

The night is another country



Impunity and violence against transgender women human rights defenders in Latin America

2012



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Foreword

In July 2009, the Delhi High Court passed an order decriminalizing private consensual sex between adults. This was a momentous victory for human rights activists in India, who had been fighting for almost a decade against an antiquated piece of legislation which law enforcement officers used primarily to target men who have sex with men (MSM) and transgender people. As the lawyer who initiated and appeared on behalf of the Petitioners, Naz Foundation, I believe that criminalization of perceived 'unnatural' sexual behavior is an affront to human dignity, privacy and equality and violates the right to health. Criminalization dissuades individuals from seeking health services, thus derailing HIV prevention efforts and affecting the right to health. The violence and oppression recounted by the chilling testimonies of transgender women defenders in the REDLACTRANS and the Alliance's powerful report serves as a reminder of similar, if not harder, struggles faced by transgender women rights defenders in Latin America.

The report highlights how transphobia has permeated different structures of society, family and institutions, robbing transgenders of their human dignity. It is a valiant effort to document the appalling number of murders and extra-judicial killings of transgender women human rights defenders in Latin America, whose deaths remain uninvestigated by government agencies. The systemic failure of the rule of law and the growing culture of impunity that results from it indirectly legitimize horrific acts of abuse and violence against transgender women. Failure to protect women against violence or to prosecute perpetrators is also a violation of the State's obligation to protect the right to health of women as interpreted by General Comment No. 14 under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The report also details the

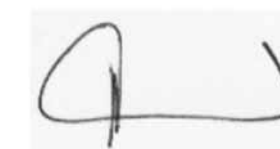
vulnerabilities of transgender women generally, as well as the specific vulnerabilities of transgender women activists who engage in sex work whose visibility and desire to defend their own human rights in the absence of State protection of their rights puts them at greater risk of violence. Key findings in the report reveal a shocking trend of systemic and hateful targeting of a vulnerable population on the basis of their very identity.

In my capacity as the UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, I have written a report that examines the impact of criminalization of same-sex conduct, sexual orientation and gender identity on the enjoyment of the right to health (A/HRC/14/20). In that report I highlighted that the right to health approach requires States to repeal laws that discriminate on grounds of sexual orientation and gender identity. The present report mentions a list of discriminatory laws in the Latin America region, which do not specifically refer to gender identity but are still wide enough to include gender identity within their ambit. The report also calls for the repeal of such laws that could be 'interpreted as criminalizing sex work.'

Pertinently, the present report makes a holistic and comprehensive set of recommendations for stakeholders at the international, regional and national levels. These include calls for arrests and trials of those responsible for murders, hate crimes and other human rights violations; providing legal recognition of gender identity; and extending comprehensive health services to the transgender community. These recommendations are very useful to policy-makers, specialized government agencies, human rights and developmental organisations, and civil society organisations in Latin America and across the world working on these issues.

I congratulate REDLACTRANS, the International HIV/AIDS Alliance and all those who have partnered with them to make this important, well-researched contribution that highlights the egregious violations of the human rights of transgender women human rights defenders in Latin America. I hope that States and other actors adopt the practical and sector-focused list of recommendations in policy and practice. It is indeed a commendable feat and I hope that, like the victory we achieved after a decade of battle for the rights of sexual minorities in the Indian context, the report will spur States in Latin America to respect, protect and fulfill their obligations towards their transgender community, especially their transgender women human rights defenders.

I hope that this report will be widely read and more people will be inspired work on these issues so that the dignity of transgender people is restored.



Anand Grover

United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Presentation

The decision to produce this report was born from the need to expose the numerous cases of violence and murders unjustly suffered by transgender women in Latin America. In recent years, perhaps as a result of the growing transgender movement in the region, REDLACTRANS and the Alliance have witnessed first-hand the painful testimonies of human rights violations committed against transgender people, which have taken place in a climate of unacceptable impunity.

Although this report focuses on physical violence, transgender women experience violence on many levels as a result of social exclusion and discrimination. With the exception of Argentina, the gender identity of transgender people is not recognised by law, and they are condemned to an existence that does not coincide with their gender identity. This situation is made worse by the social rejection they face on many levels, ranging from the home and in schools, to the workplace and health services. In proof of this, transgender women are the population with the highest prevalence of HIV/AIDS in Latin America, averaging at 35%.

The partnership between the Alliance and REDLACTRANS dates back to 2007, and is focused on advocating for transgender rights, as well as the organisational and institutional development of the network and its focal points in 17 countries in the region. Over the past few years, the member organisations of REDLACTRANS have contributed to unquestionable historical achievements as a result of their political growth despite a context of flagrant discrimination. For example, the Gender Identity Law that was recently passed in Argentina grants anybody the right to change their name on their official documents to one that reflects their gender identity, without having to undergo bureaucratic legal or clinical procedures.

Given the absence of forensic and legal data, caused by the inexistence of transgender women in official records, this report presents scarce quantitative evidence. However, we believe that the wealth of the testimonies of the transgender women illustrates the problem in a more human and holistic way.

We hope that the evidence collected in this report as well as its recommendations incite Latin American States to take immediate action to rectify this situation, and that they contribute to creating a political and legal environment that favours the true inclusion of transgender women in society. Only by putting the rhetoric into practice will we reduce the vulnerability of transgender women, not only to HIV but to any situation in which they are marginalised, targets of violence, or that prevents the full enjoyment of their human rights.

First and foremost we want to thank all the transgender women who, with honesty and bravery, shared their testimonies to produce this report. Thanks also to Monica Leonardo, the lead researcher, as well as the members of REDLACTRANS and their team who gave feedback to the draft versions of the report and enriched the recommendations. We would also like to thank Javier Vasquez, Human rights adviser at the Pan American Health Organisation PAHO/WHO, who provided technical support on the report, as well as colleagues from the Alliance Secretariat who participated in the process.

