 40. In this study, as it did earlier in its previous report on LGBTI issues, the Commission will prefer to use the term “body diversity” as a broader term. The IACHR considers that “body diversity” includes other terms used in international and national documents, such as “sex characteristics”, “genetic characteristics” or “intersex status”. When referring to these other terms, the IACHR will do so because they are mentioned in the documents cited.

<sup>35</sup> United Nations High Commissioner, “International Human Rights Law and Sexual Orientation & Gender Identity”, Fact Sheet Free and Equal Campaign. In the same vein, the European Court of Human Rights has ruled that the prohibition of discrimination under Article 14 of the European Convention on Human Rights (prohibition of discrimination) includes sexual orientation and gender identity (see ECHR Court, “Case of Identoba and others v. Georgia”, (Application No. 73235/12), Judgment, Strasbourg, May 12, 2015, para. 96).

strict scrutiny must be carried out in relation to these “suspect categories” precisely because it translates into a guarantee that the distinction is not based on prejudices and/or stereotypes which usually surround the categories of suspected discrimination.<sup>36</sup> For its part, the Inter-American Court reaffirms the IACHR’s position, agreeing that “no rule, decision or practice of domestic law, whether by state authorities or by private individuals, may in any way diminish or restrict the rights of any person on the basis of their sexual orientation”.<sup>37</sup>

37. The Commission emphasizes that, under international law, the scope of this prohibition also includes the guarantee of economic, social and cultural rights (hereinafter referred to as “ESCR”); and that the bodies of the Inter-American system have already identified, for instance, the rights to social security, health and labor rights as ESCR deriving from the OAS Charter.<sup>38</sup>
38. The Commission also states that the Inter-American Convention against All Forms of Discrimination and Intolerance,<sup>39</sup> adopted in 2013, and that the OAS General Assembly itself has urged its Member States to ratify it,<sup>40</sup> establishes their commitment to “adopt legislation that clearly defines and prohibits discrimination and intolerance, applicable to all public authorities as well as to all individuals or natural and legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas”.<sup>41</sup>
39. In addition to the international standards outlined above, in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the Inter-American Commission concluded that, “LGBTI persons, or those perceived as such, are subject to various forms of violence and discrimination based on the perception of their sexual orientation, their gender identity or gender expression, or because their bodies differ from the

---

<sup>36</sup> IACHR, Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque v. Colombia, April 2, 2014, para. 63.

<sup>37</sup> I/A Court H.R. Duque v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 26, 2016. Series C No. 310, para. 104.

<sup>38</sup> IACHR, Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque v. Colombia, April 2, 2014, para. 68.

<sup>39</sup> The Convention expressly defines that one of the prohibited grounds for discrimination is sexual orientation, gender identity and expression, and genetic characteristics, among others. Inter-American Convention against All Forms of Discrimination and Intolerance, of June 5, 2013, Article 1.1 (Part 2). To date, this treaty has been signed by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Haiti, Panama, Peru and Uruguay; however, only Uruguay has ratified the treaty and therefore it is not in force.

<sup>40</sup> See, for example, OAS. General Assembly. Resolution AG/RES. 2863 (XLIV-O/14). Human Rights. Sexual Orientation and Gender Identity and Expression. Adopted at the 4th plenary meeting, held on June 5, 2014, resolution 9.

<sup>41</sup> Inter-American Convention against All Forms of Discrimination and Intolerance, of June 5, 2013, Article 7.

socially accepted standard for female and male bodies”, in “clear violation of their human rights as recognized in Inter-American and international human rights instruments”.<sup>42</sup> In this regard, the IACHR recalls that, since the adoption of its Strategic Plan 2011-2015, it decided to give the rights of LGBTI persons (Plan of Action 4.6.i, 2011-2012, “LGBTI Persons”) a special thematic emphasis, considering that “[t]he Commission has confirmed that LGBTI persons face serious discrimination, both in fact and in law, in the countries of the region”.<sup>43</sup> In addition, the IACHR’s commitment to the defense and promotion of the rights of persons whose sexual orientation, gender identity - real or perceived - or whose bodies diverge from the binary pattern was renewed in its Strategic Plan 2017-2021, which highlights intersectional issues that enhance the possibility of human rights violations.

---

<sup>42</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 1.

<sup>43</sup> IACHR, Press Release No. 115/11, “IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons” November 3, 2011. See also IACHR, Action Plan 4.6.i (2011 – 2012) LGTBI persons.

## CHAPTER 3

# RECOGNIZING THE RIGHTS OF LGBTI PERSONS: TOWARDS A COMPREHENSIVE PROTECTION



## RECOGNIZING THE RIGHTS OF LGBTI PERSONS: TOWARDS A COMPREHENSIVE PROTECTION

40. The Inter-American Commission considers that the recognition of the rights of LGBTI persons is a fundamental factor in achieving equality, dignity and non-discrimination, as well as in combating the violence to which these people are subjected, and in order to build or achieve a more just society. Likewise, the IACHR understands that legal recognition, provided by laws that guarantee rights and duties, often happens as a consequence of the recognition previously conferred by society. In this respect, the Commission considers that the recognition and protection of human rights cannot be subordinated to social acceptance. In this sense, in accordance with the principles of equality and non-discrimination enshrined in the Inter-American legal framework, the IACHR understands that the absence of social recognition cannot be used as an argument to justify the violation of the human rights of LGBTI persons. On the contrary, States have the obligation to design and implement projects that pursue cultural changes in order to guarantee respect and acceptance for people whose sexual orientation, gender identity or whose gender characteristics differ from the patterns most widely accepted by society. The Inter-American Commission understands that failure to recognize the existence of LGBTI persons and to provide them with the protection everyone else enjoys leaves them in a situation of absolute vulnerability to the various forms of inequality, discrimination, violence, and exclusion.
41. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in America (2015), the Commission determined that "historical discrimination against [LGBTI] persons compels States to be particularly vigilant to adopt measures to ensure the interruption of cycles of violence, exclusion and stigma" suffered by those, in light of the principle of non-discrimination.<sup>44</sup> In this context, the IACHR recognizes the fact that important regional progress in some OAS Member States regarding the recognition of the human rights of LGBTI persons.

---

<sup>44</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 84.

## A. *Data Collection: Making Rights Effective*

42. The collection of data on LGBTI persons and the compiling of official statistics on the violence to which these people are subjected are essential instruments to highlight the challenges that they face and to guarantee an effective response by States to the recognition of their rights. In this regard, the IACHR emphasizes that it is not feasible to take political decisions aimed at addressing the problem of discrimination against LGBTI persons without reliable data, which would also make their situation visible and would mean a form of recognition vis-à-vis other people.<sup>45</sup> In addition, the Commission emphasizes that the existence of official documents, per se, does not necessarily reflect the complexity of the problems experienced by LGBTI persons, as underreporting remains a challenge; there are also limited reporting mechanisms available. In this regard, the IACHR has repeatedly stressed the crucial importance of adequate data collection mechanisms to understand and support the design of effective public policies aimed at combating human rights violations against LGBTI persons.<sup>46</sup>
43. In the IACHR's opinion, the lack of effectiveness of many measures adopted by States is mainly related to deficiencies in their design, elaboration and implementation, as well as to the absence of effective evaluation mechanisms. This is largely because States lack reliable qualitative-quantitative information that reflects the true extent of discrimination suffered by LGBTI persons in the hemisphere. It is important to stress that, despite the progress made, the situation in the Americas presents a disparate picture and the data collection mechanisms in the OAS countries are still very limited.<sup>47</sup>
44. Within the scope of the OAS, at least since 2013, the OAS General Assembly, in its resolutions, has urged Member States to produce statistical information on violence based on sexual orientation and gender identity

---

<sup>45</sup> See, *mutatis mutandi*, IACHR, [Situation of People of African Descent in the Americas](#), December 5, 2011, para. 38; and IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 21.

<sup>46</sup> See, *inter alia*, IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para 392; and 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.

<sup>47</sup> IACHR, Press Release No. 153A/14, [An 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.

with a view to developing public policies that protect the human rights of LGBTI persons.<sup>48</sup>

45. Also at the UN level, the Independent Expert's first report on protection against violence and discrimination based on sexual orientation or gender identity recently stated that, with regard to the root causes of violence and discrimination against LGBTI persons, "more empirical research is needed on the issue"<sup>49</sup> and that his own work "is an opportunity for encouraging and generating information and data, possibly disaggregated".<sup>50</sup> The Independent Expert also noted that "[p]ursuant to the Sustainable Development Goals [Agenda 2030], UNDP [United Nations Development Program] is working on a lesbian, gay, bisexual, transgender and intersex inclusion index to help generate more data, which will also contribute to policy formulation and programming".<sup>51</sup> Finally, the Independent Expert included in his recommendations that the Sustainable Development Goals can enable governments and other actors "to generate data and information in a disaggregated manner so as to facilitate future planning and allocation of resources."<sup>52</sup>
46. On this point, the IACHR reminds States that, according to the "Yogyakarta +10 Principles"<sup>53</sup> on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics, adopted on November 10, 2017, States must:

Compile statistics and research on the extent, causes and effects of violence, discrimination and other harm, and on the effectiveness of measures to prevent, prosecute and provide

---

<sup>48</sup> OAS, General Assembly, [Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression](#), AG/RES. 2807 (XLI/III-O/13), adopted at the fourth plenary meeting, held on June 6, 2013. In the following years, the General Assembly also continued to adopt resolutions with similar content.

<sup>49</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 36. The mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity was established in 2016 by the Human Rights Council in its resolution 32/2 (see United Nations, A/HRC/29/23).

<sup>50</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 38.

<sup>51</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 46.

<sup>52</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 66.e.

<sup>53</sup> As stated by the IACHR in its report on violence in 2015 (see para. 19 and footnote 44), the Yogyakarta Principles (2006) are a set of principles that guide the application of international human rights law in relation to sexual orientation and gender identity. [Principles on the application of international human rights law in relation to sexual orientation and gender identity](#), 2006. The Yogyakarta Principles +10 complement the Yogyakarta Principles.

reparation for such harm on grounds of sexual orientation, gender identity, gender expression and gender characteristics.<sup>54</sup>

47. The Commission therefore reiterates that States should make efforts and allocate sufficient resources to collect and analyze disaggregated statistical data in a systematic manner on the prevalence and nature of violence and bias discrimination against LGBTI persons, or those perceived as such. States should ensure that these statistics are disaggregated by lesbian, gay, bisexual, transgender and intersex persons, as well as by factors such as race, ethnicity, age, immigration status and displacement status, disability status and socio-economic status, among others. The Commission also underlines the importance for States to collect and analyze data demonstrating the effective and qualitative inclusion of LGBTI persons through the public policies implemented in order to provide a comprehensive picture of the overall situation of recognition of the rights of LGBTI persons. The IACHR continues to stress that information gathering must be based on respect for the specificities and sensitivities of LGBTI persons and carried out by appropriately trained and sensitive personnel to the diversity of sexual orientation, gender identity - real or perceived - and body diversity.
48. In this context, in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the IACHR noted that some OAS Member States, such as the United States, Brazil, Guatemala, and Colombia, established data collection mechanisms to address these shortcomings.<sup>55</sup> However, on that occasion, the Commission warned that, according to information received, “either no information is collected or, where information is collected, it is not properly disaggregated”.<sup>56</sup> Furthermore, recognizing the fundamental and historical role of civil society in data collection, States should create mechanisms for receiving information from these groups and work together in a participatory manner for the analysis and design of laws, policies, programs and other decisions. For their part, the responses to the IACHR's questionnaire for this study submitted by States, independent State bodies and civil society

---

<sup>54</sup> [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](#), 2017. Principle 30 (Right to State protection), c. The Yogyakarta +10 Principles were adopted on November 10, 2017, with a view to complementing the Yogyakarta Principles (2006), and establishing additional State principles and obligations on the application of international human rights law relating to sexual orientation, gender identity, gender expression and sex characteristics.

<sup>55</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 396-399, among others.

<sup>56</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 395.

organizations again demonstrate that, with rare exceptions,<sup>57</sup> the lack of statistics on the situation of LGBTI persons remains a reality in the States of the region.

49. The State of Costa Rica, for example, informed the IACHR that “the collection of statistical information to determine the impact of the actions taken by the Costa Rican State to guarantee and protect human rights [of the LGBTI population] is a debt owed by the country” and, therefore, “it is not possible to provide [such] information.”<sup>58</sup> In Brazil, national projects and public policies, such as the “Brazil without Homophobia” Program, have not been updated and have lacked official data since 2013.<sup>59</sup> For its part, the State of Belize indicated that, “in relation to violence and discrimination [against LGBTI persons], there is no State entity collecting such information”;<sup>60</sup> and the State of Nicaragua reported that “the statistical data on the LGBTI population is immersed in the great national results”.<sup>61</sup> The State of Mexico pointed out that “there are no official statistics (at least not reported) in any public body, including the National Institute of Statistics and Geography (INEGI), which identifies LGBTI persons with sufficient procedural rigor”<sup>62</sup>. Also, most of the responses to the consultation questionnaire submitted by civil society organizations pointed to serious shortcomings in official data collection by government entities.
50. Notwithstanding the above, the IACHR notes that some States have made progress in implementing its recommendation regarding the collection and analysis of disaggregated statistical data on LGBTI persons in a systematic manner.<sup>63</sup>
51. The State of Argentina, for example, presented information on the 2010 Federal Census conducted by the National Institute of Statistics and Censuses (INDEC), the first census to register same-sex couples in the country.<sup>64</sup> According to the information, there were 24,228 households with

---

<sup>57</sup> In item 5 of the questionnaire (“Gathering of Data”), the IACHR requested information on the following: “Identify the policies and practices, if applicable, destined to gather statistical data on lesbian, gay, trans, bisexual and intersex persons, or those persons perceived as such”.

<sup>58</sup> Costa Rica. Response to the Consultation Questionnaire.

<sup>59</sup> *Aliança Nacional LGBTI* (Brazil). Response to the Consultation Questionnaire.

<sup>60</sup> Belize. Response to the Consultation Questionnaire.

<sup>61</sup> Nicaragua, Response to the Consultation Questionnaire. Nicaraguan civil society organizations, in turn, expressed that “there is not a single governmental entity and/or unit that handles updated statistical, qualitative or quantitative data on LGBTIQ people in the country” (Red Temática de la Diversidad Sexual LGBTIQ de Nicaragua. Response to the Consultation Questionnaire).

<sup>62</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire

<sup>63</sup> IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015. Recommendations, para. 1, (a) - (e)

<sup>64</sup> Argentina, National Institute against Discrimination, Xenophobia and Racism (INADI), Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

same-sex partners in Argentina, with 58.3% of same-sex couples being female and 41.7% male; and 21% of same-sex couples have dependent children, the majority (97.5%) being female. The State also reported on the signing of an agreement between INDEC and the National Institute against Discrimination, Xenophobia and Racism (INADI) in November 2011, with a view to jointly conducting the First Trans Population Survey, through a Pilot Test in the Municipality of La Matanza, carried out from 18 to August 29, 2012, “in response to the need for socio-demographic information on a population that is significantly at-risk, both from the social point of view and in terms of the exercise of civil rights”.<sup>65</sup> Finally, the State of Argentina also reported on the planning, implementation and results of an Exploratory Test to measure the acceptance or rejection of questions referring to the LGBTI population in socio-demographic household surveys, which was jointly designed by INDEC and the General Directorate of Statistics and Census of the Autonomous City of Buenos Aires, and carried out by the latter in its area of competence in December 2016, with a view to the National Population, Households and Housing Census of 2020.<sup>66</sup>

52. According to information provided by the State of Ecuador, the National Council for Gender Equality (CNIG) has generated studies, analyses and research on the rights of LGBTI persons, in collaboration with other institutions, for example, the “Study of LGBTI Living Conditions”; “Balance and Perspective of the Human Rights of LGBTI persons in Ecuador from the Decriminalization of Homosexuality”; and the “Study of Living Conditions of the Transgender Population”.<sup>67</sup> Also, in the period 2012-2013, the CNIG together with the National Institute of Statistics and Censuses (INDEC), with the support of the pro-rights organizations of the LGBTI population of the Coastal and Sierra region, conducted the first “Survey on the Living Conditions of the LGBTI population”, which collected information on acts of discrimination, exclusion and violence experienced by LGBTI persons in different areas, such as family, education, health, justice, among others. According to the information provided, this first survey resulted in the document “Case study on living conditions, social inclusion and compliance with human rights of the LGBTI population in Ecuador”, which is the first approach to the issue in order to obtain official information on the population of this social group.<sup>68</sup>

---

<sup>65</sup> Argentina, National Institute against Discrimination, Xenophobia and Racism (INADI), Ministry of Justice and Human Rights. Response to the Consultation Questionnaire (Annex - First Transgender Population Survey 2012: Transvestites, Transsexuals, Transgender and Transgender Men. Technical report of the Pilot Test Municipality of La Matanza, Province of Buenos Aires).

<sup>66</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>67</sup> Ecuador. Response to the Consultation Questionnaire.

<sup>68</sup> INEC, *Primera Investigación (estudio de caso) sobre Condiciones de Vida, Inclusión Social y Derechos Humanos de la población LGBTI en Ecuador, 2013*. The survey was conducted using a non-probabilistic

53. Finally, according to the response of the State of El Salvador, the Department of Social Diversity of the Secretariat for Social Inclusion (hereinafter “SIS”) of the Presidency of the Republic has produced several statistical studies since 2011. Among them, the State mentions the following: “Report on attacks against LGBTI”; “Diagnosis on the health situation of the LGBTI population”, in coordination with PAHO/WHO El Salvador; and “National Consultation on Sexual Diversity in 2012”. The State also reported that the SIS requests information from the institutions of the public administration on institutional statistics and transparency, on the basis of which the efforts of the institutions to provide transparent and disaggregated information in the assistance of LGBTI persons are evaluated, in order to examine whether figures are included to enable the reality of LGBTI persons interacting with the institutions to be known.<sup>69</sup>
54. Despite the need to update the data received by the States of the region, the IACHR considers that the examples constitute good practices in the region and that the data constitute an essential tool for designing, implementing, and evaluating state policies aimed at LGBTI persons, as well as for formulating any necessary changes in such policies. Furthermore, human rights standards and principles should constitute “both a guide and a navigation map for the design, implementation and evaluation of public policies,” particularly the principles of equality and non-discrimination, with special emphasis on body, sexual and gender diversity.<sup>70</sup> Finally, the IACHR emphasizes that such data collection should be guided by the principles of confidentiality and data security, so that LGBTI persons are not exposed to systematic violations, including persecution procedures by the State institutions themselves. Likewise, the treatment, the methodology of analysis and the use of the information collected must be adequate to respect the perspective of sexual orientation, gender identity and body diversity of people, obeying the principle of non-discrimination.

---

technique that was applied to people aged 18 and over, where 2,085 LGBTI persons were surveyed in Quito, Guayaquil, Portoviejo, Machala, Babahoyo, Ibarra, Santa Elena, Salinas, La Libertad and Manta, based on a mapping of the existence of civil society organizations working on LGBTI rights. Ecuador. [Response to the Consultation Questionnaire](#) (the Case Study).

<sup>69</sup> El Salvador. Response to the Consultation Questionnaire.

<sup>70</sup> See, IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para 428.

## **B. *The Consolidation of a Culture of Rights through the Need for Awareness Raising and Cultural Changes in Society at Large***

55. Discrimination against LGBTI persons, or those perceived as such, is closely linked to the existence of social and cultural prejudices rooted in the societies of the Americas. Indeed, in the opinion of the IACHR:

Societies in the Americas are dominated by underpinning principles of heteronormativity, cisnormativity, sex hierarchy, sex and gender binary systems, and misogyny. These principles, combined with widespread intolerance towards non-normative sexual orientations, gender identities and expressions, and diverse bodies, legitimize violence and discrimination against LGBTI persons or those perceived as such.<sup>71</sup>

56. In this regard, the Inter-American Court has pointed out that, while it is true that some societies are often intolerant of a person's sexual orientation or gender identity, States cannot use this as a justification for perpetuating discriminatory treatment, but must instead address intolerant and discriminatory expressions in order to prevent exclusion.<sup>72</sup> As the IACHR stated in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex People in the Americas (2015), “[a]chieving increased understanding and respect toward diverse sexual orientations, gender identities and bodies will consequently reduce and eventually eradicate [stigma and negative stereotypes] against LGBTI persons”.<sup>73</sup>
57. In order to raise awareness of the rights of LGBTI persons and the human rights violations committed against them, the IACHR launched two social media campaigns in December 2014 and May 2015.<sup>74</sup> At the UN level, the UN High Commissioner for Human Rights also launched a global education campaign to combat violence and discrimination against LGBTI persons in July 2013.<sup>75</sup>

---

<sup>71</sup> IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, para. 48.

<sup>72</sup> See I/A Court H.R. *Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 119.

<sup>73</sup> IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, para. 426.

<sup>74</sup> See IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, para. 435.

<sup>75</sup> On the UN's *Free & Equal* campaign.

58. On the other hand, the IACHR notes that violence and discrimination based on sexual orientation, gender identity and expression or body diversity often begin to be experienced during childhood, at home or in school, for example. Therefore, raising awareness and educating children and adolescents plays a fundamental role in promoting a cultural change that fully accepts sexual and physical diversity and promotes the acceptance of diverse sexual orientations and gender identities. By virtue of this, the IACHR has stressed the need for States to ensure that “education policies are designed to change social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence [and discrimination] against them.”<sup>76</sup>
59. The UN Independent Expert on protection against violence and discrimination on grounds of sexual orientation or gender identity has also pointed out that “lack of education and/or awareness, as well as lack of understanding, can turn from an early age into the biases, prejudices and phobias that underlie violence and discrimination”.<sup>77</sup> The independent expert added that “the lack of awareness/knowledge might be compounded by stereotyping, homophobia and transphobia, virulent from the bottom to the top of the social, cultural and political ladder”.<sup>78</sup>
60. In this regard, several States have pointed out that the necessary cultural changes in the societies of the region face challenges that require State efforts towards the consolidation of a more just and egalitarian society, without discrimination on the grounds of sexual orientation, gender identity and expression, or body diversity. The State of Argentina, for example, highlighted “the persistence of social conceptions and prejudices regarding identities [LGBTI] based on the hetero-cis-normative paradigm present in the general population, in laws and in the institutional practices of public and private bodies”, and “the existence of institutional policies rooted in the hetero-cis-normative paradigm”, as factors that hinder the development of practices respectful of the human rights of the LGBTI population.<sup>79</sup>

---

<sup>76</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 454. See also IACHR, Press Release No. 92/13, [The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings](#), November 22, 2013 and IACHR, Press Release No. 68/13, [IACHR Holds Regional Meeting on Education, Culture, and Rights of LGTBI Persons](#), September 19, 2013.

<sup>77</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 61.

<sup>78</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 35.

<sup>79</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

61. For its part, the State of Costa Rica highlighted “the little knowledge that public officials have of the existence of specific provisions prohibiting discrimination in services on the grounds of sexual orientation and gender identity”, and that this affects the real impact of these provisions on peoples’ daily lives, “including the use of terms that have a discriminatory or pejorative connotation, [and] the persistence of pathologizing or pitying visions in their approach to the reality they face because of their sexual orientation or gender identity”.<sup>80</sup>
62. The State of Guatemala observed that “the disadvantage is not in the lack of legislation, but rather in the way in which it is applied and its influence on the application of cultural, religious and moral norms that should override the material application of the law for all. Thinking about a binary world leaves out multiple realities that by not understanding or going against social or cultural precepts deprive and exclude LGBTI persons from the effective enjoyment of their rights.”<sup>81</sup>
63. With regard to the relationship between existing social and cultural prejudices and the need for education and awareness-raising from an early age, the IACHR notes with concern the trend in several countries of the region to prohibit the dissemination and use of materials related to the gender perspective, which has been pejoratively referred to as “gender theory and/or ideology”, particularly among children and adolescents. The IACHR emphasizes that the gender perspective is not a “theory”, much less an “ideology”, but only “a critical instrument for combatting discrimination and violence against women and against people with different sexual orientations and gender identities; it is a concept that seeks to raise awareness of the position of structural inequality and subordination of women in relation to men because of gender”.<sup>82</sup>
64. The IACHR recalls that, in accordance with the Yogyakarta Principles, States should:

Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse

---

<sup>80</sup> Costa Rica. Response to the Consultation Questionnaire.

<sup>81</sup> Guatemala, COPREDEH. Response to the Consultation Questionnaire.