Human rights will not be a reality until *all* human beings can realise them

Executive summary

This report has been compiled by the *Red Latinoamericana y del Caribe de Personas Trans* (REDLACTRANS), Latin American and Caribbean Transgender Network*, and the International HIV/AIDS Alliance (the Alliance) and analyzes the violence to which transgender women human rights defenders† are subjected in Latin American countries and the impunity enjoyed by the perpetrators of such violence. By describing individual cases, the document details the main human rights violations suffered by transgender women defenders and shows the direct responsibility that States have when it comes to respecting, protecting and promoting those rights. The final section contains recommendations drawn up jointly with representatives of transgender women human rights defenders from Honduras and Guatemala.

The report presents three findings. Firstly, the testimonies and events it describes reveal the systematic nature and scope of the human rights violations committed against transgender human rights defenders and other transgender women by State actors. These rights violations, which include extrajudicial executions, torture, cruel, inhuman and degrading treatment and arbitrary detentions, extend beyond both the heading of hate crime, the label under which such cases are usually categorized, and the context of widespread violence that exists in many countries of Latin America. Around 80 per cent of the transgender activists interviewed reported having been subjected to violence or threats to their physical integrity allegedly emanating from State actors.

As its second finding, the report shows that the penetration of transphobia, namely fear or hatred of transgender people, across State structures at every level, is facilitating a similarly systematic climate of impunity with regard to human rights violations committed against transgender activists and other transgender women. The report presents evidence of such impunity which manifests itself in a culture of silence that impedes the filing of complaints, a failure to adopt a differentiated approach when dealing with such cases, ineffectiveness in the justice system, the existence of discriminatory legislation and the absence of legislation on gender identity. Although it was difficult to find official data on cases of murdered transgender people processed through the justice system, civil society organizations have provided compelling data: according to Colombian activists, 60 transgender women were murdered between 2005 and 2012 without a single person having been brought to justice. In the same period 35 transgender people were murdered in Guatemala, with only one person brought to justice. In Honduras, in the cases of 61 killings of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals reported between 2008 and 2011, only ten people were brought to trial, none for the death of transgender women, despite the fact that the latter accounted for two thirds of the cases. The analysis provided in this report shows that the impunity surrounding the violation of the rights of transgender activists and other transgender women is not solely due to the general impunity that exists in several Latin American countries but is largely motivated by transphobia.

* A transgender person is someone whose anatomy does not match their gender identity. This report addresses the issues relating to transgender women who have been born with masculine physiology but are, to all intents and purposes, women.

† In this report, a transgender woman human rights defender is understood to be any transgender woman who promotes and defends her own human rights and/or those of other transgender women. Similarly, the terms “transgender activist”, “transgender human rights defender”, “transgender human rights leader” and “transgender defender” are used.

The report's third main finding is that transgender human rights defenders in Latin America are at extreme risk of being subjected to human rights violations, a risk that is exponentially increased in the context of sex work. Ninety-five per cent of the transgender human rights defenders interviewed combine their activism with sex work. In about 90 per cent of the cases covered in this report, the violence reported is related to sex work. This happens when the police take direct action against defenders because of their activism, making use of the sex work context to take reprisals against them. The case of the *Colectivo Unidad Color Rosa* de Honduras speaks volumes: of the seven members who set up the group in 2001, six have been murdered.

The report highlights other aspects of the vulnerability of transgender defenders that they share with other transgender women, such as facing discrimination from their families and the communities or ethnic groups to which they belong, and the violence used by *maras*[§] and organized crime.

These findings show that the national, regional and universal measures and mechanisms established to protect human rights are failing in the case of transgender women..

The report concludes that, in the context of the generalized stigmatization, discrimination and violence these groups face, it is virtually impossible to provide an effective HIV response focused on the most-at-risk populations. In Latin America, the violence and intimidation to which transgender women are subjected and the impunity with which such crimes are committed, undermine efforts to ensure that HIV prevention, treatment, care and support services reach transgender women which, paradoxically, is the population with the highest HIV prevalence.

The report recommends that State authorities in Latin America, the Organization of American States, the United Nations, its member States and specialised agencies and civil society organizations join together to combat the impunity, violence and discrimination suffered by transgender activists. It calls for all cases of human rights violations, hate

crimes and discrimination allegedly committed against transgender women to be investigated, prosecuted and punished. It also urges the international community to specifically monitor the human rights of transgender women in Latin America and, within the framework of their respective mandates, to publicly express their concerns and recommendations. Lastly, it recommends that civil society organizations work with transgender women's organizations to monitor and make this issue public, by sharing their advocacy experiences, devising institutional strategies and encouraging the establishment of partnerships to defend and promote the human rights of transgender women.

This qualitative research was carried out by the Guatemalan lawyer, Monica Leonardo Segura, who was accompanied by Enrique Restoy for the collection of testimonies in Honduras. It was supported by the guidance of Marcela Romero and Aldo Fernandez from REDLACTRANS, Ana Maria Béjar, Enrique Restoy and Thomas Dunmore from the Alliance secretariat as well as Javier Vasquez from the Pan-American Health Organisation.

§ Street gangs active in Central America that are engaged in criminal activities

Introduction

It's as if the night is another country; because during the day, the police have a bit more respect for us because of the complaints we have filed, which has given us a higher profile as far as complaints are concerned, [even] at international level. But it's different at night, you're exposed when you are out doing sex work in the street, it's as if you don't exist, anything can happen. If we didn't have to go out on the street at night, if we had education and job opportunities, it would be another story. (Transgender activist in San Pedro Sula, Honduras, July 2012)

The countries of Latin America have ratified most of the main international and regional human rights treaties¹ and have committed themselves to respecting, protecting and fulfilling fundamental rights by refraining from committing abuses, taking effective steps to prevent them and establishing reparation mechanisms in the event that violations take place.²

Although none of the conventions explicitly address the rights of LGBTI people, treaty-monitoring bodies have interpreted several of such instruments to include the provision of safeguards against discrimination on grounds of sexual orientation and gender identity.³

At regional level, the most significant pronouncements have been the resolutions passed by the General Assembly of the Organization of American States condemning acts of violence against people because of their sexual orientation or gender identity and requesting States parties to take action to combat discrimination and protect human rights defenders, both male and female, who are working to bring to light the discrimination and

human rights violations people are suffering because of their sexual orientation or gender identity.⁴

By signing up to these international standards, the States of Latin America show that they are genuinely interested in promoting the human rights of LGBTI people. However, the perpetration of human rights violations on grounds of sexual orientation and gender identity is common practice and entrenched in the region, to the point of being systematic, while discrimination on the same grounds is institutionalized.

Within this context, the situation of transgender women⁵ who are human rights defenders⁶ is particularly precarious owing both to their visibility,⁷ which openly challenges established gender norms,⁸ and to the work they do to promote and defend human rights. There has been clear recent evidence of violence being targeted at transgender women in different Latin American countries and of the failure of States to take action to prevent, combat and eradicate it.⁹

This report therefore reflects the issues that transgender human rights defenders in the region are denouncing and supports their appeal for the countries of the region to enforce the rule of law and comply with the international human rights commitments they have undertaken. As a transgender activist in Honduras said, transgender women are crucially vulnerable at night, "which is like another country" in which the rights of these women "don't exist".

Methodology

The research methodology of this report is qualitative and it draws from both primary and secondary sources. This was favoured over a quantitative approach, not only because statistics on the transgender population are non-existent in official records, but also because it was considered to be the best way to capture the wealth of the population's real-life testimonies. Key informants included transgender women human rights defenders, transgender women in general, various state authorities, representatives from international institutions and civil society. Information was collected from a range of sources, including approximately 60 reports and documents on the situation of transgender women in Latin America as well as 55 in-depth interviews to transgender women human rights defenders carried out during visits to San Pedro Sula, El Progreso and Tegucigalpa (Honduras) and Guatemala City (Guatemala) and from telephone calls to Cali (Colombia), Santiago (Chile), Buenos Aires (Argentina), Montevideo (Uruguay), Curitiba (Brazil) and Guadalajara (Mexico).

In July and August 2012, 22 interviews were also conducted with political officials and members of the police, prosecution services and judiciary from Honduras and Guatemala, together with eight interviews with specialists and officials from the Inter-American human rights protection system and the United Nations system. The analysis focused on comparing the data collected from these sources with the States' compliance with the international human rights framework, and identifying the gaps that exist. The recommendations that came from the leading investigator's analysis were validated and enriched by representatives of REDLACTRANS from Honduras and Guatemala during a workshop that took place in the region.

The names of the transgender activists interviewed have been withheld for security reasons.

I. "For me, life is a bonus": Human rights violations committed against transgender activists and other transgender women

About six months ago, I got in a car with a man who I know is a policeman. He hired me to provide my sexual services, but afterwards he didn't want to pay and he wouldn't let me get out of the car. He shouted at me, "Today you really are going to die, hueco¹⁰!". I told him to kill me, because I knew that sooner or later I'd end up dead, because for me, life is a bonus. (Transgender activist in Guatemala City, Guatemala, July 2012)

Despite the frequency of the discriminatory treatment and serious human rights violations to which transgender women are subjected in the Latin American region, their lack of recognition as a specific group and of personal identification documents that reflect their gender identity keep these women invisible.¹¹ It is therefore hard to make an accurate determination of the scale of the crimes committed against transgender human rights defenders and other transgender women, given the lack of specific data available on that population.¹²

It is therefore also difficult to make statistical comparisons about specific aspects of the issue. However, even though the figures do not always accurately reflect what transgender women's organizations have reported, it is worth pointing out that, according to the 2011 Trans Murder Monitoring Project, between 1 January 2008 and 31 December 2011, 80 per cent of the murders of transgender people reported throughout the world came from Latin America, with a total of 826 cases distributed as follows:

Firstly, abuses, attacks and killings committed against the transgender community should be seen as part of the generalized violence observed in the region. Five of the 14 countries in the world with the highest number of violent deaths per 100,000 inhabitants are in Latin America: Colombia with 27, Guatemala with 43, Honduras with 48, El Salvador with 60, and Venezuela with 45.¹³ In addition to the complex legacy of violence bequeathed to many of them, Latin American countries also suffer from a chronic history of human rights abuses perpetrated by law enforcement officers.

However, the violence committed against transgender human rights defenders and other transgender women is clearly too systematic, and its prevalence too widespread, to be explained solely in the context of the general violence. It is evident that the gender identity of the victims and their activism work are the main motives for the crimes in question.