<sup>82</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017. The IACHR has received information on similar initiatives in countries such as Brazil (Aliança Nacional LGBTI. Response to the Consultation Questionnaire; and Universidade Federal de Pernambuco. Response to the Consultation Questionnaire), Bolivia (CDC - Capacitación y Derechos Ciudadanos. Response to the Consultation Questionnaire), Colombia (Colombia Diversa. Response to the Consultation Questionnaire), and Ecuador (Adelante - Sexual Diversity. Response to the Consultation Questionnaire; and Organización Ecuatoriana de Mujeres Lesbianas/Hivos/Sendas. Response to the Consultation Questionnaire), among others. See also information published by the International Lesbian, Gay, Bisexual, Trans and Intersex Association for Latin America and the Caribbean ([ILGALAC](#)).

sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.<sup>83</sup>

65. In this regard, the Commission notes that the State of Peru reported on the adoption of the “National Curriculum for Regular Basic Education”, which states that “students must achieve an understanding of non-discrimination based on sexual orientation”. According to the information, however, the same reference is not made when it comes to violence motivated by gender expression and gender identity.<sup>84</sup>
66. On this subject, the Inter-American Commission on Human Rights has learned of the strengthening of anti-rights groups in the region against gender education. These groups propagate false information that the analytical category “gender” is part of an ideological discourse aimed at destroying the traditional family, religion and society. However, the IACHR recalls that gender is “an analytical category from the social sciences and a methodological tool for examining and revealing the historical relationships of inequality between men and women and the concrete impacts on the lives of both.”<sup>85</sup> In the same vein, the stigmatization of the concept of “gender” affects people who have sexual orientations, gender identities - real or perceived - and sexual characteristics different from those understood by society. Thus, the Inter-American Commission emphasizes that gender education is an important tool for the education of children and adolescents, since it generates an environment conducive to respect and the acceptance of diversity, and contributes to the construction of a society based on equality and non-discrimination, free from all forms of violence and intolerance.
67. The Commission still notes that the human rights of LGBTI persons are an inalienable part of human rights and that freedom of religion or belief cannot be invoked to justify discrimination against people of diverse or non-normative sexual orientations, gender identities and expressions, or whose bodies vary from the female and male body standard which do not conform to expectations dictated by their religious dogmas. In this regard, the Inter-American Commission notes positively the words used in the decision of Judge Devindra Rampersad of the High Court of Trinidad and Tobago in

---

<sup>83</sup> Yogyakarta Principles. [Principles on the application of international human rights law in relation to sexual orientation and gender identity](#), 2006. Principle 16.d.

<sup>84</sup> Peru. Response to the Consultation Questionnaire. See also: El Comercio, “PJ anula parcialmente enfoque de igualdad de género en el currículo escolar”, 29 August 2017.

<sup>85</sup> Follow-up Mechanism to the *Belém do Pará Convention* (MESECVI), Committee of Experts expresses concern over anti-rights speeches that classify gender as an ideology, June 5, 2017.

Jason Jones v. Attorney General of Trinidad and Tobago,<sup>86</sup> which explained that his decision was not related to any religious belief, since Trinidad is a secular country and that “the beliefs of some - by definition - are not the belief of all, and in the Republic of Trinidad and Tobago, all are protected under the Constitution.”<sup>87</sup>

68. Likewise, the IACHR highlights as a negative practice the recent measure adopted by the State of Paraguay on gender education, through Resolution No. 29,664 of the Ministry of Education and Science, which “represents a setback for the rights of women, people with diverse sexual orientations and gender identities, and children to receive an education free of stereotypes that are based on ideas of inferiority or subordination”.<sup>88</sup> According to the statement of the IACHR’s Special Rapporteur on Economic, Social, Cultural and Environmental Rights, “[i]ncorporating a gender perspective in all aspects and at every level of education is not only desirable but necessary to ensure that educational systems are effectively oriented toward building egalitarian societies and preventing and eliminating discrimination and violence against women, as well as against LGBTI individuals and communities.”<sup>89</sup>
69. In the same vein, the IACHR Rapporteurship on Women’s Rights stated that “[e]ducational programs with a perspective on gender and sexual diversity are essential to eradicate negative stereotypes, combat discrimination, and protect the rights of all persons”.<sup>90</sup> In addition, the IACHR considers that these measures that prohibit 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 [...] this type of interpretation creates an environment conducive to the development of discriminatory speech and attitudes toward LGBTI persons”.<sup>91</sup>

---

<sup>86</sup> *The High Court of Justice of Trinidad and Tobago, Claim No. CV2017-00720, in the Matter of an Application for Constitutional Redress under S. 14 of the Constitution, Jason Jones v. The Attorney General of Trinidad and Tobago*, April 12, 2018.

<sup>87</sup> 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.

<sup>88</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017.

<sup>89</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017; citing IACHR Special Rapporteur on ESCER Rights, Soledad García Muñoz.

<sup>90</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017; citing IACHR Rapporteur on Women’s Rights, Commissioner Margarette Macaulay.

<sup>91</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017.

70. Indeed, according to the Rapporteurship on the rights of LGBTI persons “[t]he concept of family cannot be limited only to stereotypes based on binary gender constructs—man and woman—or on heteronormative sexual orientation.”<sup>92</sup> The concept of family should be understood in its broadest spectrum to ensure recognition of diverse emotional connections and to respect people’s sexual orientation and gender identity, as well as to protect the children who belong to these families.”<sup>93</sup>
71. In this context, the Inter-American Commission notes that the current challenges to bring about the necessary cultural change in the societies of the Americas are not insignificant. However, there are also important experiences in raising the awareness of American societies with regard to combating discrimination against people with diverse or non-normative sexual orientations, gender identities and expressions, or whose bodies vary from the female and male body standard. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the Commission mentioned, by way of example, several of these experiences in countries such as Argentina, Brazil, Colombia, Cuba, El Salvador, Guatemala, Mexico and Nicaragua, among others.<sup>94</sup> The IACHR reiterates that positive public statements by senior state authorities are an essential point for the eradication of social stigma and cultural discrimination against LGBTI persons in the countries of the Americas, as “States play a crucial role in leading social change to combat discrimination and social prejudices”.<sup>95</sup>
72. In this regard, the IACHR highlights the strong formal statement of apology by the State of Canada to the LGBTI community in the country and to all those who were “unfairly criminalized by unjust laws and actions”, by virtue of their sexual orientation or gender identity which was publicly broadcast nationwide on November 28, 2017. The declaration was accompanied by legislative proposals to provide reparations and to permanently destroy all criminal records of persons persecuted, prosecuted and convicted for their sexual orientation or gender identity. The statement was addressed to all LGBTQ2 persons,<sup>96</sup> who were victims of oppression and systematic rejection by the state, in the following terms:

---

<sup>92</sup> IACHR, Press Release No. 208/17, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017, quoting the IACHR president and Rapporteur on the Rights of LGBTI Persons, Commissioner Francisco Eguiguren Praeli.

<sup>93</sup> See IACHR, [Towards the Effective Fulfillment of Children’s Rights: National Protection Systems](#), November 30, 2017, para. 408.

<sup>94</sup> See IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 429-432.

<sup>95</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 433.

<sup>96</sup> In relation to the acronym “LGBTQ2”, the IACHR notes that it adds queer and Two-spirit to the lesbian, gay, bisexual and transgender group. On these terms, see IACHR, [Violence against Lesbian, Gay, Bisexual,](#)

It is our collective shame that Canadians who identify as lesbian, gay, bisexual, transgender, queer, or two-spirit were unjustly treated [...] because of their sexual orientation or gender identity [...] We are sorry. We hope by acknowledging our failings we can make the crucial progress LGBTQ2 people in Canada deserve. We will continue to support each other in our fight for equality because we know that Canada gets stronger every single day that we choose to embrace diversity.<sup>97</sup>

73. Likewise, the State of Costa Rica has made an official pronouncement apologizing for the promotion and execution of arbitrary persecution and detention of LGBTI persons in the past, after recognizing that until 1969 same-sex relationships were a criminal offence in the country. In the words of the president of Costa Rica:

It was the Costa Rican State that promoted and executed persecutions, raids, arbitrary detentions and beatings. It was the Costa Rican state that was responsible for many lives lost, victims of stigma during the first years of the fight against AIDS. It was the Costa Rican state that has systematically denied fundamental rights to LGBTI persons and has failed to protect thousands of its citizens because they love who they love or because they are who they are [...] On behalf of the Government of the Republic, I apologize and renew my commitment to fight to ensure that this shameful chapter of our history is not repeated.<sup>98</sup>

74. In addition, the IACHR observes the holding of workshops, activities and campaigns to raise awareness, training sessions and interdisciplinary and cross-sectorial coordination in order to dismantle prejudices regarding gender expressions and identities, body diversity and sexual orientation, providing adequate information and clear tools for the citizens of various States of the American continent.
75. For example, the Federal Campaign for the Visibility of the LGBTI Population and the Eradication of Violence and Discrimination (“Visibility Campaign”),

---

[Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 13 and 23. The Prime Minister of Canada also referred in his statements to intersex people, as well as the intersectionality of other factors that generated such discrimination.

<sup>97</sup> See, on the [formal apology](#). The full video of the event before the Canadian Parliament is also available [here](#). *Prime Minister of Canada, Remarks by Prime Minister Justin Trudeau to apologize to LGBTQ2 Canadians*, November 28, 2017.

<sup>98</sup> See, on the speech of the President of [Costa Rica](#). Press Release, *Stonewall Inn: Orgullo, amor e igualdad*, June 30, 2018.

in Argentina, launched on May 17, 2017 in 19 provinces of the country and the Autonomous City of Buenos Aires, and in more than 50 public spaces and buildings;<sup>99</sup> the National Campaign “Leave your prejudice aside. Respect differences” to clarify concepts about sexual orientation and diverse gender identities in Brazil;<sup>100</sup> the “Respect for sexual and gender freedom” campaign to reduce discrimination based on sexual orientation or gender identity in Colombia;<sup>101</sup> the “Campaign against Homophobia and for Inclusion”, launched on June 14, 2017 by the National Council for Preventing Discrimination (CONAPRED), in order to generate a cultural change in favor of diversity by combating stigma, prejudice and stereotypes motivated by sexual orientation and gender identity against LGBTI persons in Mexico;<sup>102</sup> and, in Venezuela, Agreement 003-2014 of the Legislative Council of the State of Bolivar, an initiative presented by the civil society organization “Orgullo Guayana” and other social movements, in which discriminatory acts against LGBTI persons within the entire territory of the State of Bolivar are rejected, and special activities, plans, programs and educational campaigns to eradicate discrimination against LGBTI persons are promoted.<sup>103</sup>

76. In conclusion on this point, the IACHR stresses that States have a fundamental and direct participation in the construction and maintenance of a culture of respect and non-discrimination. Therefore, States must create mechanisms to combat social and cultural prejudices, as well as to encourage the creation of a respectful environment through the development of laws and public policies for education. In this regard, the Commission calls on States to develop and implement policies and programs to eliminate stigma, stereotypes and discrimination against LGBTI persons, or those perceived as such, with a view to eradicating existing social stigma.

---

<sup>99</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>100</sup> Brazil. Response to the Consultation Questionnaire (see information on the [campaign](#).)

<sup>101</sup> Colombia. Response to the Consultation Questionnaire.

<sup>102</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire.

<sup>103</sup> Asociación Civil Venezuela Igualitaria (Venezuela). Response to the Consultation Questionnaire.

### **C. *Protection and Empowerment of LGBTI Persons with Regard to their Identity***

77. The IACHR established that a person's sexual orientation "is independent from the sex assigned to that person at birth, and independent from that person's gender identity," and furthermore "constitutes a fundamental component of the private life of an individual", with a "clear nexus between the sexual orientation and the development of the identity and life plan of an individual, including his or her personality, and relationships with other human beings".<sup>104</sup> Likewise, with respect to gender identity, it has observed that it refers to the internal and individual experience of gender as each person feels it profoundly, which may or may not correspond to the sex assigned at birth, including the personal experience of the body and other expressions of the gender with which the person identifies.<sup>105</sup> Body diversity, on the other hand, refers to a wide range of body presentations that vary from the body considered as standard, for example, "variations in the sexual anatomy that expand beyond the cultural conceptions of how female and male bodies should be".<sup>106</sup>
78. In this regard, the IACHR notes that LGBTI children and adolescents often face rejection by their families and their community, who disapprove of their sexual orientation, gender identity or body diversity, which "tends to lead to generalized discrimination, stigmatization, intimidation, harassment, abuse, mistreatment, physical, psychological, and sexual violence, and in extreme cases even death". This situation "relegates them to circles of exclusion and poverty that put them at even greater risk for violence and exploitation".<sup>107</sup> The same is true for LGBTI persons in adulthood, and even for older adults, with certain specificities relating to the increasingly prolonged social isolation they experience as they delay or avoid the act of publicly assuming their sexual orientation or gender identity.<sup>108</sup>
79. The Commission reiterates that the process of acceptance, articulation and recognition of sexual orientation and/or gender identity is a highly personal

---

<sup>104</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 19.

<sup>105</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 20.

<sup>106</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 17.

<sup>107</sup> See IACHR, [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), November 30, 2017, para. 299.

<sup>108</sup> SAGE – *Services and Advocacy on GLBT Elders* (USA). Response to the Consultation Questionnaire. See in this regard, *National Resource Center on LGBTI Aging y SAGE – Services and Advocacy on GLBT Elders, Strengthen your state and local aging plan: A practical guide for expanding the inclusion of LGBTI older adults* p. 7.

process, and may arise at different times in life depending on the individual. This process may also differ from the open expression of sexual orientation or gender identity within the family or community.<sup>109</sup>

80. Likewise, in relation to the right of individuals to publicly and openly express their sexual orientation and gender identity, commonly referred to as “coming out of the closet”, the IACHR’s Special Rapporteur for Freedom of Expression has pointed out that it is included in the right to freedom of expression, and that this type of expression enjoys a special level of protection under Inter-American instruments, as it relates to an integral element of personal identity and dignity.<sup>110</sup>
81. In this regard, the Inter-American Commission considers that, in addition to protecting the right of all persons to express their sexual orientation and gender identity, it is necessary to create ways to enable the integral development of personality and personal capacities through education, information and awareness-raising, with a view to providing tools to confront the stigma, stereotypes and discrimination often faced when expressing personality and identity. Similarly, in line with the principle of human security, the United Nations Human Security Unit has stated that, “[p]rotection and empowerment are thus mutually reinforcing. People protected can exercise many choices. And people empowered can avoid some risks and demand improvements in the system of protection”.<sup>111</sup>
82. In addition, the IACHR considers that an important part of carrying out this work relates to the obligation of States to adopt legislative or other measures as may be necessary to give effect to the rights to equality and non-discrimination, among others, of LGBTI persons. In other words, although the adoption or amendment of legislation in itself does not necessarily result in the establishment of conditions that guarantee the free and full exercise of the human rights of LGBTI persons, States must adopt anti-discrimination legislation and gender identity laws, with a view to promoting respect and tolerance for sexual orientation, gender identities and diverse gender expressions, and for people whose bodies challenge socially accepted standards for female and male bodies. States must also ensure the effective implementation of such legislation in order to promote and protect the rights of LGBTI persons.

---

<sup>109</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 309.

<sup>110</sup> See, IACHR, Annual Report 2009. [Report of the Special Rapporteur for Freedom of Expression](#), December 30, 2009, Chapter II (Inter-American Legal Framework on the Right to Freedom of Expression), paras. 54-57.

<sup>111</sup> United Nations, Commission on Human Security, [Human Security Now](#), 2003, p. 12.

83. Accordingly, in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the Commission recommended States:

Enact anti-discrimination legislation or amend existing legislation in order to prohibit all forms of discrimination, that include sexual orientation, gender identity and gender expression, gender characteristics or intersex status;<sup>112</sup> and

Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates.<sup>113</sup>

84. On that occasion, the IACHR noted that several OAS member states had adopted important legislation to combat discrimination based on sexual orientation and gender identity, such as Argentina, Bolivia, Brazil, Chile, Canada, Colombia, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Suriname, the United States, and Uruguay.<sup>114</sup> The enactment of these legislative measures shows a growing consensus in the region on the need to combat discrimination on the basis of sexual orientation, gender identity or expression, as well as to recognize LGBTI persons and their right to protection against the violence and discrimination they suffer.
85. For example, according to information provided by the State of Argentina, since 1996, the Autonomous City of Buenos Aires reformed its constitution and became the first in Latin America to make explicit the categories of gender and sexual orientation as prohibited categories of discrimination, in addition to physical characteristics.<sup>115</sup> Additionally, it was reported that on September 18, 2015, the National Ministry of Health issued Resolutions No. 1507, 1508 and 1509 related to blood donation, which put an end to institutional discrimination against the LGTBI community, who were prevented from donating blood. The decision of the Ministry of Health

<sup>112</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015. Recommendations, para. 25.

<sup>113</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015. Recommendations, para. 26.

<sup>114</sup> See, IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 412 y 421.

<sup>115</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire. Article 11 of the [CABA Constitution](#) establishes that: "The right to be different is recognized and guaranteed, and no discrimination tending towards segregation for reasons or on the pretext of race, ethnicity, gender, sexual orientation, age, religion, ideology, opinion, nationality, physical characteristics, psychophysical, social, economic condition or any circumstance that implies distinction, exclusion, restriction or impairment is permitted."

determined a paradigm shift that replaces the disparaging concept of “risk groups” with the consideration of “situations or practices of increased risk”, in order to eliminate the stigma built around the LGTBI population as a “risk group”.<sup>116</sup>

86. The State of Bolivia, for its part, highlighted the enactment of Law No. 045 “Against Racism and All Forms of Discrimination” on December 8, 2010. Article 5.a of the Law prohibits discrimination on the grounds of, inter alia, “sexual orientation and gender identity”.<sup>117</sup> The Law also prohibits and establishes that homophobia “refers to aversion, hatred, prejudice or discrimination against homosexual men or women; it also includes other persons who are part of sexual diversity”;<sup>118</sup> and prescribes that transphobia “is understood as discrimination against transexuality and transsexual or transgender people, based on their gender identity”.<sup>119</sup>
87. With respect to Chile, the IACHR was informed of the adoption of Law No. 20,609 on July 24, 2012, which “establishes measures against discrimination” and prohibits “arbitrary discrimination” on the grounds of sexual orientation and gender identity, among others.<sup>120</sup> In this regard, the IACHR has been informed that, in the case of situations of discrimination, after the implementation of this Law, only two complaints have been accepted regarding sexual orientation to date, among more than 50 filed under the same suspicious category. According to the information received, this limited effectiveness is due to the fact that Law No. 20,609 requires the plaintiff to prove that there has been arbitrary discrimination, and allows the defendant to justify such action by arguing that it was in the exercise of a fundamental right.<sup>121</sup>

---

<sup>116</sup> Argentina, INADI. Response to the Consultation Questionnaire.

<sup>117</sup> Bolivia. Response to the Consultation Questionnaire. [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 5.a.

<sup>118</sup> [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 5.g.

<sup>119</sup> [Ley contra el Racismo y Toda Forma de Discriminación Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 5.h.

<sup>120</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 421. See [Law No. 20.609](#), Article 2 of which establishes the following definition of “arbitrary discrimination”: Definition of arbitrary discrimination. For the purposes of this Act, arbitrary discrimination is understood to mean any distinction, exclusion or restriction that lacks reasonable justification, made by agents of the State or individuals, and that causes deprivation, disturbance or threat to the legitimate exercise of the fundamental rights established in the Political Constitution of the Republic or in international human rights treaties ratified by Chile and in force, particularly when it is based on grounds such as race or ethnicity, nationality, socio-economic status, language, ideology or political opinion, religion or belief, trade union membership or participation in trade unions or lack thereof, sex, sexual orientation, gender identity, marital status, age, affiliation, personal appearance and illness or disability.

<sup>121</sup> Agrupación Lésbica – Rompiendo el Silencio (Chile). Response to the Consultation Questionnaire.

88. Some states, such as Brazil, have adopted legislation regarding women’s rights that has impacted the situation, for example, of trans women, and recognized their right to protection because of their gender identity. A positive example to highlight is the “Maria da Penha Law”, enacted by the State of Brazil in compliance with a decision of the IACHR,<sup>122</sup> in order to prevent domestic and family violence against women. Article 2 of this law states that “every woman, irrespective of social class, race, ethnicity, sexual orientation [...], enjoys the fundamental rights inherent to the human person, and the opportunities and facilities to live free from violence are assured [...]”.<sup>123</sup> The IACHR notes that this law protects sexual orientation, but not gender identity. However, according to information received by the Commission, Brazilian courts have decided, for example, that “the biological gender assigned at birth (male) does not prevent the victim, whose [gender] identity is female, from being recognized as a woman, and she would therefore be subject to protection under the Maria da Penha Law”.<sup>124</sup>
89. The State of Colombia, for its part, informed the IACHR that its Constitutional Court has interpreted the 1991 Constitutional provision on equality before the law in a broad manner to include LGBTI persons and to recognize their right not to be discriminated against because of their sexual orientation, gender identity or expression, and body diversity, despite the fact that these categories are not expressly included in the constitutional text.<sup>125</sup> In this regard, the State stressed that the Constitutional Court has clarified the link between sexual orientation, human dignity, free development of personality and that LGBTI persons are holders of all fundamental human rights, in its judgments T-539/94 and C-098/96, as follows:

[...] Homosexuals cannot be discriminated against because of their status as such. The fact that their sexual behavior is not the same as that the one adopted by the majority of the population does not justify unequal treatment. (...) Fair treatment of homosexuals must be based on respect, consideration and tolerance, since they are human beings who enjoy the same fundamental rights as others in conditions of

<sup>122</sup> See IACHR. [Report No. 54/01](#), Case 12.051, Maria da Penha Maia Fernandes (Brazil), April 16, 2001.

<sup>123</sup> See [Law No. 11.340](#) of August 7, 2006, Article 2 (available only in Portuguese).

<sup>124</sup> *Aliança Nacional LGBTI* (Brazil). Response to the Consultation Questionnaire; citing, for example, a decision of the Court of Justice in Acre. This judgment mentions that the “sexual identity” of the victim is female (see also information available at TJAC. [Decisão inédita assegura medida protetiva de urgência a transexual vítima de violência doméstica](#)).

<sup>125</sup> Colombia. Response to the Consultation Questionnaire. See Political Constitution of Colombia (1991), Article 13: “Every person is born free and equal before the law; they shall receive the same protection and treatment on the part of the authorities and they shall enjoy the same rights, liberties and opportunities without discrimination on the basis of gender, ethnicity, national or family origin, religion, political or philosophical opinion.”

full equality, even if they are not identical in their way of being to others.

[...] The fundamental right to freedom of sexual [orientation] removes from the democratic process the possibility and legitimacy of imposing or embodying through law the majoritarian sexual [orientation]. Sexuality, apart from compromising the most intimate and personal sphere of individuals, belongs to the field of their fundamental freedom, therefore the State and the community cannot intervene on those issues, since there is no public interest at stake that is relevant and warrants it, nor is social harm generated.<sup>126</sup>

90. In this sense, the Commission takes note of the positive value of the Constitutional Court's decision that guarantees the protection of the right to sexual orientation for the free development of the person, without interference from the public. Likewise, the IACHR emphasizes that progress is not necessarily made through protective laws, but also through the decisions of the other branches of government, the judiciary and the executive, as in the aforementioned cases of Colombia and Brazil.
91. In addition, in the context of the end of the armed conflict, the State of Colombia enacted the "Final Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace", signed by the National Government and the FARC-EP in November 2016, and endorsed by the Congress of the Republic in the same month, in which it pays special attention to the fundamental rights of the LGBTI population.<sup>127</sup> According to the information received, respect for equality and non-discrimination is one of the general principles governing the process of implementing the Final Agreement, and includes an express reference to the prohibition of

---

<sup>126</sup> Colombia. Response to the Consultation Questionnaire; and Corporación Caribe Afirmativo. Response to the Consultation Questionnaire. The IACHR notes that in these decisions, the Colombian Constitutional Court used the term "sexual option" instead of sexual orientation. However, the IACHR considers that the term "sexual option" is neither adequate nor similar in nature to sexual orientation. In this regard, the Commission emphasizes that, as defined in its 2015 report, a person's sexual orientation constitutes a fundamental component of his or her private life and that there is a clear connection between sexual orientation and the development of his or her identity and life plan, including his or her personality (para. 19). In other words, sexual orientation is much more than just a person's choice, since it refers to "the ability of each person to feel a profound emotional, affective and sexual attraction to people of a gender different from his or her own, or of the same gender, or of more than one gender, as well as the ability to maintain intimate and sexual relations with these people". The Colombian State itself subsequently adopted the terminology of "sexual orientation" in its legislation, as described in this document (see, for example, [Act No. 1482 of 2011](#), as amended by Act No. 1752 of 2015, which "is intended to penalize acts of discrimination on grounds of race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation, disability and other grounds of discrimination" - Article 1).