The treasurer of the Colectivo Unidad Color Rosa died after being shot seven times in January 2011. She was in a shop with a friend when two lads known to them came asking for her sexual services and took her away. Her friend never saw them again. According to her, the lads belonged to the Policía Nacional Preventiva, National Preventive Police, but she has not been brave enough to testify. She was summoned by the Fiscalía, Prosecutor's Office, but she refused to

Table 1. Murders of transgender people between 2008 and 2011 in Latin America

Country	Murders 2008-2011	Country	Murders 2008-2011	Country	Murders 2008-2011
Argentina	28	Mexico	93	Costa Rica	3
Bolivia	8	Nicaragua	2	Ecuador	10
Brazil	426	Panama	2	El Salvador	8
Chile	4	Paraguay	3	Guatemala	35
Colombia	67	Peru	11	Honduras	42
Venezuela	65	Uruguay	3	TOTAL	826

http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/all-tmm-reports-since-2008.htm

talk. The complaint has been shelved for lack of evidence. (Transgender activist in San Pedro Sula, Honduras, July 2012)

A colleague was the victim of a violent attack by police. She was beaten up when some policemen assaulted her while she was doing sex work and threatened her that if she said anything, she would end up lying [dead] in wasteground at dawn. She filed a complaint and ratified it. Some time later, she was found lying [dead] in wasteground. (Transgender activist in Guatemala City, Guatemala, July 2012)

In Guatemala, 29 per cent of transgender women identified the police as being their main agent of

discrimination,¹⁴ and reported it to the authorities.¹⁵ In Colombia, 78.7 per cent of transgender people said they had been victims of the police, and 51.1 per cent the victims of private security agents.¹⁶ In Lima, Peru, 46 per cent of the assaults reported were at the hands of the Serenazgo, night patrols, another 31 per cent were by the Policía Nacional, National Police, and a further 7 per cent were the result of joint action by the two groups.¹⁷

The human rights violations reported by transgender women in Latin America include extrajudicial executions, torture and other cruel, inhuman and degrading treating, arbitrary detention, threats and extortion.

1. Extrajudicial killings and attempted extrajudicial killings

The right to life and not to be arbitrarily deprived of life is a universal right that is protected in several international instruments,¹⁸ and its exercise is crucial for the realisation of all human rights. If this right is not respected, the others lack meaning.¹⁹

Nevertheless, in various Latin American cities, the murder of transgender activists and other transgender women is widespread and committed, on occasion, by police officers or individuals acting with the acquiescence of the State.

Unlike most crimes committed against other members of the LGBTI community, virtually all killings of transgender activists and other transgender women have been carried out in the course of sex work, using a firearm.²⁰ Testimonies from witnesses and colleagues suggest that police officers were directly involved in a good number of such killings, and that the motives ranged from killing someone for reporting an officer, to the result of arguments with the police over sexual favours or money. This was illustrated by cases from Uruguay and Honduras:

In Uruguay, six girls have been murdered within a very short time during 2012. The first was shot three times and had her throat cut and was found in the Teja area of Montevideo. Then there is the

case of a girl who died after being shot five times near Roosevelt Park. Another one turned up dead two blocks from there. A fourth girl was found dead in the department of Cerro Largo, after being thrown into a well full of water and with signs of having been sexually assaulted. Another girl was shot in the back as she was opening the door of her home in the neighbourhood of Tres Ombúes, in Montevideo. (Transgender human rights defender in Montevideo, Uruguay, July 2012)

The first victim of the political crisis [in Honduras]²¹ on the night of 29 June 2009 was a human rights defender from the Colectivo Unidad Color Rosa who was carrying out sex work after the curfew had fallen on that day. She was shot in the eye and showed signs of having been strangled. A service weapon is believed to have been used. (A transgender human rights leader in San Pedro Sula, Honduras, July 2012)

A transgender activist from San Pedro Sula, Honduras, reported that she has gone back to doing sex work, combining it with her human rights work, and that it is putting her at greater risk than ever of being subjected to violence by police officers who have allegedly tried to kill her on several occasions (see Chapter III on the vulnerability of transgender women who are human rights defenders):

I am a certified public accountant. For over seven years, I worked on HIV prevention programmes as a health technician both for the State and international organizations. I have been a human rights activist for over 20 years. In the 1990s I witnessed the murder of a colleague by police officers. Their lawyers threatened to kill me if I identified them. I testified against them. I had to get out of sex work for a while, for security reasons.

Following the 2009 political crisis I was left jobless and had to go back to doing sex work on the streets. One night in October 2011 I was coming out of a bar when a car without plates stopped next to me. Four individuals got out and shot me four times in the head and body without saying a word. One of the bullets is still lodged in

2. Torture and cruel, inhuman or degrading treatment

All human rights treaties, both international and regional, absolutely prohibit torture and cruel, inhuman or degrading treatment or punishment.²² That prohibition is also reiterated in several international standards.²³

International law has recognized that LGBTI people occupy a vulnerable position in society which, in turn, increases their risk of being subjected to torture.²⁴

In contravention of that, transgender human rights defenders and other transgender women in Latin America are subjected to police brutality and cruel, inhuman and degrading treatment, which take place in both police stations and patrol cars as well as on the street. Ninety-five per cent of the transgender defenders interviewed reported having suffered that kind of treatment.

When I get into a car with a client, the police come up to the car and drag me out. They extort money from the client, saying to him, "Aren't you ashamed to be with a man?", they take his money. They often take me to the station and lock me up with other men. If I don't want to get out [of the car] or I get annoyed with them, the police hit me. At the beginning of 2012, three policemen forced me into a patrol car telling me they were going to take me to the station, but

my neck. No one asked me any questions in the hospital and there was no police investigation. It wasn't the only time. I had already been shot three times while out doing sex work. Altogether I have been shot nine times. There are witnesses but they are also afraid to make a statement. I myself have witnessed many other police attacks but I'm also afraid to report them. This is what the police call "social cleansing". According to them, it's because there are lots of complaints against transgender women doing sex work. I think I'm on the list. (Specialist in Public Health and transgender human rights defender in San Pedro Sula, Honduras, July 2012)

they took me to an isolated place and kicked me and punched me in the stomach for over 15 minutes. They left me lying there and threatened to kill me if I talked. (Transgender activist in El Progreso, Honduras, July 2012)

In July 2011 I was walking along and some police officers asked me for my ID card, I told them I didn't have one because the authorities wouldn't give me one on account of my female appearance. They put me in the patrol car, took all my money and shared it out among themselves in front of me. I then tried to leave but after a few metres one of the policemen pointed his pistol at me and the others started hitting me in the face and body. A bank guard took down the number of the patrol car and, equipped with that, I went to file a complaint at the first police station. They told me I had to submit it to the Fiscalía de Derechos Humanos, Human Rights Prosecutor's Office, and come face to face with them. That same evening some men in a red car tried to take me away by force. I was so scared that I didn't file the complaint. (Transgender human rights defender in San Pedro Sula, Honduras, July 2012)

Taunts and insults from police about violence against transgender women often also amount to degrading treatment.