<sup>127</sup> Colombia. Response to the Consultation Questionnaire; Corporación Caribe Afirmativo (Colombia). Response to the Consultation Questionnaire; and Colombia Diversa (Colombia). Response to the Consultation Questionnaire.

undermining the rights of persons because they belong to the LGBTI population.<sup>128</sup> In this regard, the IACHR highlights the enactment of Law No. 1448 of 2011, or “Victims and Land Restitution Law”, which included LGBTI persons in its scope of protection by recognizing as part of the definition of conflict victim the category of sexual orientation. According to the information, the Unit for Integral Attention and Reparation to Victims (UARIV) has registered more than 2,000 LGBTI persons as victims of the armed conflict.<sup>129</sup>

92. In other countries, such as Peru, other legislative measures have been adopted. In Peru there are 17 regional ordinances protecting the LGBTI population against discrimination, some of which protect both sexual orientation and gender identity; others, which only consider sexual orientation as a prohibited category of discrimination.<sup>130</sup> Likewise, according to the information received, the State of Peru has 68 provincial and district ordinances throughout the territory, 57 of them protect only sexual orientation, and the remaining 11 provincial and district ordinances also consider gender identity as a prohibited category of discrimination.<sup>131</sup> Notwithstanding the foregoing, the Commission notes that the State itself recognized that such legislative measures have not resulted in a decrease in cases of violence and discrimination faced by LGBTI persons, perpetrated “mainly by members of the security forces (serenazgos) and the National Police of Peru, [...] who were not necessarily aware of municipal ordinances against discrimination in the jurisdiction for which they served.”<sup>132</sup>
93. Despite the examples of progress referred to above, as expressed by the United Nations independent expert on protection from violence and discrimination based on sexual orientation or gender identity, “[m]any countries are still hampered by a lack of anti-discrimination measures or insufficient anti-discrimination measures”.<sup>133</sup> Furthermore, the Independent Expert added that “discrimination is also intersectional” and “[e]ven where

---

<sup>128</sup> Corporación Caribe Afirmativo (Colombia). Response to the Consultation Questionnaire.

<sup>129</sup> Colombia. Response to the Consultation Questionnaire; Colombia Diversa (Colombia). Response to the Consultation Questionnaire; and Corporación Caribe Afirmativo (Colombia). Response to the Consultation Questionnaire. See for example [Law 1448 of 2011](#), Articles 6 and 13.

<sup>130</sup> Peru. Response to the Consultation Questionnaire. The ordinances issued in the departments of Ayacucho, Loreto, San Martín, Ucayali, Tacna, Moquegua and La Libertad protect both sexual orientation and gender identity. Those issued in Apurímac, Madre de Dios, Huancavelica, Junín, Amazonas, Ica, Huánuco and Piura, protect only sexual orientation (on these ordinances, see information available [here](#)).

<sup>131</sup> Peru. Response to the Consultation Questionnaire.

<sup>132</sup> Peru. Response to the Consultation Questionnaire (See the register of cases available [here](#)) and PROMSEX (Peru). Response to the Consultation Questionnaire.

<sup>133</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 55.

there are laws to protect people from discrimination, there might be weak implementation”.<sup>134</sup>

94. Therefore, with respect to the obligation of States to adopt legislative or other measures against discrimination on the basis of sexual, gender, and body diversity, the IACHR emphasizes that such measures must be comprehensive, formal and substantive, de jure and de facto, in order to guarantee their efficacy and effective practice.
95. On the other hand, in relation to the obligation of States to adopt laws that recognize the right to identity of trans persons - called gender identity laws - the IACHR reiterates that such laws must allow, among other things, that trans persons have access to identity documents according to the gender with which they identify, which should include not only the change of name but also the sex component, and must not have a pathologizing component.<sup>135</sup> The Commission also considers that these procedures should be easily accessible - ideally administrative procedures<sup>136</sup> - and must be based on the free and informed consent of the person concerned,<sup>137</sup> in order to ensure the greatest protection for trans people. Finally, the IACHR considers that the recognition of gender identity should not be subordinated to the performance of gender identity reaffirmation procedures such as reaffirmation surgeries and/or hormonal treatments.<sup>138</sup>
96. With respect to means of empowerment of LGBTI persons, the IACHR notes that the adoption and enforcement of gender identity laws result in increased access to services, reduced situations of stigma and discrimination in the areas of health, education, work, housing, and increased active participation of trans people in the political and democratic spheres, among other benefits.
97. In this regard, the IACHR notes that the Inter-American Court recently issued its decision regarding the request for Advisory Opinion OC-24 filed by the State of Costa Rica, which gave the Court the first opportunity to give its

---

<sup>134</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 56.

<sup>135</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 419.

<sup>136</sup> IACHR, Press Release No. 075/15, [“IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons”](#), July 1, 2015.

<sup>137</sup> IACHR, Press Release No. 064/16, [“Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness”](#), May 12, 2016.

<sup>138</sup> IACHR, Press Release No. 064/16, [“Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness”](#), May 12, 2016. In this regard, see also United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 57.

opinion on the rights protected by the American Convention that are relevant for analyzing the right to recognition of gender identity.<sup>139</sup> According to the Inter-American Court:

Consequently, it can be concluded that the right of each person to define his or her sexual and gender identity autonomously and that the personal information in records and on identity documents should correspond to and coincide with their self-defined identity is protected by the American Convention under the provisions that ensure the free development of the personality (Articles 7 and 11(2)), the right to privacy (Article 11(2)), the recognition of juridical personality (Article 3), and the right to a name (Article 18). Thus, States must respect and ensure to everyone the possibility of registering and/or changing, rectifying or amending their name and the other essential components of their identity such as the image, or the reference to sex or gender, without interference by the public authorities or by third parties. This necessarily means that those who identify themselves with diverse gender identities must be recognized as such. Moreover, the State must ensure that they can exercise their rights and contract obligations based on that same identity, without being obliged to purport another identity that does not represent their individuality, especially so when this involves a continuous exposure to the social questioning of that same identity, thus affecting the exercise and enjoyment of the rights recognized by domestic and international law.<sup>140</sup>

98. In accordance with the above-mentioned international obligations, the Commission welcomes the trend observed in the region to recognize the gender identity of trans persons through identity documents.<sup>141</sup> In 2009, the State of Uruguay became the first country in the region to adopt a gender identity law through the enactment of Law No. 18,620, which guaranteed that both the name and the sex marker of applicants are in accordance with their identification documents. Similarly, in November 2018, Uruguay made further progress in revising the recognition of identity, moving from a judicial procedure (which was provided for in Law 18.620), to a simpler administrative process, through the adoption of the Integral Law for Trans Persons (Law 19.684),<sup>142</sup> which guarantees the right to gender identity of

<sup>139</sup> I/A Court H.R. [Request for an Advisory Opinion submitted by the State of Costa Rica](#), May 18, 2016.

<sup>140</sup> 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. 115.

<sup>141</sup> [Law No. 18,620 \(October 25, 2009\)](#).

<sup>142</sup> [Law 19.684 \(October 26, 2018\)](#)

trans persons so as to focus on their self-determination and dignity, taking into account the self-perceived gender identity.

99. Similarly, the Comprehensive Trans Persons Act protects the right to privacy by imposing restrictions on information that could be sensitive. In addition to recognizing gender identity, this law supplements the law of 2009 and provides for the inclusion of data on gender identity in the national census, as well as reparations for victims of State persecution based on actual or perceived gender identity during the period of the dictatorship. The comprehensive law also guarantees access to education and culture, work and health care free from discrimination. Notwithstanding the important progress in the recognition of gender identity in Uruguay, the Commission considers it important to note that the legal framework still establishes as a requirement for the adequacy of identity data the "stability and persistence of gender for at least 2 years,"<sup>143</sup> in addition to the fact that, after the registry has been adjusted, it cannot be initiated again until after five years, in which case the person regains the original name assigned at birth.
100. A noteworthy example is the gender identity law adopted by the State of Argentina on May 24, 2012 (Law No. 26,743), which in the opinion of the IACHR "constitutes the best practice in the region, insofar as it does not require any type of medical intervention or procedure, judicial procedure or psychiatric or medical certification, for the recognition of the gender of persons", according to their gender identity. Since its enactment violence and discrimination against trans persons in Argentina has decreased.<sup>144</sup> In effect, this law guarantees the free development of persons, extending its protection to children and adolescents, according to their gender identity, whether or not it corresponds to the sex assigned at birth. This law not only ensures the rectification of the sex and the change of name in all documents that prove the identity of the person, but also guarantees access to comprehensive health, hormonal treatments and partial or total surgical interventions, without requiring judicial or administrative authorization, the only requirement is the person's informed consent.<sup>145</sup> According to data from the National Registry of Persons, from 2012 to 2017, 5,703 registry modifications have been made in Argentina, in compliance with the Gender Identity Law.<sup>146</sup>

---

<sup>143</sup> See, in this regard, art. 8 of Law 19.684 (October 26, 2018).

<sup>144</sup> [Law No. 26,743](#) (May 24, 2012). See, in this regard, IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 419.

<sup>145</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire; and Argentina, INADI. Response to the Consultation Questionnaire.

<sup>146</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

101. Another example of a gender identity law in the region is Law No. 807 (“Gender Identity Law”) enacted by the State of Bolivia on May 21, 2016.<sup>147</sup> The IACHR points out that the adoption of this law took place after the Thematic Hearing entitled “Human Rights Situation of LGBTI persons in Bolivia” held on April 8, 2016, during the IACHR’s 157th Period of Sessions, which addressed the pending approval of this law. This law establishes that trans persons, after conducting a technical psychological examination and through an administrative procedure initiated before the Civic Registration Service (SERECI), may change their name, sex and image data in all public and private documentation related to their identification, which would allow them to fully exercise their right to identity according to their identity and gender expression.<sup>148</sup> In application of the law, on September 5, 2016, in a public act carried out in offices of the Personal Identification Service (SEGIP), the first Identity Cards were delivered in different departments of the Plurinational State of Bolivia.<sup>149</sup> However, the IACHR observes that on October 13, 2016, several Congressmen from the “Christian Democrat” and “Democratic Unity” political parties filed an abstract unconstitutionality action before the Plurinational Constitutional Court against some articles of Law No. 807 (Case 16831-2016-34-AIA). On October 17, 2016, through Constitutional Order 0261/2016-CA, the Justices of the Court decided not to admit part of the lawsuit for lack of active legitimation, partially admitting it.<sup>150</sup> Subsequently, through SCP judgment 0076-2017 of November 9, 2017, the Plurinational Constitutional Court of Bolivia declared the unconstitutionality of Article 11.II of the referred law, which established that the change of one’s name, sex and image “will allow the person to exercise all fundamental political, labor, civil, economic and social rights”.<sup>151</sup> In this regard, the IACHR notes that the Gender Committee of the Judicial Branch issued a statement on this judgment, in the sense that it fails to comply with the tribunal’s required conventionality control by making an interpretation contrary to international human rights instruments, specifically concerning the principle of equality and nondiscrimination,<sup>152</sup> and in this sense, the

<sup>147</sup> Law No. 807 (of May 21, 2016).

<sup>148</sup> IACHR, Press Release No. 116/16, “[IACHR Welcomes Progress on Human Rights of LGBTI Persons](#)”, August 16, 2016.

<sup>149</sup> CDC – Capacitación y Derechos Ciudadanos (Bolivia). Response to the Consultation Questionnaire.

<sup>150</sup> See Bolivia, Response to the Consultation Questionnaire; and CDC – Capacitación y Derechos Ciudadanos (Bolivia). Response to the Consultation Questionnaire. In this regard, the aforementioned Action requested the revision of Articles 1, 3.4, 7, 8, 9 “with respect to the phrase ‘change of sex data’, and the totality of Articles 10, 11.II, 12.I, and First Final Provision, as they were considered contrary to the Constitution of Bolivia. The Admissions Commission of the Plurinational Constitutional Court decided to partially admit the Action of Unconstitutionality against Articles 1, 3.2, 4.II, 7, 8, 9 regarding the phrase ‘change of sex data’, Articles 10, 11.II, 12.I and First Final Provision, considering that they were contrary to the Political Constitution of the State.

<sup>151</sup> *Tribunal Constitucional Plurinacional*, Judgement [0076/2017](#) del (TCP). The decision declared the phrase in quotation marks unconstitutional.

<sup>152</sup> See information available at [the Gender Committee of the Judiciary’s website](#)

IACHR deeply regrets that the scope and effectiveness of said protective law<sup>153</sup> has been limited in terms of making it impossible for trans persons to exercise all human and fundamental rights.

102. More recently, in September 2018, Chile adopted the Gender Identity Act, which ensures that trans and gender diverse persons, from the age of 14, can change, on the basis of their self-perception, their name, sex marker data and their photographic records in all public and private documents in the country. However, the IACHR has noted with concern the inclusion of the requirement of mandatory divorce for married persons who agree to a change of name, sex and image in the documentation, which may represent an obstacle to the recognition of gender identity and a violation of the right to non-discrimination.<sup>154</sup>
103. In addition, the Commission notes that there are other States in the region that have regulatory frameworks that allow for partial or full recognition of the gender identity of trans persons under certain particular circumstances, such as Canada,<sup>155</sup> Cuba,<sup>156</sup> Ecuador,<sup>157</sup> United States,<sup>158</sup> Guatemala,<sup>159</sup> Panama,<sup>160</sup> The Dominican Republic,<sup>161</sup> and Venezuela.<sup>162</sup> The gender identity of trans persons has also been recognized on the continent, to some extent, by Executive Branch decrees, for example, in Mexico (only in Mexico City - Decree of March 7, 2015) and Colombia (Ministerial Decree No. 1227 of June 4, 2015), issued following joint work with civil society

---

<sup>153</sup> IACHR, Press Release No. 116/16, "[IACHR Welcomes Progress on Human Rights of LGBTI Persons](#)", August 16, 2016.

<sup>154</sup> IACHR, Press Release No. 275/18, "[IACHR Welcomes Progress on Recognition of Gender Identity in the Region](#)", December 21, 2018.

<sup>155</sup> ILGA, [Trans Legal Mapping Report](#), 2017, p. 116.

<sup>156</sup> ILGA, [Trans Legal Mapping Report](#), 2017, p. 1022, p. 94, BBC "[Change of sex is already a reality in Cuba](#)", January 23, 2010; Washington Blade, "[AmidChange, LGBTI Cubans face lingering challenges](#)", May 27, 2015.

<sup>157</sup> Ecuador. Response to the Consultation Questionnaire. [Organic Law on the Management of Identity and Civil Data](#) (February 4, 2016).

<sup>158</sup> *National Center for Transgender Equality, ID Documents Center – Wisconsin*; *ID Documents Center – Oregon*; y ILGA, [Trans Legal Mapping Report](#), 2016, p. 63..

<sup>159</sup> Article 3.1 of the "Manual of Procedure for the Registration of Change of Name, Identification of Person and Identification of a Third Party", Directory Agreement No. 27-2010 of the National Registry of Persons. See Guatemala. Response to the Consultation Questionnaire.

<sup>160</sup> Panama. Response to the Consultation Questionnaire. [Law No. 31 of 2006](#) (July 25, 2006), Article 11.

<sup>161</sup> A case of a trans woman who changed her name under the Civil Status Act No. 659 of July 17, 1944 has been registered in that country. She is the first transgender woman authorized to change her name on her identity documents; however, it is not possible to make the change in the sex component. See, in this regard, ILGA, [Trans Legal Mapping Report](#), 2016, p. 51.

<sup>162</sup> Article 146, [Organic Law of Civil Registry](#), approved by the National Assembly on August 25, 2009.

organizations;<sup>163</sup> as well as by judicial decisions in countries such as Brazil,<sup>164</sup> Chile,<sup>165</sup> El Salvador<sup>166</sup> and Peru.<sup>167</sup>

104. Nevertheless, the IACHR draws attention to the fact that some of the regulations cited present problematic provisions related to the following aspects: Recognition of gender identity through the courts; the impossibility of changing the name on identification documents and, instead, using concepts such as “social name” or adding expressions such as “known as” on documents; restricting recognition of gender identity exclusively to adults; requiring a prior and consistent period of two years in the gender with which the person identifies; establishing that the change in identity documentation can be made only once, which could entail important challenges for the full recognition of the gender identity of those persons who identify themselves as being a flowing gender, and/or those trans persons who for reasons of personal security decide to request to reverse the changes in their records; the imposition of pathologizing requirements; and the conditioning of the recognition of gender identity to the performance of reaffirmation surgeries. The IACHR emphasizes that such restrictions are incompatible with the international obligations of States, as decided by the Inter-American Court in OC-24/17.
105. While the above-mentioned measures constitute significant progress in the recognition of the gender identity of individuals, the IACHR urges States to adopt comprehensive measures, in legislation and public policies, to effectively guarantee the right to gender identity of all persons, as a sine qua non condition for the free development of their personality in all fundamental areas of their life plan. In this regard, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has observed that gender identity is “an intrinsic part of the diversity of human life. There is thus a need to

---

<sup>163</sup> IACHR, Press Release No. 075/15, “[IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons](#)”, July 1, 2015. See also Colombia. Response to the Consultation Questionnaire; and Mexico, CONAPRED. Response to the Consultation Questionnaire. With regard to the Colombian decree, it should be noted that in March 2016, the Colombian Constitutional Court gave LGBTI persons the freedom to go without limitations before a notary to change their sex and name, because there are exceptional situations that merit tempering the restriction of changing sex/name only once, provided for in the decree, in order to protect fundamental rights.

<sup>164</sup> Brazil. Response to the Consultation Questionnaire. See also, STF, [STF reconhece a transgêneros possibilidade de alteração de registro civil sem mudança de sexo \(Supreme Court recognizes the possibility to change trans persons sex on civil registry\)](#), and “civil registry change without sex change - using the term 'transsexual' - without the need for surgery: ADI 4275, March 2018 + EX appeal (from the TJRS decision in second instance) of August 2018, reaffirming that 'transgender people have a subjective fundamental right to change their name and their gender classification in the civil registry, not requiring anything more than the manifestation of the individual's will, who may exercise this power both through the judicial process and directly through the administrative process”.

<sup>165</sup> Isaac Ravetllat Ballesté (Chile). Response to the Consultation Questionnaire.

<sup>166</sup> El Salvador. Response to the Consultation Questionnaire.

<sup>167</sup> Peru. Response to the Consultation Questionnaire

move towards legal recognition of self defined gender identity without coerced methods.”<sup>168</sup>

106. Along similar lines, the Principles of Yogyakarta +10<sup>169</sup> (Principle 31) states that:

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.

107. Consequently, States should:

- i. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and drivers’ licenses, and as part of their legal personality;
- ii. Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;
- iii. While sex or gender continues to be registered:
  - a. Ensure a quick, transparent, and accessible mechanism that legally recognizes and affirms each person’s self-defined gender identity;
  - b. Make available a multiplicity of gender marker options;

---

<sup>168</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarhorn, A/HRC/35/36, April 19, 2017, para. 57.

<sup>169</sup> [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.

- c. Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;
- d. Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.

108. For its part, the Inter-American Court considers that:

States may determine and establish, in keeping with the characteristics of each context and their domestic law, the most appropriate procedures for the change of name, change of the photograph and rectification of the reference to sex or gender in records and on identity documents so that these conform to the self-perceived gender identity, regardless of whether these are of an administrative or judicial nature.[citation omitted] However, these procedures should comply with the following requirements established in this Opinion: (a) these should be centered on the complete rectification of the self-perceived gender identity; (b) these should be based solely on the free and informed consent of the applicant without involving requirements such as medical and/or psychological or other certifications that could be unreasonable or pathologizing; (c) these should be confidential, and the changes, corrections or amendments to the records and on the identity documents should not reflect the changes made based on the gender identity; (d) these should be prompt and, insofar as possible, cost-free, and (e) these should not require evidence of surgery and/or hormonal therapy.

Since the Court notes that administrative or notarial procedures are those best suited to and most appropriate for these requirements, States may provide a parallel administrative procedure that the person concerned may choose.<sup>170</sup>

109. With regard to the recognition of the gender identity of all individuals, the Commission reiterates the previously expressed parameters regarding the

---

<sup>170</sup> 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. 160.

manner in which the norms concerning this subject should be regulated and implemented, non-compliance of which, in turn, may involve violations of various rights protected by the American Convention. These parameters can be summarized as the processes aimed at recognizing gender identity: i) they should take informed consent as a central element without demanding requirements that may be pathologizing, such as medical and/or psychological certifications; ii) they should ensure the confidentiality of the process; iii) accreditation of the experience of gender identity for a determined period of time should not be required; iv) they should be expeditious and administrative in nature; v) they should include the possibility of adapting both the name component, as well as the sex according to the gender identity of the applicant; vi) they should avoid the accreditation of total or partial surgical interventions and/or hormonal therapies; (vii) they should avoid requirements that are unreasonable or that may expose the person to discrimination and/or stigmatization on grounds of privacy, such as the existence of a criminal record; viii) should be extended to children and adolescents through their legal representatives and with express agreement of the person concerned, taking into account the principles of progressive capacity and best interests of the child; and ix) national systems for the interconnected and cross-checked management of personal data ensuring effective recognition of gender identity must be available.

110. Finally, the IACHR reiterates that States must adopt gender identity laws in accordance with the aforementioned standards, as well as a legal framework that specifically protects people against discrimination based on sexual orientation, gender identity and expression, or body diversity, due to the inherent link between violence and discrimination,<sup>171</sup> in accordance with Inter-American human rights instruments and, in general, with international human rights law. In this regard, the IACHR emphasizes that the recognition of gender identity and the rights of LGBTI persons to live without discrimination must be enshrined in the legal systems of States. This recognition is aimed not only to protect LGBTI persons, but also to ensure they have all rights on an equal footing with other heterosexual or cisgender people, and that they are also duly empowered to demand them through effective remedies to that end.

---

<sup>171</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 418.

## ***D. The Right to Democratic and Political Participation***

111. The Inter-American Commission on Human Rights considers that the recognition of the identity of LGBTI persons is a fundamental condition for the exercise of the right to political participation and is central to the consistency of democracies. However, this right must be ensured in such a way that it constitutes the effective right of persons to elect and/or be elected to public and legislative functions. Consequently, the IACHR considers that the effective participation of LGBTI persons is fundamental to ensure the effectiveness of legislation, policies and programs aimed at improving the conditions for the full enjoyment and exercise of their human rights, and the realization of their life projects.
112. The IACHR considers that one of the most positive ways in which States can promote the democratic participation of LGBTI persons in State actions is through their effective participation in the areas and decision-making instances on the respective public policies, in order to ensure that their own vision of inclusion and the exercise of their rights is considered. It is also important to create specific government agencies to deal with the rights of this population and to work on the respective public policies, particularly if these allow the participation of civil society organizations. The IACHR has been informed of several initiatives in this regard adopted by some states in the region. In this regard, it is essential to point out that many of these bodies have been created precisely as a result of the work of civil society organizations committed to the struggle of LGBTI persons for access to and recognition of their human rights.
113. The State of Argentina, for example, recently created the “General Directorate for Comprehensive Sexual Diversity Policies” (DGPIDS), through Administrative Decision No. 483/2016, within the Secretariat for Human Rights and Cultural Pluralism of the Ministry of Justice and Human Rights of the Nation.<sup>172</sup> This specialized area’s mission is to coordinate national and federal policies on sexual diversity from a comprehensive perspective, where the full exercise of LGBTI rights is pursued in a transversal, inter-ministerial, inter-sectorial and federal manner, with the objective of achieving cultural change, reducing the levels of stigmatization and discrimination of this population. Through the DGPIDS, the “Permanent Table of Public Policies on Sexual Diversity” was also created in July 2016, with the participation of 23 provinces and the Autonomous City of Buenos Aires, in order to promote the federal perspective of sexual and gender diversity in public policies and translate legislative progress into social

---

<sup>172</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

inclusion and effective equal opportunities.<sup>173</sup> In addition, in 2016 the “Inter-Ministerial Table on Sexual Diversity” was consolidated, with the participation of the national Ministries of Health, Social Development, Labor, Education, Security, Defense and Culture, the National Institute against Discrimination, Xenophobia and Racism (INADI) and the National Women’s Council, whose purpose is to promote the coordination of public policies specific to each Ministry where sexual diversity areas or programs exist.<sup>174</sup>

114. The State of Brazil informed the IACHR of the creation of the “National Council to Combat Discrimination and Promote LGBTI Rights” through Decree No. 7,388 of 2010, and the subsequent establishment of the “National System for the Promotion of Rights and Confrontation of Violence against Lesbians, Gays, Bisexuals, Transvestites and Transsexuals” through Decree No. 766 of July 3, 2013.<sup>175</sup> The IACHR takes note of the work of the Council, putting forward draft laws to combat discrimination and for the promotion and defense of the rights of LGBTI persons, as well as that of the National System, which through multidisciplinary attention aims to promote the citizenship of LGBTI persons, based on equal rights and the fight against violence and discrimination.
115. For its part, the State of Colombia stated that, in accordance with the National Development Plan 2014-2018, adopted by Law No. 1753 of 2015,<sup>176</sup> the Ministry of the Interior is carrying out the necessary actions in the process of the formulation, implementation and follow-up of the “National Public Policy for the Guarantee of the Exercise of the Rights of LGBTI Persons”, including a participatory consultation, which resulted in a significant volume of observations and comments made by different bodies, including universities, social organizations and national institutions, with a view to drafting the Decree that will structure this public policy.<sup>177</sup>
116. In the State of Ecuador, Decree No. 21,525 was issued in 2013 to enable social sector entities to build and implement comprehensive inclusion and restitution policies for the LGBTI population. In order to comply with the above, the State created an “Intersectional Commission for Follow-up to the Presidential Commitment for Comprehensive Inclusion and Restitution of Rights Policies for the LGBTI Population”, composed of several ministries that developed the “Comprehensive Public Policy for LGBTI persons” and its “Implementation Plan 2016-2017”, in which it established clear and specific

---

<sup>173</sup> Argentina, INADI. Response to the Consultation Questionnaire; and Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>174</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>175</sup> Brazil. Response to the Consultation Questionnaire.

<sup>176</sup> Article 130 of the Law “By which the National Development Plan 2014-2018 ‘All for a new country’ is issued”, approved by the House of Representatives on June 9, 2015.

<sup>177</sup> Colombia. Response to the Consultation Questionnaire.

guidelines for work on behalf of the rights of the LGBTI population in Ecuador.<sup>178</sup>

117. The State of Peru informed the IACHR about the creation of a working group called “Working Group to Promote the Rights of Gays, Transsexuals, Bisexuals and Intersex”, through Ministerial Resolution No. 294-2016-MIMP of November 3, 2016, as a coordination mechanism between the State and civil society. According to the information received, the objective of the Working Group is to promote awareness-raising proposals aimed at society as a whole to combat discrimination against the LGBTI population, to develop actions for the protection of their fundamental rights and the promotion of the exercise thereof, as well as the construction of proposals for inclusive public policies.<sup>179</sup>
118. The IACHR considers the above examples to be positive in that they tend to promote the participation of LGBTI persons in the design, implementation and evaluation of state actions on their behalf, thus promoting their empowerment and, at the same time, their protection. At the same time, it should be pointed out that, due to the precariousness of the data collection referred to above, there is insufficient information on the effectiveness of the aforementioned bodies or the policies promoted by them.
119. On the other hand, in relation to the right to elect or to be elected, as well as the political rights in a broad sense, the IACHR considers that perhaps the most evident measure that States are guaranteeing the right of LGBTI persons to democratic and political participation is through the effective assurance of the rights enshrined in Articles XX of the American Declaration<sup>180</sup> and Article 23 of the Convention.<sup>181</sup> In addition, the Commission reminds States that, under both the Declaration regime (Article II, “without distinction [...] or any other factor”) and that of the American Convention (Article 1.1, “without any discrimination [...] or any other social condition.”), the rights recognized in those instruments must be respected

---

<sup>178</sup> Ecuador. Response to the Consultation Questionnaire.

<sup>179</sup> Peru, Ministry of Women and Inclusive Populations (MIMP). Response to the Consultation Questionnaire.

<sup>180</sup> Article XX of the Declaration (Right to vote and to participate in government) provides that: Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

<sup>181</sup> Article 23 of the Convention (Right to Participate in Government) provides: Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

regardless of the sexual orientation, gender identity or expression, or body diversity of persons.

120. In the same vein, with regard to additional obligations of States relating to the right to participate in public life, the Yogyakarta +10 Principles provide that States shall “[t]ake measures to ensure that sexual orientation, gender identity, gender expression and sex characteristics are not used as grounds to prevent a person from exercising their right to vote”.<sup>182</sup>
121. In summary, international human rights law recognizes the right, on the one hand, to vote and, on the other, to be elected, inter alia, without unjustified or arbitrary discrimination. In this regard, the IACHR notes that the lack of recognition of the right to identity, specifically of trans persons, as evidenced by the difficulty or impossibility of obtaining identification documents consistent with their gender identity, may result in such persons being unable to vote or being faced with difficulties in voting in popular elections. Hence the importance, as stated above, for States to ensure that trans persons have access to identity documents that include name and sex changes, as well as that they conform to their gender image and expression.
122. It is also essential that States make efforts towards greater understanding and respect for sexual orientation, gender identities and diverse bodies to eliminate stigma and negative stereotypes against LGBTI persons, in order to effectively ensure that these people can be elected and take a direct part in public affairs. Finally, LGBTI persons must be duly empowered to claim their rights, including through their own nomination to public office, and to demand that their freely elected representatives fight for recognition and greater protection of their rights.
123. As an example, the Commission noted in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in America (2015) that a trans person had been appointed as a member of the State Mechanism to Prevent and Combat Torture in the state of Pernambuco, Brazil, and that this appointment meant greater protection of the right to personal integrity of LGBTI persons against torture.<sup>183</sup> The examples of LGBTI persons elected or appointed to public affairs management positions in OAS member states are still limited; however, they show a growing influence of this group.

---

<sup>182</sup> Additional Principle 25.D complementing the 25 Yogyakarta Principles (2006). The additional 25.E also requires States to design and implement affirmative action programs to promote democratic and political participation. [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.

<sup>183</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 418.

124. For example, in Brazil, the leadership exercised by Federal Representative Jean Wyllys, a gay man, in federal legislation and public policies for the benefit of LGBTI persons is widely-known; just as Senator Claudia Lopez's performance in Colombia is evident and of the Representative to the Chamber Angélica Lozano, both lesbian women, for the rights of the LGBTI community in that country.
125. The IACHR also notes recent and significant progress regarding the popular election of LGBTI candidates in Canada and the United States. In Canada, for example, Julie Lemieux - a trans woman - became the first openly trans mayor of that country when she was elected in November 2017, in Très-Saint-Rédempteur, in the Province of Quebec. In the United States, the IACHR also highlights, for example, the performance of Senator Tammy Baldwin - a lesbian woman - and the first openly gay person elected to the U.S. Senate in 2012; as well as the vote that elected Kate Brown - openly bisexual - as Governor of the state of Oregon, in special elections in 2016; and the recent election of Danica Roem - a trans woman - to the Virginia House of Delegates in November 2017.
126. The Commission has also been informed that, in Guatemala, Congresswoman Sandra Morán Reyes, elected on September 6, 2015, is the first Congresswoman to declare herself a lesbian. After her election, she presented a bill to punish crimes of prejudice or hate crimes, which seeks to criminalize homophobia and sexual or racial discrimination against children and adults; and is working with different civil society organizations on a proposal to amend the Civil Code to legalize civil unions between two persons regardless of their sex.<sup>184</sup>
127. According to the information, with regard to the State of Peru, four candidates were recently elected: Alberto de Belaunde and Carlos Bruce, both gay, as Congressmen of the Republic; Luisa Revilla, a trans woman, as Counselor of La Esperanza district; and Victor Manuel Nieves, a gay man, as Counselor of the San Martín province. Gay Congressmen Alberto de Belaunde and Carlos Bruce, for example, have presented a bill that establishes civil union as "a relationship of coexistence between two persons of the same sex to voluntarily share a couple's life that generates rights and obligations".<sup>185</sup>
128. The IACHR also received information on the work of Congresswoman Tamara Adrián Hernández, a trans woman, and the first transgender congresswoman elected to Venezuela's National Assembly in 2015. According to the information received, she has publicly supported the

---

<sup>184</sup> Guatemala, Human Rights Ombudsperson. Response to the Consultation Questionnaire.

<sup>185</sup> Peru. Response to the Consultation Questionnaire.

presentation of draft legislation on equal civil marriage and the recognition of the gender identity of trans persons in Venezuela, as well as presented the Agreement of the National Legislative Assembly that declares May 17 of each year as “National Day against Homophobia, Biphobia and Transphobia” throughout the territory of the Bolivarian Republic of Venezuela. The Agreement urges public authorities and society in general to practice tolerance and respect; promotes the fight against discrimination against persons because of their sexual orientation, identity and gender expression in all areas; and it urges the National Executive to ratify the Inter-American Convention against All Forms of Discrimination and Intolerance, among other measures.<sup>186</sup>

129. Furthermore, the Commission notes that on March 1, 2018, the Superior Electoral Tribunal (TSE) of Brazil decided, in response to consultation No. 060405458, that the term “sex” used in the 1997 Elections Law should be read with the meaning of gender.<sup>187</sup> This opened the way for trans people to register candidatures according to their gender identity, and not on the basis of their biological sex. The decision on the consultation also impacted the 30% quota for female candidates, which benefited trans women. As a result, the 2018 elections marked a record number of trans candidates, when at least 53 candidates were registered, including two candidates for district deputy for the Federal District; 33 for state deputies; 17 for federal deputies; and, for the first time, one candidate for the Senate.<sup>188</sup> Out of the total nominations, three trans afro-women were elected to representative positions in state parliaments.<sup>189</sup> The IACHR underlines that the number of candidacies increased about ten times compared to the 2014 general elections, when only five candidatures were recorded.
130. The Commission concludes, on this issue, that States must create the conditions for the priorities and interests of LGBTI persons to be represented on the public agenda, and that the involvement of LGBTI persons strengthens democracy, promotes inclusion, and is a *sine qua non*

---

<sup>186</sup> Asociación Civil Venezuela Igualitaria (Venezuela). Response to the Consultation Questionnaire. However, the information also indicates that the Agreement was annulled by the Constitutional Chamber of the Supreme Court of Justice in Decision No. 797, dated August 19, 2016. The IACHR also notes that Congresswoman Tamara Adrián filed a complaint with the Commission for the alleged non-existence in the Venezuelan legal system of a suitable and effective remedy that would allow for the modification of the registry documentation to the person’s gender identity. Therefore, the State violated her human rights by denying her the possibility of adapting her registry documentation to her gender identity (IACHR, [Report No. 66/16. Petition 824-12. Admissibility. Tamara Mariana Adrián Hernández. Venezuela. December 6, 2016](#)).

<sup>187</sup> On the [TSE decision of May 1, 2018](#). Query No. 0604054-58.2017.6.00.0000.

<sup>188</sup> Nexo Jornal, [O recorde de candidaturas de trans. E seus desafios](#), September 27, 2018.

<sup>189</sup> Huffpost, [Erica Malunginho, Erika Hilton e Robeyoncé Lima: As mulheres trans eleitas em 2018](#), November 17, 2018.

condition for guaranteeing more egalitarian societies and consolidating representative democracy in the Americas.<sup>190</sup>

## **E. Right to Education**

131. In the Inter-American System, the right to education is enshrined in several instruments, and includes the right of every person “to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.”<sup>191</sup> which is reiterated in Article 26 of the American Convention, establishing the commitment of States to “achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards”.<sup>192</sup> Likewise, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights - hereafter referred to as the “Protocol of San Salvador” - provides that States “ought to enable everyone to participate effectively in a democratic and pluralistic society”, in addition to “be directed towards the full development of the human personality and human dignity.”<sup>193</sup> In

---

<sup>190</sup> See *mutatis mutandis*, IACHR, [The Road to substantive democracy: Women’s political participation in the Americas](#), April 18, 2011, paras. 171-173.

<sup>191</sup> American Declaration, Article XII (Right to Education): Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education.

<sup>192</sup> American Convention, Article 26 (Progressive Development): The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

<sup>193</sup> Protocol of San Salvador, Article 13 (Right to Education): 1. Everyone has the right to education. 2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace. 3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: a. Primary education should be compulsory and accessible to all without cost; b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education; c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education; d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction; e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies. 4. In conformity with the domestic legislation of the States Parties,

addition, all the above-mentioned instruments expressly contain rules providing for the obligation of non-discrimination (Articles II, 1.1 and 3, respectively) in relation to all the rights enshrined therein.

132. With particular respect to LGBTI persons, or those perceived as such, the IACHR has condemned acts of intimidation and harassment in educational settings (commonly known as bullying or harassment), and has urged OAS member States to adopt and enforce effective measures for the prevention of violence and discrimination against LGBTI persons in both public and private educational institutions.<sup>194</sup> The Commission has also recommended that States should implement “comprehensive sexuality education in school curricula, which includes a perspective on body, sexual and gender diversity”.<sup>195</sup> In addition, it referred to the fact that “comprehensive sexuality education is a basic tool for ending discrimination against LGBTI persons and that it ‘must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity’”.<sup>196</sup>
133. Other international bodies have issued similar recommendations. In this regard, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has noted that UNESCO is working to address the problem of bullying in the educational environment through its “Teaching Respect for All” initiative, which has helped to develop teaching plans for teachers to address homophobia and transphobia in primary and secondary schools.<sup>197</sup> The Independent Expert added that UNESCO’s report, entitled *Out in the Open: Education sector responses to violence based on sexual orientation and gender identity/expression* which was published in 2016, provides a wealth of information in this regard.<sup>198</sup> Finally, the Independent Expert called for

---

parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above. 5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

<sup>194</sup> IACHR, Press Release No. 92/13, [The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings](#), November 22, 2013.

<sup>195</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 455.

<sup>196</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 455, citing the United Nations, Report of the United Nations Special Rapporteur on the Right to Education, A/65/162, July 23, 2010, para. 23.

<sup>197</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 455, citing the United Nations, Report of the United Nations Special Rapporteur on the Right to Education, A/65/162, July 23, 2010, para. 23.

<sup>198</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 43. On the UNESCO Report, [Out in the open: education sector responses to violence based on sexual orientation or gender identity/expression: summary report](#).

“broad-based education, awareness-raising and action responsive to issues of sexual orientation and gender identity.”<sup>199</sup>

134. With regard to additional obligations of States relating to the right to education, the Yogyakarta +10 Principles state that “States shall ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving capacity of the child”.<sup>200</sup>
135. In compliance with the recommendations referred to above, the IACHR has been informed of various measures adopted by the States of the continent, with a view to guaranteeing the full development of the human personality of LGBTI persons and recognizing their right to participate effectively in a democratic and pluralistic society, through inclusive and non-discriminatory education.
136. For example, in Argentina, since 2006, the Comprehensive Sex Education Act (Act No. 26.150) has been in force in the national and provincial jurisdictions of the Autonomous City of Buenos Aires and other municipalities, which seeks to guarantee the education and information of children and adolescents including a federal perspective of sexual diversity and human rights.<sup>201</sup> In addition, the State has informed the IACHR of the “Ellas Hacen” program run by the Under-Secretariat for Integrated Policies of the Ministry of Social Development, which has the objective of improving the quality of life of women by providing them with training activities, accompaniment at the end of their education and training associated with social-community practices, in order to promote their empowerment and autonomy. This program is aimed at “women or trans females who belong to households in a situation of socioeconomic vulnerability” and who are in any situation of risk as described in the requirements for admittance. The IACHR was also informed about specific experiences, such as the Trans Open Doors Educational Center (in the city of San Miguel de Tucumán, in the Province of Tucumán) and the Mocha Celis Popular High School (in the Autonomous City of Buenos Aires), which are inclusive and non-exclusive areas, with the aim

---

<sup>199</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 66 h.

<sup>200</sup> Additional Principle 16.I of the Yogyakarta Principles (2006). Supplementing Principle 16.J also provides that similar material should be included in teacher training and continuing professional development programs. [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.

<sup>201</sup> [Act No. 26,150 on Comprehensive Sex Education](#) (October 23, 2006).

of ensuring that “students” finish primary and secondary school, in addition to other educational options such as professional workshops.<sup>202</sup>

137. Still with regard to Argentina, the IACHR draws attention to the importance of collecting disaggregated data for the design of public policies aimed at guaranteeing recognition of the human rights of LGBTI persons. The Commission emphasizes that, because of its interrelation between human rights, data concerning the right to education will have an impact on the recognition of other rights, such as the right to work or to housing, for example. In this sense, according to the information received, the Public Ministry of Defense of the Autonomous City of Buenos Aires, together with the Popular High School Trans Mocha Celis, carried out an investigation that was published in March 2017, entitled “The Revolution of the Butterflies”, on the situation of the trans collective in the City of Buenos Aires in relation to indicators such as education, family, health, work, violence, among others.<sup>203</sup>
138. According to this research, since the enactment of Argentina’s Gender Identity Law, there has been an improvement in the access to the right to education, and the schooling of transgender and transvestite women at all levels has improved in the last ten years. In 2016, the percentage of those with complete secondary education was 24.3%; the percentage of those involved at the tertiary and university levels, although incomplete, was 10.1%; and the percentage of complete university education was 5.9%. However, the report also indicates that a very high percentage (59.8%) of transgender and transvestite women surveyed did not have the educational level established as compulsory by the Argentine State (complete secondary). Trans men, on the other hand, have a much higher level of education than trans/travestite women; 72.8% have a complete secondary level of education or more. According to the information received, the discrepancy between the data regarding trans women and trans men seems to be related to the access to education itself, due to the fact that trans women suffer greater discrimination. For example, 26% of trans and transvestite women surveyed said they were studying, of which 50% were in secondary school, and almost 16% said they were studying at university level; for their part, 39.4% of trans men surveyed said they were studying, of which almost 54% were studying at university level.<sup>204</sup>

---

<sup>202</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire; and Argentina, Public Defender’s Office of the Autonomous City of Buenos Aires. Response to the Consultation Questionnaire. For information on the “Ellas Hacen” program.

<sup>203</sup> The report “[The Butterfly Revolution: Ten Years After The Gestation of the Proper Name](#)” (March 2017).

<sup>204</sup> Argentina, Public Defender’s Office of the Autonomous City of Buenos Aires. Response to the Consultation Questionnaire.

139. In this regard, the Commission appreciates that the effective recognition of the right of trans persons, under the recognition guaranteed by the Gender Identity Law, has provided increased access to education for these persons and granted the opportunity to overcome the barriers of exclusion and to guarantee a life free from fear and violence. The IACHR also takes note of the positive steps taken by the State of Argentina and calls on the other States of the Region to move forward with laws, policies and programs aimed at recognizing the identity and education of trans persons, as well as the education of all persons, with a view to deconstructing prejudices and consolidating societies that are more inclusive and free of all types of violence, without limiting the individual development of LGBTI persons.
140. The State of Brazil informed the IACHR of Resolution No. 12/2015, issued by the National Council to Combat Discrimination and Promote LGBTI Rights, which establishes parameters to guarantee the conditions of access and presence of transvestites and transsexuals - and all persons who do not have their recognized gender identity - in the country's educational institutions, including the use of their "social name", access to bathrooms according to their gender identity, and clothing according to their gender identity and expression.<sup>205</sup>
141. With regard to the State of Chile, the IACHR was informed of two public policies for the Chilean education system concerning the LGBTI population. The Superintendence of Education issued a circular on the rights of girls, boys and trans students in the field of education (ORD. 0768, April 27, 2017) to all establishments and directors of educational establishments in the country, with the aim of specifying the guiding principles of human rights, especially the right to education and freedom of teaching, and the recognition and protection of gender identity. Likewise, information was provided on the adoption in April 2017, by the Ministry of Education, of the document "Guidelines for the inclusion of lesbian, gay, bisexual, trans and intersex persons in the Chilean educational system", which contains guidelines to protect the rights of LGBTI children and adolescents in educational contexts, as well as actions to support them in case they do not have the support of their families, and learning objectives to address this issue, in accordance with international human rights standards.<sup>206</sup>
142. The State of Costa Rica, for its part, presented information on various official materials and guidelines and administrative rulings on the subject, such as the following: The "Manual of Good Practices for non-discrimination against

---

<sup>205</sup> Brazil. Response to the Consultation Questionnaire; and Public Defender's Office of the State of Rio de Janeiro (Brazil). Response to the Consultation Questionnaire.

<sup>206</sup> Union of Sex Workers Amanda Jofre (Chile). Response to the Consultation Questionnaire. The document is available [here](#). April 2017.

minors within the education system” (MEP-CIPAC 2008), which establishes guidelines capable of inhibiting discrimination in education on the grounds of sexual orientation; the “Declaration of the Ministry of Public Education as a space free from discrimination on the grounds of sexual orientation and gender identity” (Circular DM-024-05-2015), which reiterates the obligation of educational authorities to apply the Manual of Good Practices referred to above, and to carry out activities in educational centers that serve as spaces in which there is respect for diversity; Resolution No. 3566-2016 of the Office of the Minister, which orders administrative and educational authorities to recognize the gender identity of adults who so request it, by including the phrase “known as”, both in the employment records of civil servants and in all official documentation issued in respect of students; and the “Comprehensive Sexuality and Affectivity Education Study Program” (2012, amended in 2017), directed to persons in the tenth grade of diversified education and aims to explore their sexual identity, gender identity and sexual orientation, in accordance with their rights, as well as their life projects.<sup>207</sup>

143. The State of El Salvador informed the IACHR that, as of August 24, 2016, the Ministry of Education has had in place a “Policy of Equity and Gender Equality”, its creation involving the participation of a LGBTI population focal group. This policy “constitutes a normative instrument [that will allow] the adoption of measures that eradicate gender discrimination and violence based on sexual orientation, gender identity and expression against children and adolescents within the national education system”.<sup>208</sup>
144. The Commission also takes note of the information received regarding the State of Colombia. In March 2013, Congress passed Law No. 1620, which created the “National School Coexistence System”. This law established, inter alia, the obligation of educational establishments to create “School Coexistence Committees” to promote human rights and sexual and reproductive rights, to lead strategies for the prevention of harassment and violence, and to follow up on cases of harassment and violence. It also determined that institutions should modify the coexistence manuals to incorporate respect for human rights and sexual and reproductive rights, and establish new ways of managing conflicts in schools from a pedagogical

<sup>207</sup> Costa Rica. Response to the Consultation Questionnaire. The information presented also included agreements and resolutions against discrimination based on sexual orientation and gender identity, from the National Learning Institute (INA) and from the country’s five public universities. The documents cited are available, respectively, *Ministerio de Educación Pública de Costa Rica, Buenas prácticas para la no discriminación de personas menores de edad insertadas en el sistema educativo*, 2008; *Ministerio de Educación Pública de Costa Rica, declaración del MEP como espacio libre de discriminación por orientación sexual e identidad de género*, November 9, 2018; *Ministerio de Educación Pública de Costa Rica, Resolución 3566*, december 20th 2016; *Ministerio de Educación Pública de Costa Rica, Programa de estudios de educación para la afectividad y sexualidad integral*, 2017

<sup>208</sup> El Salvador. Response to the Consultation Questionnaire.

rather than a punitive perspective. Finally, it has established a comprehensive care steps and protocols to deal with cases of bullying for any reason, including sexual orientation and gender identity.<sup>209</sup>

145. However, according to the information received, there is still very little implementation of Law No. 1620 by the 95 Education Secretariats certified in Colombia. For instance, the organization Colombia Diversa followed up on all Education Secretariats during 2015 and 2016 and found that there was very low implementation, “for budgetary reasons, lack of political commitment or insufficient staff in the secretariats to comply with the current legal framework, and pressure from conservative political and religious groups”.<sup>210</sup>
146. Indeed, despite the examples of measures mentioned above, the IACHR notes with concern the persistence of violence and discrimination against LGBTI students in the education sector, and the lack of effective prevention, protection and reporting mechanisms. In response to these human rights violations, the Commission wishes to illustrate two examples of school bullying lawsuits in countries in the hemisphere that resulted in additional measures to prevent discrimination in the education sector.
147. The first case is from Colombia and relates to the lack of effective implementation of Law No. 1620. It concerns to Sergio Urrego, a 16-year-old gay youth who committed suicide in August 2015 after being discriminated against by his school authorities. Before these events, Sergio’s mother had allegedly reported the situation to the Cundinamarca Ministry of Education, but said institution allegedly failed to take any measures to protect him or to prevent further acts of discrimination. The Colombian Constitutional Court reviewed this case in Ruling T-478 of 2015, and determined that Sergio was discriminated against by his school authorities, further recognizing that there was a general situation of discrimination in educational institutions in Colombia, even after Law No. 1620 came into force. Consequently, the Constitutional Court ordered the Ministry of Education to form the School Coexistence Committee provided for in the aforementioned law, to create a unified information system for school coexistence, to establish comprehensive care steps for cases of school harassment, and to review all the country’s coexistence manuals to ensure that they respect the sexual orientation and gender identity of its students. However, according to information received by the IACHR, the Ministry of Education has not complied with these orders as of the date the information was received.<sup>211</sup>

---

<sup>209</sup> [Law No. 1620](#) (March 15, 2013).

<sup>210</sup> Colombia Diversa (Colombia). Response to the Consultation Questionnaire.

<sup>211</sup> Colombia Diversa (Colombia). Response to the Consultation Questionnaire.

148. The second case concerns the United States of America, where the IACHR has found that “acts of bullying based on sexual orientation escalated to acts of brutal violence against the victims, mainly because milder manifestations of violence or discrimination were either ignored or not taken seriously by school and district authorities”.<sup>212</sup> This is the paradigmatic case of Derek Henkle, a young gay man who was 15 years old when the events occurred at Galena High School in Reno, Nevada. Beginning in 1995, Derek repeatedly suffered various types of abuse, intimidation, and homophobic violence from other students, who spat at him, assaulted him, and discriminated against him on the basis of his sexual orientation. Once in the school parking lot, several students threw a ribbon around his neck three times and threatened to drag him along the road behind a pickup truck. Derek had recorded and reported each of these incidents to the school authorities that failed to take any steps to protect him. In 2000, Derek filed a bullying lawsuit in the Nevada District Court against the Washoe County School District and various school officials. In August 2002, the School District decided to resolve the matter through an out-of-court settlement, compensating the victim for the abuse and violence suffered, and committing to implement eighteen measures concerning LGBTI students, including revising its manuals on student freedom of expression so as to expressly recognize that it includes the right to express one’s sexual orientation freely in school, and to discuss issues related to sexual orientation in the school environment; require periodic training of all students on bullying; include periodic training of all officials on prevention and appropriate response to bullying; and publish implementing policies and regulations on the subject in all student handbooks and school buildings.<sup>213</sup>
149. Similarly, Azmi Jubran, a young man from North Vancouver, Canada, suffered bullying at school between 1993 and 1998. According to information during that time, Azmi was reportedly insulted and suffered physical and verbal assaults, even if he did not identify himself as gay. In 1996, the young man filed a complaint against the school board with the British Columbia Human Rights Tribunal for discrimination based on sexual orientation.<sup>214</sup> On that occasion, the Court ruled that the harassment committed by his fellow classmates had a harmful, insulting and demeaning effect and constituted unwanted interference with Azmi Jubran’s dignity.<sup>215</sup>

<sup>212</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 320.