In September 2011 a client attacked me, he was drunk and aggressive. While I was in his car, he stabbed me in the arms, neck and leg. I struggled with him and managed to run out into the street. Nobody helped me even though I was covered in blood. Someone called the police. The police didn't ask me to make a statement, they laughed at me, they asked me for sexual services even though I told them I was injured and needed help. They told me I had got what I deserved for being out on the street. (Transgender human rights defender in El Progreso, Honduras, July 2012)

I alone know the suffering that can be caused by being held together with 300 men and spending whole days being raped and beaten, but I cannot describe it. (Transgender activist in Guatemala City, Guatemala, July 2012)

3. Arbitrary detentions

International law recognizes and protects the right to liberty and the right not to be arbitrarily deprived of it.²⁵ Similarly, international standards identify and condemn the existence of legal provisions that can result in loss of liberty on grounds of sexual orientation or gender identity, including indirectly. In some cases, detention or charges may appear to be based on reasons other than identity or status as such, though those reasons may simply be a pretext for taking action against a person's sexual orientation or gender identity.²⁶

This is the case of the ambiguous morality codes and public decency laws which tend to be used for making arbitrary arrests on grounds of sexual orientation or gender identity or expression. As far as transgender women in Latin America are concerned, regulations outlawing sex work, in some cases, and the absence of explicit regulation of the free exercise of sex work, in others,²⁷ are examples of laws that serve as a pretext for arbitrarily arresting these women.

For example, during the field research of this report, the authorities were asked about the regulation of sex work in Honduras, the *Superintendente de Justicia, Seguridad y Transporte*, Superintendent of Justice, Security and Transport, for the municipality of San Pedro Sula said that "[t]he law prohibits prostitution". When asked which body of law

Transgender activists and other transgender women also face humiliation when they are taken to prisons and other detention centres intended for men where they suffer disproportionately from sexual violence inflicted on them by other inmates and security officials, as well as the resulting psychological trauma.

I alone know the suffering that can be caused by being held together with 300 men and spending whole days being raped and beaten, but I cannot describe it. (Transgender activist in Guatemala City, Guatemala, July 2012)

contained that prohibition, he replied that it was "[i]n all the laws, in the Constitution, in the *Ley de Policía y Convivencia Ciudadana* [Police and Social Coexistence Law], in the Criminal Code, in the *Ley de Municipalidad* [Municipality Law], in all the laws, because it goes against morality and decency".²⁸

Although this view of the legality of sex work in Honduras is incorrect, Honduran legislation does nevertheless contain some elements that hinder transgender women from fully exercising their rights. Similarly, the power and discretion the police have under the provisions of the Police and Social Coexistence Law enables police abuse and the arbitrary detention of transgender defenders to take place. Even though sex work as such is not illegal in Honduras, this law contains vague terminology that the police can use to arrest people they believe to be breaching morality, a category in which transgender women are usually placed.

In most cases in which women doing sex work are arrested, the police say that it's for practicing prostitution. When the women say that prostitution is legal and ask to be shown the law that says it is prohibited, the police say, "Go and study it for yourself!". It's not us who are ignorant. (Transgender activist in San Pedro Sula, Honduras, July 2012)

Likewise, the *Ley contra la Violencia Sexual, Explotación y Trata de Personas*, Law against Sexual Violence, Exploitation and Trafficking in Persons in Guatemala,, does not adequately and explicitly differentiate between sex work that is carried out willingly and people trafficking. This results in the police authorities criminalizing sex work and the consequent negative effect this has on transgender women, who are left at risk of abuse, unlawful detention and extortion.²⁹

In Guatemala and Honduras, around 60 per cent of the transgender human rights defenders interviewed reported having been subjected to arbitrary detention at some point. In Chile, in June 2012, several incidents of transgender women being arrested while carrying out sex work were reported. A transgender leader from Chile said:

On 13 June, at about 11 o'clock at night, the special forces from Santiago [de Chile] Police Station arrested me by force, in a violent and aggressive way, taking my bag from me and without informing me of why I was being arrested. They took me to the police station where they told me they were detaining me temporarily for a check (control de detención), even though when I was arrested I had my ID

4. Threats and extortion

Transgender women who are human rights defenders and have reported violations of such rights by police officers are subjected to constant threats and extortion by the police themselves and are forced to withdraw their complaints or terrorized into not filing one at all.

In many cases, the fact that these complaints have to be filed at the very police stations in which the alleged perpetrators work, can dissuade those who wish to lodge a complaint from doing so.