<sup>213</sup> See Merjian, Armen H. (2009). “Henkle v. Gregory: A Landmark Struggle against Student Gay Bashing.” *Cardozo Journal of Law & Gender*. Yeshiva University: 41–64. Derek Henkle’s case is also cited in IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 320 and footnote 884.

<sup>214</sup> *Jubran v Board of Trustees (BCSC) BCHRT 2002. Par. 36 & School District No. 44 (North Vancouver) v. Jubran (n 313)* See also CBC News, “*Landmark win for bullying victim*”, October 25, 2005.

<sup>215</sup> *Jubran v. Board of Trustees* (n 315). Para. 92. *Jubran v. Board of Trustees* (n 315), para. 92.

The Human Rights Court also found that School Boards have a duty to maintain a positive school environment for everyone they serve. After analyzing the arguments of the parties, the Court concluded that the School Board had failed to address homophobia and homophobic harassment with its students or to take specific measures to combat this problem.<sup>216</sup>

150. The IACHR also points out that in this case the School Board appealed the case, which resulted in the annulment of the earlier decision by the judge of a Chamber of the Supreme Court of British Columbia, based on an argument of error of law. The judge considered that the human rights code of British Columbia only protected cases of discrimination “motivated by the sexual orientation of a person or group of persons” and not based on a perception.<sup>217</sup> However, in 2005 the case reached the British Columbia Court of Appeal, where the Court reiterated the original decision of the Human Rights Tribunal and considered that the harassment suffered by the Azmi Jubran constituted a violation of his dignity, regardless of being, or being perceived, as such.<sup>218</sup>
151. With respect to this issue, the IACHR further emphasizes that education is an essential means to promote cultural change in society, and includes not only formal educational processes, related to schools and universities, but also all means that contemplate the production of information for society in general. In this regard, the IACHR urges States to assume their role as guarantors of a society free of all forms of prejudice, discrimination, and violence, and to undertake efforts aimed at the development of an adequate educational project in formal educational settings, while at the same time promoting a process of cultural change in all sectors of society in general. With regard to formal education, programs should be designed with a view to including gender education, free from prejudice and based on a model that guarantees the autonomy of all persons, just as States should create a safe home for children and adolescents who have a sexual orientation, real or perceived gender identity, or body characteristics which diverge from the female/male binary type.
152. Schools and educational centers also have a fundamental role in relation to the social environment in which they form part. States must therefore envision in their plans that these educational institutions be used for the promotion and commitment of local society to guarantee more inclusive

---

<sup>216</sup> *Jubran v. Board of Trustees* (n 315). Para. 158. *Jubran v. Board of Trustees* (n 315), para. 158.

<sup>217</sup> *Board of School Trustees of School District No. 44 (North Vancouver) v Jubran and other* [2003] BCSC 6, paras. 13-14.

<sup>218</sup> *School District No. 44 (North Vancouver) v. Jubran* (n 313), para. 54-56.

social spaces that effectively guarantee the respect and integration of LGBTI persons, in an environment free of discrimination, prejudice and violence.

153. In addition, the IACHR cannot fail to highlight the fundamental role that educators must play in relation to the respect for and protection of the rights of LGBTI persons. In effect, educational processes must be carried out by duly trained and qualified professionals in order to promote inclusive education free of stereotypes and to create safe environments for all. Likewise, in their work relations, these professionals should enjoy spaces that respect their own sexual orientation, gender identity - real or perceived, or body characteristics, which diverge from the female/male binary type. The Commission urges States to ensure the development and adoption of rules aimed at promoting continued training and education in sexual orientation, gender identity and body diversity, as well as the creation of mechanisms aimed at protecting education professionals against discrimination and violence on the basis of their sexual orientation - real or perceived, gender identity or body diversity.
154. The IACHR adds that universities, academic research centers and other professional training courses also constitute a fundamental space for cultural change in society, as well as for offering services to LGBTI persons. Consequently, States must ensure that these vocational training institutions offer education based on respect and inclusion of all persons, regardless of their actual or perceived sexual orientation, gender identity or body diversity.
155. In addition to formal education, States also have a duty to promote educational campaigns in their institutions that provide direct and indirect services to the population, with a view to fostering cultural change in those who do not have access to formal means of education. States should also undertake efforts to ensure that private companies promote a culture of respect for the human rights of LGBTI persons in relation to their officials and clients.
156. In light of the foregoing considerations, the IACHR recalls that States have an obligation to create effective mechanisms to prevent and sanction discrimination against LGBTI persons, or those perceived as such, in the education system, and emphasizes that awareness-raising plays an essential role in preventing discrimination against LGBTI persons in educational settings and in the effective recognition of the right to education of LGBTI persons.

## **F. Right to Health**

157. The right to health, understood as the enjoyment of the highest attainable standard of physical, mental, and social well-being, is also recognized in various instruments of the Inter-American System, such as the American Declaration (Article XI)<sup>219</sup> and the Protocol of San Salvador (Article 10).<sup>220</sup> According to Articles II of the Declaration and 3 of the Protocol of San Salvador, the right to health must be guaranteed without distinction of any kind, including on grounds of sexual orientation, gender identity or expression, and body diversity. In the same vein, the Inter-American Court has ruled that the dimensions of the right to health include not only “the absence of disease or infirmity, but also a complete state of physical, mental, and social well-being, derived from a lifestyle that allows people to achieve a comprehensive balance”<sup>221</sup> and has also stressed that discrimination against the LGBTI population “not only harms the right to individual health [...] but also to public health (Article 26 of the Convention and Article 10(1) of the Protocol of San Salvador), which is the sum of the health of the inhabitants.”<sup>222</sup>
158. For its part, with respect to State obligations relating to the right to health, the Yogyakarta +10 Principles set out a number of additional obligations, including to “[p]rotect all persons from discrimination, violence and other harm on the basis of sexual orientation, gender identity, gender expression and sex characteristics in healthcare settings”; and “[e]nsure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual’s free, prior and informed consent”.<sup>223</sup> In relation to this last

---

<sup>219</sup> American Declaration, Article XI (Right to the preservation of health and to well-being): Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

<sup>220</sup> Protocol of San Salvador, Article 10 (Right to Health): 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; b. Extension of the benefits of health services to all individuals subject to the State’s jurisdiction; c. Universal immunization against the principal infectious diseases; d. Prevention and treatment of endemic, occupational and other diseases; e. Education of the population on the prevention and treatment of health problems, and

f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

<sup>221</sup> See, I/A Court H.R., *Case of Poblete Vilchez and others. v. Chile. Merits, Reparations, and Costs*. Judgment of March 8, 2018. Series C No. 349.

<sup>222</sup> 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. 49.

<sup>223</sup> Additional obligations 17.J and 17.K, respectively, in addition to Principle 17 of the Yogyakarta Principles (2006). The Yogyakarta +10 Principles also include a number of additional health obligations (17.I-17.S). [Additional principles and state obligations on the application of international human rights law in](#)

point, on the health of trans people, the IACHR warns that their economic situation, in general, determines the quality of the medical services they receive, including gender affirmation surgeries and other related body modifications.

159. Specifically with respect to intersex persons, since 2013 the OAS General Assembly has urged States to provide them with adequate protection, as well as to implement policies and procedures, as necessary, to ensure that medical practices are consistent with applicable human rights standards.<sup>224</sup> Consequently, in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the Commission recommended that OAS Member States review “protocols that call for nonmedically necessary interventions on intersex children without their full, prior and informed consent” and that “[t]hese surgeries should be postponed until the concerned person is able to provide full, prior, and informed consent, and a decision to not undergo such procedure should be respected.”<sup>225</sup>
160. On the other hand, with respect to LGBTI persons, one of the main concerns highlighted by the IACHR in the aforementioned report concerns so-called “therapies” aimed at “modifying: the person’s sexual orientation or gender identity (commonly known as “gay cure”).<sup>226</sup> In this regard, the IACHR has urged States to adopt measures to ensure “effective processes of regulation and oversight of doctors and health care professionals that offer these services” and, in general, that “practices that harm the physical, mental and social health should not be accepted as medical therapy”,<sup>227</sup> and should therefore be prohibited.
161. Concerning the right to health, the IACHR received information on good practices in some States of the region. The State of Argentina informed the IACHR of the aforementioned Gender Identity Law, which also provides for comprehensive access to health care for trans persons. According to Article 11 of the law, anyone can request access to full and partial surgery and/or comprehensive hormonal treatment to bring their body into line with their

---

[relation to sexual orientation, gender identity, gender expression and sex characteristics](#) (only available in English), 2017.

<sup>224</sup> OAS, General Assembly, [Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression](#), AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, held on June 6, 2013. See, along similar lines, United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, February 1, 2013, para. 88.

<sup>225</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 450.

<sup>226</sup> See IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 200-212.

<sup>227</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 211.

gender identity, and all procedures are free of charge and the health benefits for these interventions must be included in the Compulsory Medical Plan. However, the State itself has recognized the lack of satisfactory compliance with the Gender Identity Law with respect to comprehensive access to health, with “many [trans] persons initiating legal actions, which runs against the non-judicial spirit of the Gender Identity Law”.<sup>228</sup> In addition, the State of Argentina also referred to the Law on the Rights of Patients in their Relationship with Health Professionals and Institutions (Law No. 26.529/2009), which establishes the right to be assisted by health professionals, without any detriment or distinction, resulting from their “sexual orientation or any other condition”; as well as to the Law on Mental Health (Law No. 26.657/2010), which prohibits diagnosis on the basis of “sexual choice or sexual identity”.<sup>229</sup>

162. In Brazil, the IACHR was informed of the “redefinition and expansion of the transsexualization process” in the public health system (Sistema Único de Saúde - SUS), through Decree (Portaria) No. 2,803 of November 19, 2013.<sup>230</sup> However, the IACHR also received information indicating that the SUS “has not satisfactorily offered access to body modification procedures, and only in rare cases trans persons have the resources to perform them in the private health network, due to the high cost of these services.<sup>231</sup> In fact, the Public Defender’s Office of the State of Rio de Janeiro stressed that, despite the aforementioned Portaria, only five hospitals throughout the country perform “genital reassignment” surgeries, and in Rio de Janeiro, for example, the hospital accredited for this purpose does not accept new patients due to a waiting list of approximately eight years.
163. Furthermore, in January 2018, the Brazilian Federal Council of Psychology approved a regulation that prohibits the country’s psychologists from “proposing, carrying out or collaborating with any event or service, in the public sphere and that refers to the conversion, reversion, readjustment or reorientation of gender identity” of trans persons.<sup>232</sup> The document provides that professionals in the area must act in accordance with ethical and professional principles to help eliminate prejudice and contribute to any action that fosters discrimination. The resolution is similar to the one

---

<sup>228</sup> Argentina, INADI. Response to the Consultation Questionnaire.

<sup>229</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire. See [Law No. 26.529/2009](#) (November 19, 2009), Chapter I, Article 2, paragraph ‘a’; and [Law No. 26.657/2010](#) (December 2, 2010), Article 3.c.

<sup>230</sup> Brazil. Response to the Consultation Questionnaire.

<sup>231</sup> Public Defender’s Office of the State of Rio de Janeiro (Brazil). Response to the Consultation Questionnaire.

<sup>232</sup> Conselho Nacional de Psicologia, [Resolution No. 01](#) of January 29, 2018.

adopted by the same Council in 1999, in cases applicable to various sexual orientations, where conversion therapy or "gay cure" was prohibited.<sup>233</sup>

164. The State of Colombia informed the IACHR that the Colombian legal system recognizes body modifications of persons with non-traditional gender identities as medical procedures that are constitutionally covered under the right to health and, therefore, "recognizes that body modifications of trans persons should be covered by the Mandatory Health Plan, bearing in mind that they have strong implications for the rights to a dignified life, health, and the free development of personality." According to the State, these procedures were incorporated into the Mandatory Health Plan through Agreement No. 029 of 2012.<sup>234</sup> In addition, the Colombian Constitutional Court determined that intersex girls and boys should be the ones to decide, through their free and informed consent, whether or not to undergo surgery, taking into account their rights to the free development of personality, sexual identity and personal autonomy.<sup>235</sup>
165. The State of Costa Rica, for its part, reported on the "National Norm for health care free of stigma and discrimination against lesbian, gay, bisexual, transgender, intersex (LGBTI) and other men who have sex with men" (2016), that in its recitals "points to the findings revealed by the IACHR in its 2015 report 'Violence against the LGBTI Population' regarding violence and discrimination against this population in health services, as well as the studies carried out at the local level that revealed the challenges faced by the country in this area. According to the information received, this National Norm "will favor the implementation of a differentiated and integral attention that responds effectively to the characteristics and particular needs of these groups".<sup>236</sup>
166. Regarding El Salvador, the IACHR notes the information presented by the State on compliance with the recommendations issued by the Commission in its Final Report on Case 12.249, Jorge Odir Miranda and others,<sup>237</sup> concerning access to antiretroviral drugs for 27 people living with HIV, including Mr. Jorge Odir Miranda - a gay man who founded the organization "Asociación Atlacatl Vivo Positivo" - specifically with respect to the fund created and administered by the National Commission against HIV

<sup>233</sup> Conselho Nacional de Psicologia, Res. N.º. 01, March 22, 1999.

<sup>234</sup> Colombia. Response to the Consultation Questionnaire.

<sup>235</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 446; citing Constitutional Court decision T-622/14 of August 28, 2014.

<sup>236</sup> Costa Rica. Response to the Consultation Questionnaire.

<sup>237</sup> See IACHR, Report No. 27/09. Case 12.249. Merits. Jorge Odir Miranda and others. El Salvador. December 6, 2016.

(CONAVIH), for HIV prevention actions and combating related stigma and discrimination.<sup>238</sup>

167. Furthermore, the State of Honduras informed the IACHR of the implementation of the “National Gender Health Policy” from 2015, which establishes clear principles regarding the guarantee of non-discrimination on the basis of sexual orientation or gender identity.<sup>239</sup> The State of Nicaragua indicated that in 2014, the Ministry of Health issued Ministerial Resolution No. 671-2014, “which protects the LGBTI population from discrimination based on sexual orientation and gender identity”. According to the information, this law establishes that trans people, for the purpose of medical attention, must be called by their “social name”, regardless of their legal name, in order to improve the quality of their health care.<sup>240</sup>
168. Finally, the State of Mexico indicated that it recently revised the “Protocol for Access without Discrimination to the Provision of Health Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender and Intersex Persons”, in addition to the four population-specific care guides: “Protocolized Guidelines for the Care of Lesbian and Bisexual Women”; “Protocolized Guidelines for the Care of Gay and Bisexual Men”; “Protocolized Guidelines for the Care of Transgender Persons”; and “Guidelines on Recommendations for Intersex Medical Care and Variation in Sexual Differentiation”. According to the information received, these documents were published in June 2017, and their objective is to guarantee medical care without discrimination on grounds of sexual orientation, gender identity and expression, and gender characteristics in the National Health System, with the participation of specialists in the medical and human rights fields, as well as target populations and civil society organizations. With regard to the guide on intersexuality, the State stressed that it “addresses the recommendations issued by the Inter-American Commission on Human Rights, in the sense of adopting measures to ensure the right to body autonomy, personal integrity and self-determination of intersex persons”.<sup>241</sup>
169. In relation to the human immunodeficiency virus, the Commission notes that several countries submitted information on the recognition of the right to health solely or principally linked to care for this disease. In this regard, and with a view to eliminating stigma on this issue, as it relates to LGBTI persons, the IACHR recognizes that the HIV epidemic “is largely concentrated in [...]

---

<sup>238</sup> El Salvador. Response to the Consultation Questionnaire.

<sup>239</sup> Honduras. Response to the Consultation Questionnaire.

<sup>240</sup> Nicaragua. Response to the Consultation Questionnaire.

<sup>241</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire. See [Protocol and its specific Guides](#). June 21, 2017.

men who have sex with men, transgender people, people who inject drugs or sex workers”. However, the Commission draws attention to the fact that this epidemic is also related to biological, socio-cultural and economic factors, as well as discrimination and violence against certain groups of people. In this context, the IACHR has emphasized that “[l]egislation and public policies currently in force in several OAS Member States have a dire impact on the full exercise of human rights by key populations at higher risk of HIV infection and persons living with HIV and AIDS, and constitute the main barrier to achieving Universal Access to HIV related services, including prevention and treatment.”<sup>242</sup> The Commission emphasizes that it is not the ‘being LGBTI’ itself that facilitates HIV infection, but rather the discrimination and vulnerability faced by the LGBTI population that results in them becoming more vulnerable to HIV.

170. With regard to the right to health, the IACHR welcomes the positive initiatives of several states in the region, which have directed their efforts to issuing guidelines and protocols for medical care in order to eradicate common forms of discrimination and violence to which LGBTI persons are exposed. However, the Inter-American Commission recalls that these protocols for medical personnel are only the first step in guaranteeing access to the right to health, and urges States to design and implement comprehensive measures to guarantee the right of LGBTI persons, or those perceived as such, to access health services without being subjected to discrimination or violence. The Commission also stresses the importance that rules for health institutions are in accordance with the specificities of other populations with different sexual orientations and body diversity, such as women, girls, boys and adolescents, refugees, persons with disabilities and the elderly.

## ***G. Personal Security***

171. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the IACHR concluded that violence against Lesbian, Gay, Bisexual, Trans and Intersex persons in the Americas is widespread and occurs in all spheres of public and private life, and exists because of “wide-spread discrimination and intolerance regarding diverse sexual orientations, gender identities, gender expressions and persons whose bodies defy socially body presentations.”<sup>243</sup> By virtue of the foregoing, in this section, the IACHR will examine some of the responses

<sup>242</sup> IACHR, Press Release No. 147/12, “[The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas](#)”, December 17, 17, 2012.

<sup>243</sup> See IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 517.

promoted by the States of the region to address this problem, especially in the sense of advancing a differentiated approach to prevent, investigate, prosecute, punish, and redress crimes committed against LGBTI persons, and to combat impunity and reoccurrence.

172. The IACHR continues to be concerned about the high rates of violence against LGBTI persons, or those perceived as such, in the Americas, and the lack of an effective state response to this problem. Nevertheless, the IACHR recognizes that several OAS Member States have adopted measures to address violence against LGBTI persons, based on the understanding that this violence is social and contextualized, and that the motivation of the perpetrators is complex and multifaceted, and not an individual or isolated event.

173. Among other measures, the IACHR previously recommended States:

Enact hate crimes legislation – either through amendments to existing legislation or through the adoption of new laws – to identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity.<sup>244</sup>

174. In this sense, several States in the region have adopted legislation that specifically criminalizes violence based on prejudice against LGBTI persons, or that establishes aggravating circumstances for crimes committed against this population. The IACHR considers that the adoption of these measures is a first step towards effectively combating violence perpetrated on the basis of the victims’ sexual orientation, gender identity and expression or body diversity.

175. The State of Bolivia, for example, through the aforementioned Law against Racism and All Forms of Discrimination (2010), incorporated certain pertinent provisions into the Criminal Code. Specifically, Article 23 of this law added to Title VII of Book Two of the Criminal Code, “Chapter V” entitled: “Crimes against the Dignity of the Human Being”, Article 281 ter, which criminalizes discrimination on the grounds of sexual orientation and gender identity, among others; <sup>245</sup> as well as dissemination and incitement to

---

<sup>244</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015. Recommendations, para. 27.

<sup>245</sup> [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 23: Title VIII of Book Two of the Criminal Code incorporates “Chapter V” entitled “Crimes against the Dignity of the Human Being”, which includes the following provisions: Article 281.- (Discrimination) A person who arbitrarily and illegally obstructs, restricts, impairs, prevents or nullifies the exercise of individual and collective rights on grounds of sex, age, gender, sexual orientation and gender identity, cultural identity, family affiliation, nationality, citizenship, language, religious creed, ideology, political or philosophical opinion, marital status, economic or social condition, illness, type of occupation, level of education,

discrimination on the same grounds;<sup>246</sup> discriminatory organizations or associations;<sup>247</sup> and insults and other verbal attacks on discriminatory grounds.<sup>248</sup> However, according to the same information provided by the State, until 2015, there was an under-recording from the media of at least 55 cases of murders against people with different sexual orientation and gender identity. However, according to the Ombudsperson's Office "none has been adjudicated and in only 14 is there an open investigation".<sup>249</sup> Based on the information received, "neither the General Command of the Police, the Special Force to Combat Violence, the Special Force to Combat Crime, the National Statistics Institute, the Public Prosecutor's Office, the Courts, nor the Ombudsperson's Office have a database with records of crimes against LGBTI persons, which makes it more difficult to take specific actions and preventive measures based on public policies".<sup>250</sup>

176. With respect to the State of Brazil, the IACHR previously noted that, "Brazil far surpasses the number of killings [of LGBTI persons] reported in any other OAS Member State".<sup>251</sup> According to the information received, Brazil is the country with the highest number of transgender and gender-diverse homicides in the world.<sup>252</sup> In addition, the IACHR has been informed that at least 343 LGBTI persons were murdered in Brazil in 2016 and by 2017 an increase of 30% was reported, reaching 445 murders, which equates to the highest number of violent deaths since civil society began collecting unofficial data on this issue 38 years ago.<sup>253</sup> The Commission notes with concern that, according to information provided by the State, Brazil has not published its "Reports on Homophobic Violence in Brazil" since 2014, as it

---

different abilities or physical, intellectual or sensory disability, state of pregnancy, regional origin, physical appearance and clothing, shall be punishable by deprivation of liberty for one to five years.

<sup>246</sup> [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 23, in the part incorporating Article 281 quater.

<sup>247</sup> [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 23, in the part incorporating Article 281 septieser.

<sup>248</sup> [Law against Racism and All Forms of Discrimination](#) (Law No. 045 of October 8, 2010), Article 23, in the part incorporating Article 281 octies.

<sup>249</sup> Bolivia. Response to the Consultation Questionnaire. See also CDC - CDC - Capacitación y Derechos Ciudadanos (Bolivia). Response to the Consultation Questionnaire.

<sup>250</sup> Bolivia. Response to the Consultation Questionnaire.

<sup>251</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 124.

<sup>252</sup> Public Defender's Office of the State of Rio de Janeiro (Brazil). Response to the Consultation Questionnaire; and Universidade Federal de Pernambuco (Brazil). Response to the Consultation Questionnaire. Both institutions referred to the statistics collected by the organization Transgender Europe. In this respect, see the information disclosed by the organization [Transgender Europe](#) (available in Portuguese) and (available in [English](#)).

<sup>253</sup> Public Defender's Office of the State of Rio de Janeiro (Brazil). Response to the Consultation Questionnaire, citing statistics collected by the organization Grupo Gay da Bahia. See also, for 2017 figures on transgender murders (179 transvestite and transsexual deaths), information published by the [Associação Nacional de Travestis e Transexuais](#) (ANTRA). See for 2017 The Guardian "[Violent deaths of LGBTI persons in Brazil hit all-time high](#)", January 22, 2018.

did previously between 2011 and 2013. This despite the fact that the State of Brazil informed the IACHR of Resolution No. 11/2014, issued by the National Council to Combat Discrimination and Promote LGBTI Rights, and reinforced by Portaria GM/MS No. 1271/2014, which establishes parameters to guarantee the inclusion in police records (boletins de ocorrência) throughout the country of the sexual orientation, gender identity, and “social name” of victims of interpersonal crimes/violence.<sup>254</sup>

177. In the State of Ecuador, article 176 of the Comprehensive Organic Criminal Code (2014) criminalizes discrimination on the grounds, inter alia, of gender identity or sexual orientation, and provides for an increased penalty whenever the offence is ordered or executed by civil servants. Article 177 of the Code criminalizes hate crimes on the grounds, inter alia, of physical or psychological violence of hatred, gender identity or sexual orientation.<sup>255</sup> According to information provided by the State, to deal with these cases, which are not always brought before courts, the National Council for Gender Equality outlined a macro-procedure to fully monitor and give comprehensive treatment to these cases; “however, so far these instruments cannot be accepted because the inter-institutional implementation instance does not have a coordination entity”.<sup>256</sup>
178. In the State of El Salvador, reforms to the Criminal Code were enacted in 2015 to incorporate as an aggravating circumstance in the crimes of homicide (article 129) and threats (article 155), the motivating factors of “hatred of gender identity and expression or sexual orientation”. In addition, the Sexual Diversity Directorate of the Ministry of Social Inclusion set up and operates a three-digit helpline for sexual diversity (#131), which provides information on cases of discrimination based on sexual orientation and gender identity or expression, and provides advice on filing complaints with the competent authorities and psycho-emotional counseling for victims and relatives of LGBTI persons in the event of discrimination. The State argues

---

<sup>254</sup> Brazil. Response to the Consultation Questionnaire.

<sup>255</sup> Comprehensive Organic Penal Code (2014): Article 176- Discrimination. - A person who, except in cases provided for in affirmative action policies, practices or incites any distinction, restriction, exclusion or preference based on nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, civil status, language, religion, ideology, socio-economic status, migratory status, disability or state of health with the aim of nullifying or impairing the recognition, enjoyment or exercise of rights under conditions of equality, shall be subject to a prison sentence of one to three years. If the offence referred to in this article is ordered or carried out by public servants, it shall be sanctioned with imprisonment for three to five years. Article 177- Acts of hatred. - A person who commits acts of physical or psychological violence of hatred against one or more persons on account of their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socio-economic status, migratory status, disability, state of health or carrying HIV, shall be deprived of liberty from one to three years. If the acts of violence cause injury to the person, it shall be punishable by a third of the sanction provided for the crime of aggravated injuries. If the acts of violence result in the death of a person, they shall be sanctioned with imprisonment between twenty-two and twenty-six years.

<sup>256</sup> Ecuador. Response to the Consultation Questionnaire.

that, notwithstanding this measure, the main obstacle to the identification of the response to the needs of the LGBTI population in El Salvador, “are attitudinal barriers both in the El Salvadoran population and in public servants”; as well as “the lack of awareness of the issue, cultural and religious prejudices, and the scarcity of specialization in the investigation of this type of crime on the part of justice sector officials”. In fact, for the National Civil Police, the obstacles to the proper implementation of these measures “focus on the androcentric vision that still prevails in El Salvadoran society”.<sup>257</sup>

179. However, another issue that the Commission wishes to raise regarding the personal safety of LGBTI persons concerns the situation of persons deprived of their liberty. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), the IACHR noted that LGBTI persons are at the bottom of the informal hierarchy in detention centers, resulting in double or triple discrimination, and are disproportionately subjected to acts of torture and other forms of ill-treatment. It also noted that LGBTI persons deprived of their liberty face an increased risk of sexual violence, as well as other acts of violence and discrimination, at the hands of other persons deprived of their liberty or custodial staff.<sup>258</sup>
180. On this occasion, the IACHR will refer to some good practices developed by the States of the region in order to provide specialized attention to the LGBTI population in situations of deprivation of liberty, in order to specifically combat discrimination against them in this context.
181. The State of Argentina, for example, informed the IACHR of various measures adopted in relation to LGBTI persons deprived of their liberty. According to the information, in 2016 there were several changes, especially in the Federal Penitentiary Service, which made it possible to define a housing policy that gradually incorporated the perspective of gender and sexual diversity. With the establishment of different administrative rules, trans women who are admitted into the penitentiary system in accordance with the provisions of the Gender Identity Act would be accommodated in units for women. The same would automatically occur in cases where the change takes place within the context of deprivation of liberty. According to the State, in order to “respect gender identity and protect trans persons in confinement situations, the Federal penitentiary system has Trans pavilions to accommodate trans women in women’s prisons”.<sup>259</sup> Training on sexual

---

<sup>257</sup> El Salvador. Response to the Consultation Questionnaire.

<sup>258</sup> See IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, paras. 145 and 148.

<sup>259</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

diversity and human rights is also being conducted for the federal and provincial prison systems, as well as for the security forces, emphasizing that, within the federal prison system, work is being done to make these mandatory for all candidates to the system as well as for all persons wishing to be promoted in their posts. On the other hand, following the aforementioned reforms, the gay men's community now has specific pavilions for their accommodation. However, the State acknowledges that there are still cases where people who have committed crimes against sexual integrity often share the space.<sup>260</sup> Finally, the State also highlighted the elaboration of a "Protocol for the Requisition, Detention, Treatment and Registration of the Trans Population", based on Resolutions No. 1181/2011 and No. 68/2017 of the Ministry of Security - Standardized Guide for the Requisition of Trans/2016 Persons to Guarantee Respect for Self-Perceived Gender Identity.<sup>261</sup>

182. For its part, in the State of Costa Rica, the Constitutional Chamber of the Supreme Court of Justice, by Resolution No. 2012016632 of October 12, 2011, declared unconstitutional the phrase in article 66 of the Prison Technical Regulations that restricted intimate visits "to persons of a different gender", and ordered the authorities of the prison system to recognize intimate visits between persons of the same sex, in accordance with the principle of equality.<sup>262</sup> Consequently, according to the information provided by the State, Circular No. 001-2013 - "Procedure for the authorization of intimate visits in same-sex couples in the centers of the Costa Rican Penitentiary System" was issued.<sup>263</sup> The State also informed the IACHR of Resolution No. 2103-2016 of the San José Juvenile Sanctions Enforcement Court, which orders the creation of a specialized center for the placement of trans women within the penitentiary system.<sup>264</sup>
183. The State of Ecuador stressed that the Ministry of Justice, Human Rights and Worship, through Ministerial Agreement No. 1,265 of July 4, 2016, approved the "Protocol for the Care of the LGBTI Population in Situations of Deprivation of Liberty", which establishes procedures to ensure adequate conditions of habitability for inmates and those who visit them. According to the State, this protocol is mandatory in all social rehabilitation centers in Ecuador, and human rights specialists worked on the text, taking into account international instruments, Ecuadorian legislation in force, as well as

---

<sup>260</sup> Argentina, INADI. Response to the Consultation Questionnaire.

<sup>261</sup> Argentina. Ministry of Justice and Human Rights. Response to the Consultation Questionnaire; and Public Prosecutor's Office (Argentina). Response to the Consultation Questionnaire. [Resolution No. 1181/2011](#), November 24, 2011 and of the Ministry of Security, [Resolution 68/2017](#), January 20, 2017.

<sup>262</sup> Costa Rica. Response to the Consultation Questionnaire.

<sup>263</sup> Circular [No. 001-2013](#), February 11, 2013.

<sup>264</sup> Costa Rica. Response to the Consultation Questionnaire.

the proposals of the LGBTI community.<sup>265</sup> According to the Explanatory Memorandum of the aforementioned Protocol, the significant vulnerability of LGBTI persons in the criminal justice system requires the creation of policies that address the needs of this group of people, and the creation and implementation of strategies that ensure non-discrimination because of their sexual orientation or gender identity. In addition, it states that “the purpose of this document is to protect the exercise of the rights of the LGBTI population [...] in places of deprivation of liberty.” The National Social Rehabilitation System must serve this group of people with unrestricted respect for their rights.<sup>266</sup>

184. Finally, on the issue of persons deprived of liberty, the IACHR notes with satisfaction the fulfillment of one of the integral reparation measures in the report on the merits of Case 11.656 (Marta Lucía Álvarez Giraldo), concerning Colombia. In its Admissibility Report on this case, the IACHR stated that the petitioner, who is a lesbian, alleged that her personal integrity, honor, and equality had been violated by the penitentiary authorities’ refusal to authorize the exercise of her right to an intimate visit due to her sexual orientation. The State, at the time, alleged that allowing intimate visits for homosexuals would affect the internal disciplinary regime of prison establishments, given that Latin American culture was intolerant of homosexual practices in general.<sup>267</sup> After the adoption of a confidential report under Article 50 of the American Convention, the State and the organizations representing the victim reached a compliance agreement, which had a direct impact on the reform of Colombia’s Penitentiary Regulations with respect to the rights of LGBTI persons deprived of their liberty, and the internal regulations of each detention center. According to the available information, this is the first time that the Colombian State publicly apologized to a lesbian woman for discriminating against her. The agreement also determines: the realization of an act of recognition of international responsibility; the publication and diffusion of the *Diario de Marta Álvarez – “Mi historia la cuento yo”*, as a tool to vindicate memory and learning; the reinforcement of awareness and training for officials and people in prison; the creation of a constitutional observatory of judicial decisions that affect the LGBTI population deprived of liberty; and the creation of a working group to monitor compliance with the reformed general regulation of prisons in Colombia.<sup>268</sup>

---

<sup>265</sup> Ecuador. Response to the Consultation Questionnaire.

<sup>266</sup> Ecuador. Response to the Consultation Questionnaire. See [Protocol](#).

<sup>267</sup> See IACHR, [Report No. 71/99, Case 11.656, Admissibility, Marta Lucía Álvarez Giraldo, Colombia](#), May 4, 1999. Pursuant to Article 50 of the American Convention, the merits report adopted is confidential in nature.

<sup>268</sup> For general information on the case, the [decision and the points of the friendly settlement](#). The IACHR also notes that, apart from the specific case of Ms. Marta Álvarez, since Judgment T-499 of 2003, the

185. On the other hand, in relation to the personal safety of LGBTI persons, and the cross-sectional factors that motivate violence, the IACHR has highlighted that, “[a]round the world, children and young people who are lesbian, gay, bisexual, transgender (LGBTI) or intersex, or seen as such, still face stigma, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of male or female.”<sup>269</sup> In addition, the IACHR has expressed special concern about the situation of women, particularly young trans women who are victims of violence, and referred to data indicating that, “80% of trans persons killed were 35 years of age or younger”.<sup>270</sup> As will be detailed below in the section on economic well-being, the IACHR has also observed that there is a strong link between poverty, exclusion and violence. Thus, for instance, homelessness increases the risk of LGBTI persons being subjected to violence, including sexual violence, as well as homeless LGBTI youth, who experience higher rates of physical and sexual assault and a higher incidence of mental health problems and high risk sexual conduct.<sup>271</sup> On the other hand, the IACHR has noted, for example, the multiple forms of discrimination and violence experienced by Afro-descendant women with diverse sexual orientations and gender identities, as well as the intersectionality of different factors, such as gender, race and extreme poverty, constituting a triple historical discrimination.<sup>272</sup>
186. In similar terms, the UN Independent Expert on Protection against Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity, in his first report, noted that, “lesbian, bisexual and transgender women are at particular risk of physical, psychological and sexual violence in family and community settings”.<sup>273</sup>

---

Colombian Constitutional Court has recognized the right to intimate visits by same-sex couples in penitentiary establishments.

<sup>269</sup> IACHR, Press Release No. 49/15, “[Discriminated and Made Vulnerable: Young LGBTI and Intersex People Need Recognition and Protection of their Rights](#)”, May 13, 2015. See also, IACHR, Press Release No. 60/13, “[The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings](#)”, August 15, 2013.

<sup>270</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 276. For example, the IACHR also stressed that “LGBTI youth are particularly vulnerable to sex trafficking [with the purpose of sexual exploitation]” (para. 299); that “most LGBTI victims of violence [...] are young Afro-descendants” (para. 365); and that “LGBTI-identified youth [...] comprise up to 40% of the country’s homeless youth population” (para. 376).

<sup>271</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 377.

<sup>272</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 359.

<sup>273</sup> United Nations, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), Vitit Muntarbhorn, A/HRC/35/36, April 19, 2017, para. 14.

187. In this regard, the IACHR notes that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”) is the only Inter-American instrument that defines violence against a particular group. In this regard, the Commission reiterates its view that, although sexual orientation and gender identity are not expressly included in the Convention of Belém do Pará, when it refers to factors that may increase women’s vulnerability to violence and, consequently, discrimination, these necessarily include sexual orientation, gender identity and the body diversity of lesbian, bisexual, transgender or intersex women.<sup>274</sup> Therefore, the IACHR reiterates that States have an obligation to prevent, punish and eradicate all forms of violence against women, and that the right of every woman to live free from violence includes the right to live free from discrimination, whether they be lesbian, bisexual, trans and intersex women.<sup>275</sup>
188. In addition, the IACHR wishes to emphasize that the adoption of special measures to protect LGBTI children is a responsibility of the State and the family, the community and the society to which they belong.<sup>276</sup> In this regard, the State, society and the family must, by all possible means, prevent all forms of violence against children in all settings;<sup>277</sup> and there must be a fair balance between the interests of the individual and those of the community, as well as a balance between the interests of the child and those of his or her parents.<sup>278</sup>
189. In relation to the personal security of LGBTI persons, since its 2015 report on this subject, the IACHR notes that the gravity of the situation persists, and that States generally do not have sufficient information to evaluate the effectiveness of the measures adopted. Nor do they have information on the intersectionality with other groups, at the root of the problem of violence caused by prejudice, due to the lack of official data collection. In this context, the IACHR reiterates the importance of the States of the American continent to undertake efforts towards the realization of the recommendations issued by the IACHR in its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015).

---

<sup>274</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 52.

<sup>275</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 282.

<sup>276</sup> I/A Court H.R. Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62.

<sup>277</sup> IACHR, [Report on corporal punishment and the human rights of children and adolescents](#), August 5, 2009, para. 28.

<sup>278</sup> IACHR, [Report on corporal punishment and the human rights of children and adolescents](#), August 5, 2009, para. 76.

## H. Access to Justice

190. The IACHR has defined “access to justice” as follows:

de jure and de facto access to judicial bodies and remedies for protection in cases of acts of violence, in keeping with the international human rights standards. The IACHR has held that for access to justice to be adequate, the formal existence of judicial remedies will not suffice; instead, those remedies must be effective for prosecuting and punishing the violations denounced and in providing redress [...] an effective judicial response to acts of violence against women includes the obligation to make simple, rapid, adequate and impartial judicial recourses available, without discrimination, for the purpose of investigating and punishing these acts and providing redress, so that in the end these acts do not go unpunished.<sup>279</sup>

191. For the purposes of this report, the justice system includes the Judicial Branch (all its instances, courts, and administrative divisions), the public prosecutor’s office, the police, and forensic medicine services, located in urban and rural areas, with national and/or local jurisdiction. In this section, the IACHR will focus on the actions of these bodies, specifically on the measures adopted with a view to eradicating widespread impunity of human rights violations committed against LGBTI persons. Such impunity, as highlighted by the IACHR, “signals that violence and discrimination are acceptable, which in turn, fosters repetition”;<sup>280</sup> and “sends a social message that the violence is condoned and tolerated, which in turn fuels further violence and leads to mistrust of the victims in the justice system.”<sup>281</sup>

192. The IACHR takes note of the ongoing enactment of legislation on hate crimes or the inclusion of sexual orientation and/or gender identity as aggravating circumstances of the crime in several countries in the region, such as Argentina, Chile, Canada, the United States, Honduras, Mexico, Nicaragua, Suriname, and Uruguay, among others.<sup>282</sup> However, it has warned that, “implementation of these laws is often weak, because of inefficiencies and obstacles in accessing justice for these crimes, including the prevalence of

---

<sup>279</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 5.

<sup>280</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 475.

<sup>281</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 476.

<sup>282</sup> See IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 412.

biased investigations, and the lack of training of police, forensics specialists, prosecutors, and judges”.<sup>283</sup>

193. This situation is aggravated by the fact that statistical data on the rate of conviction in cases involving LGBTI victims in the countries of the region are limited or non-existent, and this lack of judicial statistics “further complicates the analysis of situations of impunity in cases of violence against LGBTI persons”.<sup>284</sup> Indeed, the scarce data available to the IACHR, mainly from investigations by civil society organizations, “speak of alarming levels of impunity”.<sup>285</sup>
194. One of the concrete measures that the States of the region have been adopting in order to provide an effective judicial response to violations against LGBTI persons is the creation of specialized investigation units and the training of officials of the justice administration system, so that they are able to conduct their activities without making biased assumptions from the beginning of the investigations in order for them not to ignore the sexual orientation or gender identity of the victim as a potential motivation for the reported violation. Such efforts can be measured in a certain way, according to the information received by the Commission.
195. The State of Argentina, for example, promotes an extensive face-to-face program and virtual training in sexual diversity and human rights, implemented by the General Directorate for Comprehensive Sexual Diversity Policies (DGPIDS) of the Secretariat for Human Rights and Cultural Pluralism. According to the information received, during 2016 and 2017 to date more than 20,000 people were trained, of which a third were members of the security forces. In addition, the Ministry of Security’s Coordination of Diversity and Non-Discrimination carries out an awareness-raising program on diversity and non-discrimination, both for the national police and security forces and for other agents of the Ministry in question.<sup>286</sup> The IACHR was also informed of a cooperation agreement signed between the Ombudsperson’s Office of the Autonomous City of Buenos Aires and the Argentine Federation of Lesbians, Gays, Bisexuals and Transgender (FALGBT), in order to create the “LGBTI Ombudsperson’s Office” within the scope of this public body, whose main objective is to deal with cases of human rights violations against these people. According to the information provided, it functions as a comprehensive care center that provides advice,

<sup>283</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 414.

<sup>284</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 477.

<sup>285</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 479.

<sup>286</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

receives complaints and accusations, in coordination with the different areas and resources of the Ombudsperson's Office.<sup>287</sup>

196. The IACHR was also informed that, among its institutional policies, the Public Prosecutor's Office of the Argentine Republic (MPF) has a specific prosecutorial structure - the Specialized Prosecutor's Unit on Violence against Women (UFEM) - which has, among its statutory competencies, intervention in cases of gender-based violence against women and against the LGBTI population. According to the information received, the UFEM worked on the murder of Diana Sacayán, a trans woman and human rights defender, in October 2015, in Buenos Aires, which is one of the emblematic cases concerning violence against LGBTI persons.<sup>288</sup> The IACHR itself condemned the murder of the aforementioned human rights defender of trans people, who was found dead in her apartment on October 13, 2015.<sup>289</sup> According to the information received, from the beginning of the investigation, one of the hypothesis was that Sacayán's death may constitute a femicide/transvesticide or a gender hate crime, therefore, personnel trained in gender violence collaborated in the witness interviews and the collection of other evidentiary elements, providing a comprehensive perspective on the phenomenon, ensuring a stereotype-free performance, and adopting special measures to guarantee respect for the rights of all persons affected by the crime. According to the MPF of the Argentine Republic, this case constitutes a good practice to be replicated in order to reverse the patterns of impunity that this type of crime faces and to contribute to the prevention of violence against LGBTI persons, due to the rapid clarification of the homicide of Diana Sacayán and the bringing of the alleged perpetrators to trial. The case was brought to trial against a defendant for the crime of triple aggravated homicide for having been perpetrated against a trans woman for gender violence, for having been committed with malice and motivated by hatred of the victim's gender identity.<sup>290</sup> The Commission received information that the Oral Criminal and Correctional Court No. 4 of the City of Buenos Aires sentenced Gabriel David Marino to life imprisonment for murder aggravated by "hatred of gender identity and a context of gender violence".<sup>291</sup>

<sup>287</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>288</sup> Public Prosecutor's Office (Argentina). Response to the Consultation Questionnaire.

<sup>289</sup> IACHR, Press Release No. 123/15, "[IACHR Condemns Killing of Trans Human Rights Defender in Argentina](#)", October 30, 2015. The murder of Diana Sacayán, and the aggressions she suffered previously, are also cited in IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, footnote 1196 and para. 140, respectively.

<sup>290</sup> Public Prosecutor's Office (Argentina). Response to the Consultation Questionnaire. Information on the performance of the [MPF in the Diana Sacayán case](#).

<sup>291</sup> Public Prosecutor's Office (Argentina). Communication Note to the Inter-American Commission on Human Rights - DGDH N°. 9/2018, June 19, 2018.

197. In addition, with regard to training programs for State agents and the empowerment of civil society, it was argued that the General Directorate for Training and School of the MPF has conducted multiple workshops and courses on standards in the areas of equality and non-discrimination, access to justice and the rights of LGBTI persons, as well as criminal prosecution of cases of gender violence and hate crimes, with the participation and training of MPF agents from all over the country. Thus, from 2015 to the present, 16 activities related to the rights of LGBTI persons were carried out, six of which were exclusively for members of the MPF, while two were part of the Community Training Plan in which young students, teachers and members of civil society organizations were trained. The remaining eight activities were open to the Community.<sup>292</sup> Likewise, in June 2017, the Training Project for Territorial Gender Promoters was approved, and named “Territorial Gender Network” (RETEGER), which has the objective to transmit theoretical-practical tools to social referents and neighborhoods, so that they can accompany women and LGBTI persons who are in situations of violence, through the creation of community networks in different localities of the country that facilitate articulation with the relevant state institutions. The project includes several training modules, including a specific one on “Sexual diversity, gender identity, sexual orientation, LGBTI persons and gender discrimination”. According to the information received, the project is currently being carried out in various localities in Argentina.<sup>293</sup>
198. With regard to Colombia, the Commission was informed that, in November 2012, the “Urgent Cases Desk” was created, consisting of several government bodies, with the Office of the Attorney-General of the Nation (FGN) acting as the technical secretariat. It was reported that these desks deal mainly with cases involving violation of the rights to life, security and integrity. Follow up actions are carried out; and that affirmative actions are proposed aimed at improving the quality of life, guaranteeing and protecting the exercise of freedoms and human rights of the LGBTI social sectors. Likewise, the FGN has reiterated its constitutional commitment to carry out due diligence investigations into any type of conduct that is characteristic of a crime and to have a differentiated impact on the human rights of the LGTBI population, guaranteeing conditions of access to justice. Thus, for example, in 2014, the “Gender and Differential Approach Team” was created within the prosecuting entity, which develops guidelines to strengthen the proper investigation of violence in which sexual orientation, gender identity (real or perceived) and/or gender expression have motivated the act. Subsequently, Resolution No. 0998 was issued in 2015, creating a special working group to identify and analyze cases of violence motivated by sexual orientation and/or gender identity, directed against LGBTI persons.

---

<sup>292</sup> Public Prosecutor’s Office (Argentina). Response to the Consultation Questionnaire.

<sup>293</sup> Public Prosecutor’s Office (Argentina). Response to the Consultation Questionnaire.

Consequently, differential investigation strategies are implemented, which are executed by prosecutors, who also evaluate whether the death or victimization in the case of the crime of homicide or threats is due to, or a direct consequence of, the victim's sexual orientation or as a clear sign of discrimination and intolerance. According to the information, prosecutors receive ongoing training through international meetings and local workshops.<sup>294</sup>

199. The State of El Salvador, for its part, indicated that the Office of the Attorney-General of the Republic (FGR) has carried out the following actions to ensure access to justice for the LGBTI population: designation of specialized prosecutors in each national prosecutor's office to investigate cases involving LGBTI persons; creation of an "Inter-institutional Roundtable" to follow up cases involving LGBTI persons and to issue guidelines or recommendations, with a focus on human rights; and coordination with civil society organizations and the LGBTI population, providing a space for dialogue. The Attorney-General's Office also has a Prosecutor Training School to provide initial and ongoing training for staff. According to the information received, in 2016, in coordination with the Asociación Entre Amigos LGBTI de El Salvador and Plan Internacional, the Training School gave eight courses on "Sensitizing people to sexual diversity"; and with the support of the American Bar Association - Rule of Law Initiative (ABA-ROLI), six courses on "Specialized Investigation of Hate Crimes" were given to prosecutors, police officers, Forensic personnel and judges. There were also reports of a "Regional Intersectoral Course on Hate Crimes Investigation", benefiting 160 prosecutors; and seven "Specialized Hate Crimes Investigation" courses given in 2017 to a total of 83 prosecutors. The information provided indicates that the National Civil Police, through the Gender Unit, is working on the issue of sexual diversity from three approaches: training, awareness-raising and non-discrimination, for the mainstreaming of the subject in the manuals that regulate the provision of services of the administration of justice.<sup>295</sup>
200. The State of Honduras informed the IACHR of several actions taken by the National Human Rights Commissioner (CONADEH). According to the information received, CONADEH created the Office for the Defense of Sexual Diversity, which promotes issues relating to the enjoyment of the rights of the LGBTI population, including training for the National, Military and Municipal Police in order to reduce stigma and discrimination. In this regard, during the period from 2014 to June 2017, CONADEH conducted 265 courses for officials of the Security Forces on human rights, gender identity and sexual orientation, with the participation of 6,625 officials. Likewise, upon

---

<sup>294</sup> Colombia. Response to the Consultation Questionnaire.

<sup>295</sup> El Salvador. Response to the Consultation Questionnaire.

CONADEH's request, the "LGBTI Community Access to Justice Roundtable" was reinstated as of May 2017, with the purpose of clarifying hate crimes and establishing strategic actions to prevent situations of violence against the LGBTI community.<sup>296</sup>

201. In relation to the State of Mexico, according to the information received, the Supreme Court of Justice of the Nation (SCJN) has issued two protocols: "Protocol of action for those who impart justice in cases involving sexual orientation or gender identity"; and "Protocol for judging with a gender perspective". In addition, courses have been given on access to justice for LGBTI persons, including a diploma course on the provision of justice for vulnerable groups with a gender perspective. For its part, the Office of the Attorney General of the Republic (PGR) has in place a "Protocol for action by PGR personnel in cases involving sexual orientation or gender identity", the purpose of which is to safeguard the inherent rights of all persons, guaranteeing equal treatment and respect for their privacy, taking into account their needs for gender expression. According to the information provided by the State, this instrument establishes the rules of action to be followed by public servants, and seeks to give effect to the right of access to justice for LGBTI persons, by searching for justice based on respect and the protection of human rights, through the implementation of positive actions by the public servants of the Attorney General's Office to provide specialized care, both to victims and defendants belonging to the LGBTI community, in order to prevent them from suffering damage to their physical and emotional integrity by virtue of their gender and sexual orientation.<sup>297</sup>
202. The IACHR appreciates the above-mentioned initiatives relating to the training of personnel in the justice system in order to provide adequate care for the LGBTI population and to promote their access to justice on an equal and non-discriminatory basis. The Commission notes that sensitizing justice workers is an important initial step towards effective access to justice for the LGBTI population. In this regard, the IACHR reminds States that, in accordance with the "Yogyakarta +10 Principles" on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics, States must "[e]nsure sensitivity training of judicial and law enforcement officers and other public officials on issues relating to sexual orientation, gender identity, gender expression and sex characteristics".<sup>298</sup> Similarly, in its report on guarantees for the independence of judicial officials, the Commission urged States to

<sup>296</sup> Honduras. Response to the Consultation Questionnaire.