In 2010, my housemate was beaten by the police, I went with her to file a complaint at the police station. When we entered, the very policemen who had beaten her were coming out of the building and said, "You, what are you doing here reporting us? Do you want us to kill

card and health card with me. They kept me there for over five hours. (Transgender human rights defender in Santiago, Chile, July 2012)

In the context of the action for protection that this human rights defender filed, the *Cuerpo de Carabineros de Chile*, Chilean police, submitted a report stating that this procedure had consisted of carrying out a check on a group of individuals, some of whom, though presenting their male ID card, were "dressed as and displayed the characteristics of women".³⁰

Arbitrary detentions are not only targeted at sex workers. The prejudice that equates transgender women with sex work means that some have been arrested while going about their daily activities and were not carrying out sex work at the time of arrest. In particular, this takes place in a context in which transgender women are denied access to public places, as stated by the Honduran police authorities themselves when describing their relationship with this group: "[t]he relationship with transvestite men is the result of complaints from citizens, because they go about the streets [...], [and] their presence has a negative effect on businesses".³¹

you over there tonight?" (Transgender activist who accompanied her friend to file a complaint in San Pedro Sula, Honduras, July 2012)

Arbitrary detentions are habitually used as an excuse to subject sex workers to extortion, asking them for money or sexual favours in exchange for their freedom.³² In Panama, police have reportedly forced themselves on transgender women as their pimps: the police who arrest them do not take them to the competent authorities but take their money in exchange for letting them go. Those who refuse to hand over the money are subjected to humiliation and abuse.³³ Something similar happens in Curitiba, Brazil.³⁴ In Guatemala, on the other hand, reports indicate that it is the clients who are subjected to extortion, leaving the women without money or work.

The police don't subject us to extortion so much now but attack the client and extort money from him. That is a form of economic violence because it affects us directly. They take away our only source of income. What else are we going to do if we have no schooling, work or health care opportunities? The same is happening with the plans for renovating the historical city centre.

The Municipality wants to stop sex work in the centre, which would leave us without work. I am concerned about these things as an activist. I would like to rescue all the women but I am not God or even the State. (Project officer and transgender human rights defender in Guatemala City, Guatemala, July 2012)

5. Violations of the right to the enjoyment of the highest attainable standard of health

The right to enjoy the highest attainable standard of health, which is explicitly protected in international human rights treaties,³⁵ means that a certain level of physical and mental health is needed in order to be able to exercise all human rights and fundamental freedoms and thus participate in the civil, social, political, cultural and economic life of States. It also means that the exercise of human rights and fundamental freedoms is essential to the enjoyment of genuine physical and mental wellbeing.³⁶

Public health policies, plans and legislation can therefore be instruments that effectively protect basic human rights and fundamental freedoms or, on the contrary, they can be instruments that hinder the exercise of basic rights connected with physical and mental wellbeing.

It is therefore incongruous that, despite the prevalence of HIV among transgender women and the mandates and resolutions of specialist health care agencies such as PAHO, public health care institutions are not usually accessible to such women and do not cater for their needs. According to a Venezuelan activist, nine out of ten transgender people do not go to medical centres because of the stigma they face.³⁷ The staff are not trained to deal with sexual/gender diversity and so LGBTI people in general³⁸ are often abused or ill-treated by health care providers or even forcibly subjected to therapies to “cure” or “treat” their gender identity or sexual orientation.³⁹

Perversely, the discrimination that results in sex work being the predominant form of livelihood for transgender women also fuels social stigma by establishing a link in which transgender women are mainly associated with sex work and HIV/AIDS.⁴⁰ This point is illustrated by a case described by an activist from San Pedro Sula⁴¹ about a transgender woman who was the victim of a rape and the local health service refused her access to emergency antiretroviral drugs, claiming that she was responsible for exposing herself to the HIV virus because she was engaged in sex work.

The forensic doctors didn't want to do an autopsy after she died because they suspected she might have HIV. We had difficulty in getting her out of the morgue because of that. (Transgender activist in San Pedro Sula, Honduras, July 2012)

In addition, when HIV statistics are being compiled, transgender women are usually categorized as men who have sex with men (MSM), which not only denies their gender identity but also the specific needs and characteristics of that population. For example, in several of the progress reports submitted to UNGASS,⁴² including those from Guatemala,⁴³ Nicaragua⁴⁴ and Honduras,⁴⁵ transgender women were not mentioned.

II. “The system’s down”: Impunity compounded by transphobia

A man threatened to kill me after I had sexual relations with him. He pursued me for days. He tried to run me over with his car and after leaving me for dead he fled. I went to the Colectivo [Colectivo Unidad Color Rosa⁴⁶] and they helped me file a complaint with the Fiscalía de Derechos Humanos, Human Rights Prosecutor's Office, but there they said “the system's down” [the computers aren't working] and that I had to go to the [police] station, but I'm afraid to go there because that person is known there. Then they told me to make a complaint to the DNIC [Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate], but there too they told me “come back tomorrow, the system's down”, I had to go home. The man came back but the neighbours saw him off. (Transgender human rights defender in San Pedro Sula, Honduras, July 2012)

Under the regional and international treaties ratified by Latin American States, the authorities have an obligation to prevent violations of human

rights committed against transgender women and stop impunity by ensuring that such crimes are investigated, and that the perpetrators are prosecuted and punished.

Nevertheless, crimes against transgender human rights defenders and other transgender women in Latin America are ignored by the authorities. Such impunity in the case of abuses against transgender women confirms and legitimizes,⁴⁷ albeit indirectly, the violence that this population suffers.

Given the lack of reliable and disaggregated statistical data by gender identity, it is difficult to state categorically how much access to justice transgender women in Latin America have.⁴⁸ However, it is striking that, despite the absence of official figures, justice officials say that the incidence of crimes against transgender women is low.⁴⁹ This view may be indicative of a tendency to overlook and underestimate crimes against transgender women.