<sup>297</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire.

<sup>298</sup> [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 30 (The Right State Protection), f.

give priority to the implementation of specialized training for judges, prosecutors and public defenders on the rights of groups that, because of their characteristics, require specialized treatment,<sup>299</sup> such as lesbian, gay, bisexual, transgender and intersex people. To this end, they should promote the training of justice workers, taking into account the specificity of the violations suffered by these individuals, such as, for example, the question of their identity and/or change of name, prejudices in the investigation of crimes against them, their distrust of public bodies and officials, among others.

203. Notwithstanding the foregoing, the Commission considers it crucial that States in the region take steps to conduct effective, prompt and impartial investigations into acts of violence and discrimination against LGBTI persons, by including multidisciplinary teams with adequate scientific technical support.
204. Likewise, the IACHR notes that many of the most significant developments towards the recognition of the rights of LGBTI persons in the continent have been the result of decisions of the Judicial Branch of the States of the region. In this regard, the Commission notes that the work of judges in general enjoys greater independence and autonomy when compared with the work of the Executive and Legislative Branches, especially with respect to vulnerable populations such as LGBTI persons, in a context of stigma and social discrimination. The IACHR refers to several judicial decisions throughout this report that have supported the recognition of the rights of the LGBTI population on various issues. Indeed, the Commission recognizes, once again, “that judges are the lead actors in ensuring judicial protection of human rights in a democratic State and the due process that must be observed all judicial proceedings”.<sup>300</sup>
205. In this context, the IACHR urges States to act with due diligence to prevent, investigate, prosecute, punish and redress human rights violations perpetrated by state or private actors against LGBTI persons, through comprehensive and effective measures that promote rigorous investigation, and ensure affective access to justice for the LGBTI population, including the adoption of specific protocols for the officers in charge of the administration of justice, particularly when there have been instances of violence and discrimination.<sup>301</sup> The IACHR emphasizes that this work should be

---

<sup>299</sup> IACHR, [Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), December 5, 2013, para. 145.

<sup>300</sup> IACHR, [Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), December 5, 2013, para. 16.

<sup>301</sup> See, in the same sense, each of the specific measures included in Principle 30 (Right to the protection of the State), a - j, of the [Additional principles and state obligations on the application of international human](#)

undertaken by all branches of the administration of justice, through concerted, joint and forceful efforts, in order to address the systematic violence and discrimination suffered by LGBTI persons, combat the widespread impunity linked to such acts, and effectively guarantee the right to justice of the LGBTI population. Furthermore, the IACHR recommends that States implement the adequacy of a justice system that takes into account the respect and protection of the rights of LGBTI persons, particularly considering their real or perceived sexual orientation, gender identity or body diversity.

## ***I. Access to and Control of Economic Resources***

206. In relation to LGBTI persons, in its Report on Poverty and Human Rights (2017), the IACHR stressed that “[t]here is a strong link between poverty, exclusion and violence based on prejudice,”<sup>302</sup> and that “discrimination affecting LGBTI persons in the societies of the region places them in a cycle of exclusion that tends to culminate in poverty because of their lack of access to services, opportunities and social benefits.”<sup>303</sup> The Commission also stressed that “[s]tructural discrimination against LGBTI persons may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination.”<sup>304</sup>
207. In this section, the IACHR will refer to poverty, understood as the deprivation of physical and mental well-being due to lack of economic resources, or the deprivation of capabilities, which prevents LGBTI persons from having access to sufficient income to meet their basic needs. In this context, the IACHR will refer to some measures taken by States to guarantee, among others, the right to work and to social security, the right to housing and the right to food, which constitute basic assumptions for the economic and social well-being of LGBTI persons in order to ensure their freedom from fear and hardship, and to guarantee their human dignity. In addition, the Commission will refer to the recognition of same-sex relationships, and rights arising from same-sex relationships, particularly rights of a patrimonial nature.
208. With regard to the lack of economic resources, the Commission has considered the situation of trans people, especially those from racial

---

[rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics](#) (only available in English) 2017.

<sup>302</sup> IACHR, [Report on Poverty and Human Rights in the Americas](#), September 5, 2017, para. 440.

<sup>303</sup> IACHR, [Report on Poverty and Human Rights in the Americas](#), September 5, 2017, para. 443.

<sup>304</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 370.

minority groups, who are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence; LGBTI youth and trans people who are pushed into the informal economy, criminal activity, and sex work as a means of survival; to the close relationship between homelessness, sex work or survival sex, and violence; to the discrimination and violence faced by LGBTI persons living on the streets when they are in shelters and community homes; and to the specific and concrete impact of poverty and exclusion on the lives of intersex people and their families, which makes them more vulnerable to violence in health care settings.<sup>305</sup> Accordingly, the IACHR recommended that States “[e]nsure that the programs provided by the State for low income, homeless or unemployed persons are accessible to LGBTI persons.”<sup>306</sup>

209. Similarly, the Inter-American Court has observed that discrimination against LGBTI persons is often exacerbated by socio-economic factors such as poverty. According to the Court, “such multiple forms of discrimination may be felt at an individual level and a societal one, as LGBTI persons, deprived of access to such basic rights as employment, health, education and housing find themselves in poverty, cut off from economic opportunity”.<sup>307</sup> The Commission emphasizes that the above-mentioned pronouncements clearly demonstrate the interdependence of civil, political, economic, social and cultural human rights, as well as their indivisibility. Indeed, at the root of several of the problems identified in relation to social exclusion and poverty that disproportionately affect LGBTI persons, the lack of adequate education clearly shows how violations of this population’s right to education have a negative impact on the enjoyment and exercise of other human rights. As the Court has established, “the right to education is the epitome of the indivisibility and interdependence of all human rights”, as it is an indispensable means of realizing other human rights.<sup>308</sup>

210. In response to this problem, for example, the State of Argentina informed the IACHR that it is responsible for providing job opportunities for trans people; and state agencies such as INADI and the Employment Secretariat of the Ministry of Labor, Employment and Social Security (MTEySS) have designed joint actions with the aim of reducing situations of discrimination in the workplace. Among them, the State specifically cited the “Labor Inclusion Line for Transvestites, Transsexuals and Transgender Persons”,

---

<sup>305</sup> See IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, paras. 371, 372, 375, 378 and 379.

<sup>306</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015. Recommendations, para. 98.

<sup>307</sup> 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. 41.

<sup>308</sup> I/A Court H.R. *Gonzales Lluy and others. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 234.

implemented by the Ministry of Employment of the MTEySS, based on Resolution No. 331/2013, which extends the beneficiary population of the Training and Employment Insurance to persons whose gender identity does not coincide with the sex assigned at birth, in order to reduce the inequality of opportunities in access to employment.<sup>309</sup> According to information provided by the Public Ministry of Defense of the Autonomous City of Buenos Aires, for example, the results of this program “cannot be dismissed”, and “indicate that when there is a policy aimed at groups particularly vulnerable in their employability, participation in said policy is high”.<sup>310</sup>

211. Likewise, the IACHR observes that, in September 2015, provincial law No. 14,783 was passed in the Province of Buenos Aires (the “Diana Sacayán” Trans Quota Law), establishing that the public sector of said Province must employ transvestites, transsexuals and transgender persons in a proportion of 1% less than 3% of the entirety of its personnel.<sup>311</sup> However, the IACHR takes note that, according to the information received, this law is still awaiting implementation through regulatory regulation by the Provincial State.<sup>312</sup> In addition, the State reported that the municipalities of Rosario (Santa Fe), Las Heras (Mendoza), Bell Ville (Córdoba), Tafí Viejo (Tucumán), Resistencia (Chaco), Mar del Plata (Bs As), Río Grande (Tierra del Fuego), Campana (Buenos Aires), Morón (Buenos Aires), Lanús (Buenos Aires) and La Plata (Buenos Aires), among others, have trans labor quota ordinances. Likewise, projects for trans labor quotas were presented in the provinces of Salta, Entre Ríos, La Pampa, Jujuy, Chaco, Corrientes, La Rioja, Neuquén and Río Negro.<sup>313</sup>
212. Finally, with regard to Argentina, according to the information received, the General Directorate for Comprehensive Sexual Diversity Policies (DGPIDS) of the Ministry of Justice and Human Rights has developed an employment bank for trans persons through which job applications are received and collected from trans persons seeking work. In this way, companies and public and private bodies offering jobs and candidates entering their curricula are contacted. This exchange is aimed at trans persons over 18

---

<sup>309</sup> Argentina, National Institute against Discrimination, Xenophobia and Racism (INADI) of the Ministry of Justice and Human Rights. Response to the Consultation Questionnaire; and Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>310</sup> Public Defender’s Office of the Autonomous City of the City of Buenos Aires (Argentina). Response to the Consultation Questionnaire.

<sup>311</sup> See IACHR, Press Release No. 122/15, “[IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons](#)”, October 30, 2015.

<sup>312</sup> Argentina, National Institute against Discrimination, Xenophobia and Racism (INADI) of the Ministry of Justice and Human Rights. Response to the Consultation Questionnaire; and Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>313</sup> Argentina, National Institute against Discrimination, Xenophobia and Racism (INADI) of the Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

years of age, Argentineans (native or naturalized) or foreigners with legal residence in the country.<sup>314</sup>

213. In Brazil, in the city of São Paulo, there is another initiative similar to the one described above, concerning a scholarship for the professional qualification of trans people in vulnerable situations. This refers to the Transcidadania Program, launched in January 2015, which initially had 100 quotas (currently 175), with the objective of promoting social reintegration and reinstating the citizenship of trans people in the city of São Paulo. According to the available information, the beneficiaries receive psychological, legal, social and pedagogical support during the two-year duration of the program.<sup>315</sup>
214. The State of Ecuador, for its part, reported on the implementation of the memorandum of understanding signed between the Ministry of Labor and UN Women, to promote public policies with a gender perspective in the areas of work and employment. According to the information received, the following actions were carried out in 2015: the elaboration of a study on gender violence and discrimination against LGBTI groups in the labor sphere, which highlighted the urgency of analyzing the critical situation of vulnerability of trans workers, especially regarding their access to work in decent conditions; the creation of a guide with practical recommendations to eradicate the different forms of discrimination against LGBTI persons in the labor sphere; and awareness talks on the inclusion of work without discrimination of vulnerable people, addressed to public and private officials, emphasizing the use of inclusive language and rights of LGBTI persons and other priority groups.<sup>316</sup>
215. The State of Mexico reported that the Ministry of Labor and Social Security (STPS) promotes actions with the public, private and social sectors in favor of equality and labor inclusion of vulnerable groups, including the LGBTI community, through policies that encourage the creation of jobs in the formal sector in decent working conditions, with training, social security and health and safety conditions. It also reported that, through the Distinctive Inclusive Company “Gilberto Rincón Gallardo”, the STPS recognizes work centers that apply policies of good labor practices for people in vulnerable situations in equal opportunities, inclusion and non-discrimination. The Distinctive Inclusive Company has national coverage and, according to the information provided, to date 1,766 work centers have been recognized, benefiting 29,032 people, of which 1,925 belong to the LGBTI community. On the other hand, the State indicated that in 2016, the Ministry of Labor and

---

<sup>314</sup> Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire.

<sup>315</sup> On the [Transcidadania Program](#).

<sup>316</sup> Ecuador. Response to the Consultation Questionnaire.

Employment Promotion (STyFE) of Mexico City, in coordination with COPRED, provided unemployment insurance support to the first group of nine trans women, who suffered from phobia and discrimination in their workplace.<sup>317</sup>

216. Regarding the protection of LGBTI persons from poverty, the IACHR points out that the Yogyakarta +10 Principles provide that, “[e]veryone has the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sex characteristics. Poverty is incompatible with respect for the equal rights and dignity of all persons, and can be compounded by discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.”<sup>318</sup> Therefore, States should:

Take all necessary legislative, administrative, budgetary and other measures, including economic policies, to ensure the progressive reduction and elimination of all forms of poverty associated with or exacerbated by sexual orientation, gender identity, gender expression or sex characteristics;

Promote social and economic inclusion of persons marginalized on the basis of sexual orientation, gender identity, gender expression and sex characteristics.<sup>319</sup>

217. The limitations of the measures adopted by States in the context of access to and control of economic resources show that official efforts fail to measure up to the magnitude and seriousness of the lack of recognition of rights as described in this report. In this regard, the IACHR urges States to adopt comprehensive measures to effectively address discrimination and violence faced by LGBTI persons living in poverty, and to continue to dedicate efforts and resources to eradicate poverty.
218. Finally, on this issue, the IACHR considers it pertinent to refer to interpersonal ties between persons of the same sex, egalitarian marriage, and the rights of a patrimonial nature derived from such relationships. In this regard, the IACHR again notes that the Inter-American Court recently

<sup>317</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire.

<sup>318</sup> [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 34 (Right to protection from poverty).

<sup>319</sup> Principle 34.A and 34.B (Rights of protection against poverty). Principles 34.C, 34.D and 34.E also provide for the participation and inclusion of beneficiaries in the design and implementation of respective measures; data collection and institutionality for poverty reduction; and access to effective remedies, respectively. [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.

examined this issue in the framework of the request for an Advisory Opinion OC-24 presented by the State of Costa Rica.<sup>320</sup> The Court decided that “the scope of the protection of the family relationship of a same-sex couple goes beyond mere patrimonial rights issues [...and] permeates other rights, such as civil and political, economic and social rights, as well as other internationally recognized rights.”<sup>321</sup>

219. In the Inter-American System, certain human rights that integrate the concept of “well-being” have been identified as rights that derive from the OAS Charter, for example: the right to social security and labor rights.<sup>322</sup> Likewise, the Inter-American Court determined, in the Case of Duque v. Colombia, that sexual orientation cannot be an obstacle to the realization of economic, social and cultural rights.<sup>323</sup> In certain situations, such rights are challenged in practice due to the lack of recognition of equal marriage, or of civil unions between persons of diverse sexual orientation or gender identity with essentially the same rights and duties as those existing between heterosexuals.
220. The IACHR considers that the above leads to violations, inter alia, of the rights of equality before the law and protection against discrimination and, consequently, it is not possible to differentiate between the acknowledgement of patrimonial rights based on the sexual orientation or gender identity of persons. In the same vein, the Inter-American Court stated that:

The American Convention protects, by virtue of the right to the protection of private and family life (Article 11.2), as well as the right to the protection of the family (Article 17), the family bond that can derive from a relationship of a same-sex couple. The Court also considers that all economic rights derived from the protected family relationship between persons of the same sex should be protected, without any discrimination with respect to heterosexual couples, in accordance with the right to equality and non-discrimination (Articles 1.1 and 24). Without prejudice to the foregoing, the international obligation of States transcends issues linked solely to economic rights and extends to all internationally recognized human rights, as well as to the rights and obligations recognized in the domestic law

<sup>320</sup> I/A Court H.R. [Request for an Advisory Opinion submitted by the State of Costa Rica](#), May 18, 2016

<sup>321</sup> 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. 198.

<sup>322</sup> See IACHR, Report No. 5/14. Case 12.841. *Ángel Alberto Duque. Colombia*. April 2, 2014, para. 68.

<sup>323</sup> See I/A Court H.R. [Duque v. Colombia. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of February 26, 2016. Series C No. 310, paras. 108-109.

of each State arising from the family ties of heterosexual couples.<sup>324</sup>

221. At the United Nations level, in 2012, the Office of the United Nations High Commissioner for Human Rights also published a report on sexual orientation and gender identity in international human rights law, in which it analyzed the existence of discrimination on the basis of these categories, in areas of particular concern such as employment, health and education, as well as access to basic services such as housing and social benefits.<sup>325</sup> In addition, the report noted that, “the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried opposite-sex couples”.<sup>326</sup>
222. Indeed, in the United Nations, efforts to ensure not only the legal recognition of same-sex couples, but specifically of equal marriage, have been especially intensified in recent years. For example, the United Nations Children’s Fund (UNICEF) has also expressly supported the enactment of laws providing legal recognition for same-sex couples and their children, including legal recognition of their family ties. According to UNICEF:

Legal recognition (in addition to "protection") of family relationships is important in combating discrimination against LGBTI couples and their children, as parents without legal recognition are prevented from making decisions related to fundamental aspects of their children's lives, such as education and health. They are also frequently excluded from state benefits and tax privileges specially designed to support family members.<sup>327</sup>

223. Therefore, the Commission considers that, in view of the *pro personae* principle and the progressive development of international human rights standards on the subject, it is possible to affirm the existence of an international obligation to recognize unions of persons of diverse sexual orientation or gender identity, either as a proper marriage (egalitarian

---

<sup>324</sup> 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. 199.

<sup>325</sup> United Nations. Office of the High Commissioner. Report “Born Free and Equal”. Sexual orientation and gender identity in international human rights law. 2012, pp. 45-46.

. In this section, the report reproduces the pronouncements of the Human Rights Committee, for example the cases *X v. Colombia* and *Young v. Australia* to reaffirm that differences in the recognition of social benefits for same-sex couples constitute a violation of the Covenant.

<sup>326</sup> United Nations. Office of the High Commissioner. Report “Born Free and Equal”. Sexual orientation and gender identity in international human rights law. 2012, p. 53.

<sup>327</sup> UNICEF. *Current issues. Eliminating discrimination against children and parents base on sexual orientation and/or gender identity*, p. 4.

marriage), or under an equivalent legal status and which takes into account the principle of equality and non-discrimination with respect to the situation of heterosexual couples, as well as the principle of protection of diverse families.

224. Several states submitted information to the Commission in relation to the equal protection of LGBTI persons, through the legalization of egalitarian marriage or equivalent civil unions. In this regard, the Commission notes that equal marriage is recognized by law in Canada, Argentina and Uruguay, as well as by judicial channels in Brazil, Colombia, Mexico, Costa Rica and the United States. Chile and Ecuador have also recently adopted laws on same-sex civil unions. Several other countries in the region also informed the IACHR of legislative or other initiatives aimed at recognizing equal marriage or civil unions between persons, without distinction as to sexual orientation or gender identity.
225. In the Americas, the State of Canada was the first to legally recognize equal marriage, the Civil Marriage Act of July 20, 2005. This law establishes that marriage, for civil purposes, is the union of two persons, without reference to their sex. Also, “to give greater certainty”, the law establishes that a marriage is not null or voidable due to the fact that the spouses are of the same sex.<sup>328</sup>
226. In the State of Argentina, Law No. 26.618 of July 15, 2010 enacted egalitarian marriage.<sup>329</sup> According to the information received, this law constituted a partial reform of the Civil Code, the Civil Status and Capacity of Persons Registration Act, and the Name Act. Article 172 of the Civil Code was modified as follows: “Marriage shall have the same requirements and effects, regardless of whether the spouses are of the same or different sex”.<sup>330</sup>
227. Finally, the State of Uruguay legalized egalitarian marriage through Law No. 19,075 “Egalitarian Marriage” (of May 3, 2013), as amended by Law No. 19,119 (of August 2, 2013), determining that, “civil marriage is the

---

<sup>328</sup> Canada, [Civil Marriage Act](#) (July 20, 2005). The preamble to the law also mentions that egalitarian marriage was previously recognized through the courts in most provinces of Canada. See, in this regard, 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. 213.

<sup>329</sup> [Law No. 26.618](#) (July 15, 2010).

<sup>330</sup> Argentina, INADI. Response to the Consultation Questionnaire; and Argentina, Ministry of Justice and Human Rights. Response to the Consultation Questionnaire. See also 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. 208.

permanent union, under the law, of two persons of the same or different sex”.<sup>331</sup>

228. On the other hand, other States in the region have legalized egalitarian marriage through judicial decisions with general applicability. In the State of Brazil, for example, on May 5, 2011, the Federal Supreme Court (STF) decided two constitutional actions (ADI 4277/DF and ADPF 132/RJ), aimed at broadening the concept of family and allowing “stable union”, with equal rights and duties with marriage, between persons of the same sex. This STF decision determined that any legal distinction in the treatment of same-sex unions with those between persons of different sexes was unconstitutional. Subsequently, the National Council of Justice issued its Resolution No. 175 on May 14, 2013, stating that, “civil registry officers are prohibited from declining to celebrate civil marriage or the conversion of civil union into marriage between persons of the same sex”, thereby recognizing equal marriage throughout Brazil.<sup>332</sup>
229. The Colombian Constitutional Court, in Ruling SU-214 of 2016, announced its decision that all human beings may enter into civil marriage, in accordance with their sexual orientation, ratifying an earlier ruling of 2011. In its earlier ruling C-577 of 2011, the Constitutional Court had recognized that same-sex couples were families and that they had the right to access a formal union such as marriage. Additionally, it set a time limit for Congress to legislate on the protection deficit for same-sex couples, who, otherwise, would be entitled to appear before a notary or judge to formalize their union. By virtue of the inertia of Congress in the following years, in 2016 the Constitutional Court ratified its position on egalitarian marriage, determining that, although “the Constitution expressly establishes that marriage arises from the bond between a man and a woman, from this normative description which enshrines a right in favor of heterosexual persons, it does not follow that there is a prohibition for others to exercise it under equal conditions. By enshrining that men and women may marry each

---

<sup>331</sup> [Law No. 19.075](#) (May 3, 2013), as amended by [Law No 19.119](#) (August 2, 2013). See, in this regard, 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. 207.

<sup>332</sup> Brazil. Response to the Consultation Questionnaire; and Universidade Federal de Pernambuco (Brazil). Response to the Consultation Questionnaire; and Universidade Federal de Pernambuco (Brazil). Response to the Consultation Questionnaire. CNJ [Resolution No. 175](#) (May 14, 2013). For the STF decisions of May 5, 2011. ([Ação Direta de Inconstitucionalidade – ADI n° 4277/DF](#)); and. ([Arguição de Descumprimento de Preceito Fundamental – ADPF n° 132/RJ](#)). See also 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. 209.

other does not imply that the Constitution excludes the possibility of this bond being celebrated between women or between men as well”.<sup>333</sup>

230. With respect to the United States, on June 26, 2015, the US Supreme Court legalized same-sex marriage at the federal level. In this regard, as described by the Inter-American Court, the decision of the Supreme Court “has conducted an analysis of the principles and traditions that must be discussed in order to demonstrate that the protection of the right to marriage applies with equal force to same-sex couples”.<sup>334</sup>
231. With regard to the State of Mexico, the National Supreme Court of Justice (SCJN) issued generic jurisprudence on June 19, 2015, finding it unconstitutional to exclude same-sex couples from marriage, on the basis of the principle of equality and non-discrimination.<sup>335</sup> In light of Mexico’s jurisprudential system, which consists of the reiteration of the same criterion on at least five occasions, the First Chamber of the SCJN established a mandatory criterion for all judicial authorities in the country.<sup>336</sup> The IACHR

<sup>333</sup> Colombia. Response to the Consultation Questionnaire; Corporación Caribe Afirmativo (Colombia). Response to the Consultation and Colombia Diversa (Colombia). Response to the Consultation Questionnaire. The IACHR also observes, with respect to the economic rights of same-sex couples in Colombia since Judgment SU-214 of 2016, the progressive evolution of the jurisprudence of the Constitutional Court, in accordance with the following judgments: C-075 of 2007 (Marital Union of Fact), C-811 of 2007 (affiliation to health), C-336 of 2008 (recognition of survivors’ pensions), C-029 of 2009 (revision of Colombian law for equal rights for same-sex couples) and C-283 of 2011 (marital portion in successions). See also 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. 212.

<sup>334</sup> I/A Court H.R. Duque v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 26, 2016. Series C No. 310, para. 118, citing U.S. Supreme Court, *Obergefell et al v. Hodges, Director, Ohio Department of Health, et al.* No. 14–556. Argued April 28, 2015- June 26, 2015. The Inter-American Court also noted that the U.S. Supreme Court decision reasoned that, throughout history, an expanding list of governmental rights, benefits, and responsibilities has been added to the marriage, including: taxes, inheritance and property rights, rules of intestate succession, spousal privilege in evidence law, access to hospital, authority to make medical decisions, adoption rights, survivor’s rights and benefits, birth and death certificates, rules of professional ethics, financial restrictions, workers’ compensation benefits, health insurance and child custody, support and visitation rules. See also 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. 213.

<sup>335</sup> Jurisprudential Thesis: *Semanario Judicial de la Federación y su Gaceta*, Thesis: 1a./J. 43/2015, MARRIAGE: “The law of any federal entity that, on the one side, considers that the purpose of that one is the procreation and / or that defines as the one that is celebrated between a man and a woman, is unconstitutional” (Unofficial translation), June 2015, p. 536; *Semanario Judicial de la Federación y su Gaceta*, Thesis 1a. /J. 45/2015, CONFIGURATIVE FREEDOM OF THE LEGISLATOR. IS LIMITED BY THE FUNDAMENTAL RIGHTS TO EQUALITY AND NON-DISCRIMINATION THAT OPERATE TRANSVERSELY. “Although the state congresses have freedom of configuration to regulate the civil status of persons, this power is limited by the constitutional mandates and the recognition of human rights from the Constitution and international treaties signed by Mexico”. (Unofficial translation) June 2015, p. 533; *Semanario Judicial de la Federación y su Gaceta*, Thesis 1a. /J. 46/2015 MATRIMONIO ENTRE PERSONAS DEL MISMO SEXO. NO EXISTE RAZÓN DE ÍNDOLE CONSTITUCIONAL PARA NO RECONOCERLO. September 2015, p. 253. See also 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. 206.

<sup>336</sup> On the jurisprudential evolution regarding egalitarian marriage in Mexico (from the first cases of the Federal District - 2010, and those of Oaxaca - 2012 and 2014), see QUINTANA OSUNA, Karla I. “La Evolución Judicial del Matrimonio Igualitario en México. Su impacto en el reconocimiento de derechos”.

also notes that, according to the information, some states already have the necessary legislative reforms to recognize egalitarian marriage: Mexico City (December 21, 2009); Quintana Roo (November 28, 2011); Coahuila (September 1, 2014); Nayarit (December 16, 2015); Campeche (May 10, 2016); Michoacán (May 18, 2016); and Morelos (May 18, 2016). In addition, it was reported that there are federal entities that have legal concepts other than marriage for the legal recognition of unions of the same sex or civil union: Coahuila, “Pacto Civil de Solidaridad” (January 11, 2007); Federal District, “Sociedad de convivencia” (November 16, 2006); Jalisco, “Ley de Libre Convivencia” (October 31, 2013); and Campeche, “Ley de Sociedades Civiles de Convivencia” (December 16, 2015).<sup>337</sup>

232. The Commission also positively emphasizes the decision of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, which, applying the criteria of Advisory Opinion 24/17 of the Inter-American Court of Human Rights,<sup>338</sup> declared unconstitutional the article of the Family Code that explicitly prohibits marriage between persons of the same sex and ordered the Costa Rican Congress to adapt State legislation, within 18 months, in order to recognize equal marriage between persons of the same sex. According to the Court’s decision, if Congress does not comply with this legal mandate, the current law will lose its effectiveness and equal marriage will be recognized automatically.<sup>339</sup>
233. According to the information provided, Article 68 of the 2008 Constitution of the State of Ecuador recognizes the “stable union” of two persons without distinction as to sex, as follows: “a stable and monogamous union between two persons free of marital ties who form a de facto household, for the period and under the conditions and circumstances established by law, shall generate the same rights and obligations as families constituted by marriage”. Likewise, the de facto union of same-sex couples was recognized in Ecuador in 2015, through a reform of the civil code.<sup>340</sup>
234. Finally, with regard to the recognition of civil unions other than marriage, in the State of Chile, Law No. 20,830 (April 13, 2015) established the “Civil Union Agreement”, which “is a contract concluded between two persons

---

<sup>337</sup> Mexico, CONAPRED. Response to the Consultation Questionnaire.

<sup>338</sup> 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.

<sup>339</sup> See IACHR, Press Release 181/18, “[IACHR Welcomes Supreme Court Decision on Equal Marriage in Costa Rica](#)”, August 14, 2018.

<sup>340</sup> [Constitution of Ecuador](#) (October 20, 2008), Article 68. Ecuador. Response to the Consultation Questionnaire. The IACHR observes, however, that Article 68 of the Constitution provides that “the adoption shall correspond only to couples of different sexes”, thus establishing, constitutionally, an important distinction between the union of same-sex couples and those of different sexes. See also 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. 211.

who share a home, with the purpose of regulating the legal effects derived from their affective life in common, of a stable and permanent nature. The parties shall be known as civil partners and shall be considered as relatives for the purposes provided for in the [...] Civil Code”.<sup>341</sup>

235. With respect to the recognition of egalitarian marriage, or of civil unions between persons of diverse sexual orientation or gender identity - insofar as these grant rights and obligations equivalent to similar relationships between heterosexual persons - the IACHR considers that States have the obligation to legally recognize same-sex unions or marriages, granting the same rights to couples of different sexes, including property rights, and all others deriving from that relationship, without distinction on grounds of sexual orientation or gender identity. Not doing so would constitute a violation to the rights of equality and non-discrimination of same-sex couples, among other rights.
236. The Inter-American Court has also expressed a firm view, in the following terms:

in the Court’s opinion, there would be no sense in creating an institution that produces the same effects and gives rise to the same rights as marriage, but that is not called marriage except to draw attention to same-sex couples by the use of a label that indicates a stigmatizing difference or that, at the very least, belittles them. On that basis, there would be marriage for those who, according to the stereotype of heteronormativity, were considered “normal,” while another institution with identical effects but with another name would exist for those considered “abnormal” according to this stereotype. Consequently, the Court deems inadmissible the existence of two types of formal unions to legally constitute the heterosexual and homosexual cohabiting community, because this would create a distinction based on an individual’s sexual orientation that would be discriminatory and, therefore, incompatible with the American Convention.<sup>342</sup>

237. In effect, the Inter-American Court determined that “[t]he establishment of a differentiated treatment between heterosexual couples and couples of the same sex regarding the way in which they can form a family – either by a de

---

<sup>341</sup> [Law No. 20.830](#) (April 13, 2015), Article 1. See *Agrupación Lésbica - Rompiendo el Silencio* (Chile). Response to the Consultation Questionnaire; and 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. 210.

<sup>342</sup> 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. 224.

facto marital union or a civil marriage – does not pass the strict test of equality [...] because, in the Court’s opinion, there is no purpose acceptable under the Convention for which this distinction could be considered necessary or proportionate”.<sup>343</sup> In this regard, the Court added that it “recognizes the important role that [philosophical or religious convictions] play in the life and dignity of those who profess them. Nevertheless, these convictions cannot be used as a parameter of conventionality because the Court could not use them as an interpretative guide when determining the rights of human being.”<sup>344</sup> In conclusion, the Inter-American Court established that “States must ensure access to all the legal institutions that exist in their domestic laws to guarantee the protection of all the rights of families composed of same-sex couples, without discrimination in relation to families constituted by heterosexual couples”.<sup>345</sup>

238. In this sense, access to and control of economic resources is a fundamental factor in the construction of recognizing the rights of LGBTI persons and the possibility that they can achieve their life plans in a way that is not equal to other individuals. The Inter-American Commission welcomes the initiatives of the countries of the region that are investing efforts in the construction of the autonomy of LGBTI persons, whether through the construction of measures of historical inclusion and reparation, such as labor quota laws or programs to strengthen citizenship, as well as those that have dedicated efforts in the recognition of the right to equality and access to property rights linked to marriages and other forms of close emotional union. Likewise, the IACHR urges the other states of the hemisphere to continue to guarantee the right to equality and non-discrimination, which means that more LGBTI persons have access to economic resources and can live free from various forms of violence.

---

<sup>343</sup> 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. 220.

<sup>344</sup> 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. 223.

<sup>345</sup> 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. 228.



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”.<sup>346</sup>
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.<sup>347</sup> The IACHR recalls that the perpetuation of such laws generates a

---

<sup>346</sup> 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.

<sup>347</sup> 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.<sup>348</sup>
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.<sup>349</sup>
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).<sup>350</sup> This decision guarantees an important step towards the recognition of gender identity and expression in the country, complying with the international

---

<sup>348</sup> 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.

<sup>349</sup> 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.

<sup>350</sup> 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.”<sup>351</sup> 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.<sup>352</sup>
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”.<sup>353</sup> 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.<sup>354</sup> 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

---

<sup>351</sup> [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.

<sup>352</sup> See, in the same vein, IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), November 12, 2015, para. 85.

<sup>353</sup> Bolivia. Response to the Consultation Questionnaire.

<sup>354</sup> See Journal 1, “[Assembly Agrees Constitutional Amendment Banning Gay Marriage](#)”, April 17, 2015.

couples.<sup>355</sup> 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.<sup>356</sup> 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.<sup>357</sup> 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.<sup>358</sup>

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”.<sup>359</sup>
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”.<sup>360</sup>
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

---

<sup>355</sup> Honduras. Response to the Consultation Questionnaire.

<sup>356</sup> Panama. Response to the Consultation Questionnaire.

<sup>357</sup> NACLA, [A Giant Step Backward: The Dominican Republic Reforms Its Constitution](#), December 2, 2009.

<sup>358</sup> KOURAJ (Haiti). Response to the Consultation Questionnaire.

<sup>359</sup> Costa Rica. Response to the Consultation Questionnaire.

<sup>360</sup> 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.<sup>361</sup>

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” (Escolas sem 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.<sup>362</sup>
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”.<sup>363</sup> 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.<sup>364</sup> The IACHR notes that the U.S. Court of Appeals for the Ninth Circuit stayed this executive decision.<sup>365</sup> However, the government

---

<sup>361</sup> Peru. Response to the Consultation Questionnaire.

<sup>362</sup> 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.

<sup>363</sup> 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.

<sup>364</sup> Time, [President Trump Has Taken a Key Step to Implement His Transgender Military Ban](#), August 25, 2017.

<sup>365</sup> 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.<sup>366</sup>

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.”<sup>367</sup>
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”.<sup>368</sup> 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”.<sup>369</sup> 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.

---

<sup>366</sup> See New York Times, [“Trump Approves New Limits on Transgender Troops in the Military”](#), March 24, 2018.

<sup>367</sup> 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.

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

<sup>369</sup> 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.<sup>370</sup> 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.<sup>371</sup>
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.<sup>372</sup> 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.<sup>373</sup> 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”.<sup>374</sup>
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

---

<sup>370</sup> Colombia Diversa (Colombia). Response to the Consultation Questionnaire.

<sup>371</sup> See *El Espectador*, “[New Minister of Education says that gender equality is not a priority](#)”, November 11, 2016.

<sup>372</sup> See Actual, “[Paraguay orders the removal of materials on gender ideology from the Ministry of Education’s website](#)”, September 20, 2017.

<sup>373</sup> See Color ABC, “[MEC bans materials on ‘gender ideology’](#)”, October 11, 2017.

<sup>374</sup> IACHR, Press Release No. 208/17, “[IACHR Regrets Ban on Gender Education in Paraguay](#)”, December 15, 2017.

evangelicals of Costa Rica.<sup>375</sup> 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.<sup>376</sup>

---

<sup>375</sup> I/A Court H.R. [Press Release No. 38/2017](#), November 8, 2017.

<sup>376</sup> El Periódico, “[Marcha religiosa en “defensa de la familia” promovió mensajes de odio hacia personas de la diversidad](#)”, December 3, 2017.

CHAPTER 5

CONCLUSIONS AND  
RECOMMENDATIONS FOR THE  
EFFECTIVE PROTECTION OF THE  
RIGHTS OF LGBTI PERSONS



## CONCLUSIONS AND RECOMMENDATIONS FOR THE EFFECTIVE PROTECTION OF THE RIGHTS OF LGBTI PERSONS

259. In this report, the Inter-American Commission has identified important developments in some OAS member states regarding the recognition of the human rights of LGBTI persons, or those perceived as such. The IACHR emphasizes that the progress made has generally been achieved through the demand of LGBTI persons for their rights, and the work of the civil society organizations that support them.
260. With respect to the expansion of groups and movements opposed to the recognition of the rights of LGBTI persons in society and at the level of State Powers, the IACHR makes an important appeal to States, using the words of the Inter-American Court to remind them that “the lack of consensus in some countries as regards to the full respect for the rights of certain groups or persons identified by their real or perceived sexual orientation, gender identity or gender expression cannot be considered a valid argument to deny or restrict their human rights or to reproduce and perpetuate the historical and structural discrimination that these groups or persons have suffered”.<sup>377</sup>
261. Notwithstanding the foregoing, the IACHR has established that said progress - demonstrating a regional consensus towards the affirmation of the rights of the LGBTI population - has been accompanied by threats of regression and concrete setbacks in the recognition of these rights, driven by anti-LGBTI rights sectors that have grown and proliferated in the societies of the Americas, to the point of influencing government bodies and agencies. In this regard, the Inter-American Commission urges States to continue advancing in the adoption of legislation and public policies to effectively realize the exercise and enjoyment of the human rights of LGBTI persons in the Americas.
262. In this document, the Commission concludes that the positive measures, or progress in relation to rights, that have been identified in the Americas have

---

<sup>377</sup> See, *inter alia*, 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. 83.

ensured the effectiveness of the recognition of the rights of LGBTI persons. Likewise, the IACHR emphasizes the importance that the measures adopted have a holistic and multidimensional approach to address discrimination against LGBTI persons. In the same vein, the Inter-American Commission observes that these measures must be followed by effective implementation based on the awareness of both the beneficiaries and the officials in charge of enforcing them, as well as society in general. The IACHR also notes that States have yet to invest in the production of information to evaluate the effectiveness of such measures, both quantitatively and qualitatively.

263. However, the IACHR reiterates that States do not have reliable statistics that reflect the true dimension of discrimination suffered by LGBTI persons in the Americas, which makes their needs invisible and facilitates the subsistence of stereotypes and prejudices that contribute to perpetuating a historical situation of stigma and exclusion. Indeed, the IACHR emphasizes that the absence of data and, consequently, the invisibility of the situation, result in the absence of adequate public policies, or in the making of very difficult political decisions aimed at confronting the structural problem of discrimination against LGBTI persons in the American continent. Such data should also be as disaggregated as possible so that it can be determined when violations result from the intersection of discrimination based on sexual orientation, gender identity or expression and body diversity with other grounds of discrimination such as race, ethnicity, disability, age, nationality and socioeconomic status of the victims, among other factors.
264. Likewise, the IACHR considers that the persistent discrimination against LGBTI persons, or those perceived as such, is closely linked to the existence of social and cultural prejudices rooted in our societies. It is therefore necessary to implement and strengthen programs and policies to raise society's awareness of discrimination, promoted by all branches of the State, in order to combat this and eliminate stigmatization and stereotypes against the LGBTI population.
265. Finally, the Commission asserts that States should adopt a legal framework, as well as other measures, to specifically protect people from discrimination based on sexual orientation, gender identity or expression and body diversity, and at the same time promote education and awareness of LGBTI persons, or those perceived as such, about their rights and existing protection systems. The IACHR also calls on Member States to ratify the Convention Against All Forms of Discrimination and Intolerance.
266. The IACHR reiterates its commitment to collaborate with the States of the region in their search for solutions to the problems identified in relation to LGBTI persons. In this spirit, and based on the considerations set forth in this report, the IACHR makes the following recommendations to the OAS

Member States to protect and guarantee the rights of lesbian, gay, bisexual, trans and intersex persons, or those perceived as such.

## **A. Recommendations**

267. The Inter-American Commission on Human Rights concludes this report by making recommendations with the aim of promoting a fluid dialogue with the States of the region in order to advance the integral protection of LGBTI persons in the Americas, through the consolidation of the guarantee, recognition and promotion of the rights of these persons.
1. Implement policies to collect and analyze statistical data on violence and discrimination affecting LGBTI persons, as well as on the various aspects of the lives of lesbian, gay, bisexual, trans and intersex people (e.g. education, work, housing, health), in coordination with all branches of government, in a disaggregated and systematic manner; and use such data in the design, implementation and evaluation of state actions and policies directed to LGBTI persons, as well as to formulate any relevant changes in existing policies.
    - a. Properly trained and qualified persons should carry out such data collection. State population census systems and other official systems of data collection should be adequate to receive information on sexual orientation, gender identity or expression, and body diversity. Judicial and police systems should also be adequate to properly record human rights violations suffered by lesbian, gay, bisexual, trans and intersex persons;
    - b. Create mechanisms to maintain the security and confidentiality of the data collected;
    - c. Use the data collected to provide information for the construction of laws, policies and guidelines that guarantee the recognition of the rights of LGBTI persons.
  2. Develop coordinated strategies across sectors, articulating issues based on multiple factors, such as education, work and social security, food, housing and health, aimed at ensuring democratic participation and empowerment of LGBTI persons.
    - a. The strategies created through intersectorality must take into consideration intersectionality with other factors that generate realities in which human rights violations are more profound, such as:

ethnicity; race; sex; gender; migratory status and situation of displacement; age; situation as a human rights defender; situation of deprivation of liberty; socioeconomic situation, among others.

3. Ensure that each person has the right to define his or her sexual and gender identity autonomously and that the data contained in any official or legal register, as well as in identity documents, are in accordance with or correspond to the definition and image they have of themselves.
  - a. Establish simple legal mechanisms that enable everyone to register and/or change, rectify or adapt their name and other essential components of their identity such as image, or reference to sex or gender, without interference from public authorities or third parties.
4. Develop and implement policies and programs to promote respect for the rights of LGBTI persons and their social acceptance, especially through education and general culture.
  - a. Elaborate and implement information campaigns to raise awareness in the public and private media about body and sexual diversity and the gender approach, promoting respect, acceptance and integral social inclusion of all people.
5. Adopt comprehensive awareness-raising measures to eliminate stigma, stereotypes and discrimination against LGBTI persons, or those perceived as such.
  - a. Carry out periodic and sustained training activities for public officials on sexual orientation, gender identity and gender expression, body diversity, as well as the challenges they face, particularly for officials in the administration of justice, and for those in the education, employment and health sectors.
6. Adopt and enforce effective and practical measures to prevent and sanction discrimination against LGBTI persons, or those perceived as such, in the education system.
  - a. Ensure that education programs are designed to include a gender perspective, ensuring the deconstruction of stereotypes and prejudices and based on a model that guarantees the autonomy of all people, especially LGBTI persons.
  - b. Include comprehensive sex education in the school curriculum, in accordance with the progressive capacity of children, which includes a perspective of body and sexual diversity and a gender perspective,

ensuring that educational policies and programs are specially designed to modify social and cultural patterns of harmful behavior.

- c. Include comprehensive and positive material on the human rights of LGBTI persons in training courses for teachers and other education sector professionals.
  - d. Ensure that university and vocational education is based on respect for and inclusion of all persons, regardless of their sexual orientation, actual or perceived gender identity and sex characteristics.
  - e. Guarantee that school environments are peaceful and that respect the sexual orientation or gender identity - real or perceived - of students, as well as education professionals.
  - f. Guarantee the construction and implementation of school projects, programs and guidelines that combat discrimination and harassment in schools and educational spaces.
  - g. Guarantee training for all education professionals to build a school environment free from discrimination and violence.
  - h. Ensure that schools, universities and educational institutions fulfill the fundamental role of developing and building a peaceful environment free from all forms of violence in relation to the social environment in which they operate, creating safe and inclusive spaces for LGBTI persons.
7. Design and implement public policies that guarantee the rights of LGBTI persons to access health services, without discrimination, violence or abuse of any kind.
    - a. Ensure health protocols that address the specificities of LGBTI persons.
  8. Adopt and enforce effective measures to prevent and sanction discrimination against LGBTI persons, or those perceived to be LGBTI, in the health sector.
    - a. Adequately monitor the activity of professionals who offer “therapies” to “modify” or “cure” sexual orientation and gender identity and, if appropriate, prohibit such activities.
    - b. Prohibit any unnecessary medical intervention on intersex children without their free, prior and informed consent.

- c. Guarantee the construction of adequate medical protocols for the comprehensive care of LGBTI persons, respecting their sexual orientation, gender identity - real or perceived - and body diversity and combating violence and discrimination to which they are exposed.
  - d. Ensure access to the highest level of medical care related to gender identity affirming treatment based on the free, prior and informed consent of individuals.
  - e. Promote training on sexual orientation, gender identity - real or perceived - and body diversity for all health care professionals, with the aim of combating discrimination and prejudice.
  - f. Promote educational campaigns on sexually transmitted diseases for LGBTI persons that are sex workers.
  - g. Promote education and information campaigns for society on forms of HIV infection in order to change the stigma attached to LGBTI persons.
  - h. Promote education campaigns on the infection and treatment of HIV and related diseases.
  - i. Ensure adequate information and treatment for LGBTI persons living with HIV.
9. Take all necessary measures to ensure the standard of due diligence in the prevention, effective, prompt and impartial investigation, punishment and redress of discrimination against LGBTI persons, or those perceived as such.
  - a. Ensure that, from the beginning of the investigations, the sexual orientation or gender identity or expression - real or perceived - of the victim(s) are considered as a possible motivation of the events.
10. Create special mechanisms within protection systems for LGBTI children and adolescents that are adequate for the protection of their sexual orientation, real or perceived gender identity and body diversity.
11. Guarantee spaces for political participation and the construction of public policies for LGBTI persons, to guarantee that their real needs and demands are reflected.
12. Adapt justice administration systems to take into account the respect and protection of the human rights of LGBTI persons, particularly considering their sexual orientation, real or perceived gender identity and body diversity.

13. Reinforce public legal aid services - including counseling, assistance and representation - and ensure that LGBTI persons who are victims of crimes have effective access to justice. This includes measures to ensure that victims of discrimination and violence are aware of and have effective access to available legal remedies.
  - a. Create or strengthen specialized training mechanisms for all justice and security officials (including judges, prosecutors and public defenders) on the human rights of LGBTI persons.
14. Review existing standards to repeal, and if not possible, to annul, legal provisions that discriminate on the basis of sexual orientation, gender identity, gender expression or body diversity, and to identify gaps that hinder the effectiveness of LGBTI person's rights to equality and non-discrimination.
  - a. Repeal legal provisions that criminalize, directly or indirectly, the conduct of persons based on their sexual orientation, gender identity or expression.
  - b. Repeal laws that criminalize, directly or indirectly, the conduct of people based on their sexual orientation, gender identity or expression, and create legal and public policy mechanisms for the purpose of inclusion and promotion of the recognition of the rights of LGBTI persons, as well as awareness campaigns directed to society at large to ensure a culture of peace, free from all forms of violence and discrimination.
15. Adopt the necessary measures to prevent torture, cruel, inhuman or degrading treatment by public officials or those acting on behalf of the State, in public spaces and prisons, as well as all forms of police abuse, including the adoption of protocols and guidelines for law enforcement officials, as well as training and awareness-raising on human rights, non-regulatory sexual orientations and gender identities, diverse bodies, and the rights of LGBTI persons.
  - a. Consider as torture unnecessary medical interventions on intersex children that are carried out without their free, prior and informed consent.
16. Establish legislation, programs and guidelines to protect diverse families of same-sex couples.

17. Adopt or amend existing legislation with a view to prohibiting all forms of discrimination based on sexual orientation, real or perceived gender identity or expression, and body diversity.
18. Adopt gender identity laws that recognize the right of trans persons to rectify their name and gender component on birth certificates, identity documents and other legal documents.
  - a. Gender identity laws should guarantee expeditious and simple procedures, without the need for medical or psychological/psychiatric evaluations or certificates.
  - b. Gender identity laws must guarantee the right of girls, boys and adolescents access to gender identity recognition procedures, always seeking autonomy, protection and the development of the personality of the girls, boys and adolescents.
19. Take all necessary measures to progressively reduce the levels of poverty linked to discrimination against diverse sexual orientation, gender identity, gender expression or sexual diversity of individuals, in order to promote social and economic inclusion of LGBTI persons.
  - a. Take into consideration the existence of discrimination on the basis of sexual orientation, gender identity and sex characteristics when designing and implementing actions and programs to address the poverty of LGBTI persons, and particularly of trans women.
  - b. Take measures to ensure that no rule, decision or public policy diminishes, differentiates or restricts a person's employment and pension rights on the basis of sexual orientation, gender identity, gender expression or sexual diversity.
20. Legally recognize same-sex unions or marriages, granting the same rights conferred on couples of different sexes, including property rights, and all others deriving from said relationship, without distinction on grounds of sexual orientation, gender identity. Not recognizing such rights constitutes a violation of the rights of equality and non-discrimination.
21. Implement all necessary measures to ensure that LGBTI persons can exercise their right to express their identity and personality, sexual orientation and gender identity without discrimination.
  - a. Create education, information and awareness mechanisms that provide LGBTI persons with tools and mechanisms to address the

stigma, stereotypes and discrimination they often face when expressing their identity.

22. Adopt appropriate measures to combat hate speech against LGBTI persons and ensure that legislation to punish hate speech, which constitutes incitement to violence against LGBTI persons, is in accordance with Article 13.5 of the American Convention on Human Rights and the principles and standards established by the Inter-American Commission and Court, as described in Chapter Four of this report.
23. In relation to declarations by high state authorities, States should encourage democratic debate through declarations, practices and public policies that promote tolerance and respect for all lesbians, gays, transgender and intersex people, on equal terms, whatever their thoughts or ideas.
24. States should also encourage state authorities to refrain from making public statements or using state media to conduct public campaigns that may encourage violence against persons because of their sexual orientation, gender identity or expression and body diversity.
25. Ensure the legitimate exercise of cultural manifestations or those promoting the rights of LGBTI persons, and prevent the application of disproportionate restrictions that may be used to inhibit or repress such expressions.
26. Adopt all necessary measures for the comprehensive and practical implementation of the rights recognized within the framework of the decision issued in Advisory Opinion No. 24/2018 by the Inter-American Court of Human Rights.
27. Undertake efforts to sign and ratify the Inter-American Convention against All Forms of Discrimination and Intolerance adopted by the OAS General Assembly on June 5, 2013.