1. A culture of silence

One factor impeding progress with regard to the criminal investigation and prosecution of cases is the fact that the violence that transgender women experience on a daily basis inhibits them from filing complaints about abuses, thereby creating a culture of silence.⁵⁰ Even the authorities have recognized this, saying that “hardly any of them file complaints, only when it's something really serious, and then they don't come back”.⁵¹

There are several reasons for this. One is the history of inaction on the part of the police, prosecutors and judges. In Guatemala, even though in about 34 per cent of crimes against transgender women it was possible to identify the aggressor, no action was taken.⁵² In Honduras, out of 61 cases of the murder of LGBTI people reported between 2008 and 2011, only ten have been brought to trial, though none for the killing of transgender women even though they accounted for over two thirds of the cases.⁵³

A transgender activist in the Colombian city of Cali reported that “there were 60 killings of transgender women between 2005 and 2012 but not a single person has been tried. The investigations are open but there are no serious proceedings and no continuity. They are left open just so that they can say that something is being done but in reality no proper action is being taken”.⁵⁴

A colleague and I were working at the same corner. A little over a year ago, we were stood there and a man arrived on a bicycle. I paid no notice to the conversation until they started shouting and he shot her dead. When I heard the shot, I took my shoes off and started running. The guy shot at me but I was already half a block away running and he didn't get me. Since then, I'm afraid and I don't feel safe standing at my corner, because that man got a good look at me, he knows who I am. With the support of the organization, I filed a complaint. A patrol car came to interview me about what happened but I never heard anything more about the investigation. (Transgender activist in Guatemala City, Guatemala, July 2012)

Similarly, the fact that most cases are not investigated leaves transgender human rights defenders and other transgender women feeling powerless.

In December 2009, a colleague and I reached the corner where we used to work. Another colleague was there. About 15 minutes after we got there, a small white van with four individuals on board arrived. They wanted us to provide them with our services but because there were four of them, we were afraid to go with them and we told them to try elsewhere. They then started shooting at us. The three of us ran off, trying to escape, but I got a bullet in the arm. A frequent client of ours was nearby and heard the shots and so came to our aid. He took me to hospital in his car and just as we were arriving, we were arrested by police because the client had gone the wrong way down a one-way street trying to get there quickly. We explained to them but they arrested him anyway. Meanwhile, my colleagues told a patrol car that had arrived at the corner where we had been to follow the van from which we had been shot at. They pretended to do so but later said that it

had got away down one of those streets in Zone 1 [of Guatemala City]. They could have asked for backup but they didn't, they let them get away. (Transgender defender in Guatemala City, Guatemala, July 2012)

Since in many cases of violence, the police are the aggressors, filing a complaint about an attack means running the risk of further aggression.

There have been many occasions when the police have abused me. When they see me get into a car, on several occasions they have told the client that it's a crime to go with "huecos"⁵⁵, meaning us transgender women. I know the law and my rights, and I know it's not true, but I'm afraid to make a complaint because once a colleague had marijuana put in her bag so that they could arrest her if she started complaining. About a year ago, I was just getting out of a taxi on the corner where I work when a policeman tried to arrest me. As I wouldn't let him, he snatched my bag and started hitting me. I didn't file a complaint because he's the police officer in the area where I work and I have to see him all the time. I'm afraid that later he would take reprisals against me. (Transgender human rights defender in Guatemala City, Guatemala, July 2012)

Furthermore, the transphobia in the justice system means that transgender women are subjected to taunts and aggression when they try to file a complaint.

I went to file a complaint for discrimination at the Procuraduría de los Derechos Humanos, Office of the Human Rights Ombudsman, and they wouldn't even let me use the women's toilet. How on earth are they going to understand what discrimination against transgender women means! (Transgender activist in Guatemala City, Guatemala, July 2012)

2. The lack of a differentiated approach

Another factor preventing the effective investigation of crimes against transgender human rights defenders and other transgender women is that these crimes are underestimated⁵⁶ and are not addressed separately. The authorities themselves help foster prejudice by describing such cases as “crimes of passion”, emphasizing aspects of the personal lives of the victims instead of their vulnerability as transgender women and human rights defenders.

The report entitled *Acceso a la justicia para mujeres víctimas de violencia en las Américas*, Access to Justice for Women Victims of Violence in the Americas, published by the Inter-American Commission on Human Rights, states that “the influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence”.⁵⁷

The Commission has also called on States to open lines of investigation that take into account whether the killings of LGBTI persons are carried out because of the gender expression, gender identity or sexual orientation of the victim.⁵⁸

However, the authorities from the countries of Latin America appear not to have a comprehensive framework for conducting investigations and inquiries into cases of the intentional violent death of transgender activists that allows a broad range of motives to be considered. Their approach seems to be confined to reproducing prejudices and using derogatory language as a matter of course, thus being a very long way from the creative activity that criminal investigations require if such crimes are to be solved. See the following examples from Mexico, Guatemala, Honduras, Uruguay and Argentina:

[Transgender women are killed because of their involvement in] “prostitution, selling drugs, [for] being involved in organized crime, or stealing from their clients”; or [because] “they have a nocturnal life” and “[t]hey pass themselves off as women, and when an inebriated man sees them, he gets

*the wrong idea but when he discovers he's been deceived, he kills them”.⁵⁹ “[T]here might be an element of passion but to the extent that someone will attack them [meaning transgender women], no. We haven't reached that point; there is maturity in this country.” (Representative of the *Policía Nacional Preventiva*, National Preventive Police, of Honduras)⁶⁰*

We have three motives why they [referring to transgender women] are killed: one, for being stood at a corner; two, because they steal from a client; and three, because they belong to criminal groups... Oh! And they also kill each other.
(Representative of the *Policía Nacional Civil*, Civil National Police, Guatemala)

[O]n 20 June 2012 the body [of a young transgender woman aged 16] was found in a secluded area near the main road in Tepic [Nayarit, Mexico]. Social organizations have expressed concern that the authorities may be less rigorous in the investigation because they may assume that it was a crime of passion, as has happened in the past in similar situations.⁶¹

We have three motives why they [referring to transgender women] are killed: one, for being stood at a corner; two, because they steal from a client; and three, because they belong to criminal groups... Oh! And they also kill each other. (Representative of the *Policía Nacional Civil*, Civil National Police, Guatemala)⁶²

They are always saying that the killings are due to the settling of scores, but that is not true. They think that by saying it's a settling of scores, the matter is closed. (Transgender leader in Montevideo, Uruguay, July 2012)

The police always say that the girls are killed for being mixed up with drugs, or that they are crimes of passion. (Marcela Romero, Regional coordinator of REDLACTRANS)⁶³

3. The ineffectiveness of the justice system

One of the symptoms of the institutional discrimination that transgender activists suffer,⁶⁴ is the fact that, in most cases in which a complaint has been filed with the prosecution service, the follow-up has been flawed. The transphobia and corruption that exist in the ranks of the police extend to the *Ministerio Público*, Prosecution Service, thereby compounding the impunity surrounding human rights violations committed against transgender women.

We have a problem with a policeman who assaulted a girl who stole a weapon from him. Now he is assaulting and threatening other colleagues. He even came into my house looking for the weapon and hit one of the girls from here. The policeman is the husband of a prosecutor. He told us not to stick our noses into something that didn't concern us. I went to the police station and picked up the phone in front of the police in order to file a complaint about the threats with the prosecutor's office, and one of them snatched the phone out of my hand. No one here says anything or files complaints. Even if we did complain, given that the police are moved around a lot, by the time the complaint has got somewhere, the policeman will have already been transferred to another area. (Transgender human rights leader in El Progreso, Honduras, July 2012)

Transgender activists who file complaints do so without the help of a lawyer, and the transgender organizations that support them lack the means to provide them with legal assistance. Even when they do have legal assistance, the transphobia that may also afflict law professionals causes that legal representation may be ineffective.

Through an international cooperation project, we had the support of a [woman] lawyer for six months. Some progress was made but not much because it was a slow process raising the awareness of the lawyer. Lawyers see the issue of transgender women from the perspective of the law and not human rights. (Transgender activist in Cali, Colombia, July 2012)

Prosecutors' offices have the duty to provide information about the progress of cases on a regular basis, something which does not happen. Most cases end up being closed and abandoned for lack of follow-up.

While the specific units established by some Governments to address cases of violence against LGBTI people are an opportunity to monitor and demand the realization of human rights and consequently, reduce impunity, their mere existence does not guarantee effective criminal prosecutions if it is not be supplemented with protocols and specialist instructions on how they should operate. In Honduras, for example, the setting up of a Sección de Diversidad Sexual, Sexual Diversity Department, attached to the *Unidad de Delitos contra la Vida de la Fiscalía de Delitos Comunes del Ministerio Público*, Offences against Life Unit of the Prosecutor's Office for Common Law Offences, of the Prosecution Service, thanks to cooperation from the United States Government, has not entailed establishing technical and objective criteria for the referral and linking of cases, adopting appropriate research and litigation methodologies or capacity-building at a local level.

The prosecutor in charge of the Unit said that the cases are assigned or transferred to them if, at the time a dead body is removed, someone notices that "the victim is a transvestite"⁶⁵ or if, in the course of the investigation, the sexual orientation of the victim is discovered. However, the non-existence of a set of objective criteria for this purpose should be noted. It is impossible to make sound assertions about the methodology followed for bringing criminal prosecutions when the total number of cases being dealt with by the Unit is not even known. Furthermore, when the prosecutor was asked if she could give us a general idea of the backgrounds to the cases under investigation, she said that she "would have to ask the Embassy [of the United States]"⁶⁶ for permission.

This climate of impunity is also present in the courts, thus depriving transgender women of the right to a fair trial. Even if they reach the trial stage, many transgender activists are still in an unequal position because often witnesses are threatened or activists are denied the information they need or there is a delay in handing it over, meaning that they are at a disadvantage when the trial starts.

About a year and a half ago it was our turn to bury a colleague. The two killers were caught with her body in the boot of their car. One of them has been released by the courts. The other

is facing trial but we are concerned he's going to be set free because the prosecutor is looking for an eyewitness to testify and cannot find her. We are afraid that the case will go unpunished

because the witness fled out of fear after being threatened by relatives of the killer. (Transgender activist in Guatemala City, Guatemala, July 2012)

4. Discriminatory laws and the lack of legislation on gender identity and sexual orientation

The region still has discriminatory laws that contravene international human rights law,⁶⁷ including the following:

Federal District of Mexico, there is no equivalent law at national level.⁷¹

Table 2. Laws that contravene international human rights law.

Country	Law	Text
Argentina	Law 8431 - <i>Código de Faltas</i> , Misdemeanours Code, for Córdoba Province (2003)	Chapter 1, article 42. Anyone who bothers another person, affecting their personal decorum, by means of gestures, words or graphics, on the public highway, in places that can be publicly accessed from a public place or from a private place that has an impact on others shall be subject to a fine of up to five penalty units (5 PU) or arrest for a maximum of ten (10) days. The penalty of arrest shall be for a maximum of twenty (20) days if the victim is under sixteen years of age or if the offence takes place at night, whatever the age of the victim. ⁶⁸
Honduras	<i>Ley de Policía y Convivencia Social, Police and Social Coexistence Law</i>	The law contains several ambiguous terms such as "vago" ("vagrant") and numerous references to "morality" which make it easy for it to be interpreted in an arbitrary and discriminatory way.
El Salvador	<i>Ordenanza para la Convivencia Ciudadana, Civic Coexistence Ordinance, for the Municipality of San Salvador</i>	The following is listed as a serious infringement: Article 32. Offering services of a sexual nature in public places or soliciting sexual services in a way that is noticeable or attracts attention or that disturbs public order; and which, even when in private places, is damaging to morality and decency, offends modesty with nudity or by means of obscene words, gestures, unseemly behaviour or displays, involves indecent touching or impertinent hounding. ⁶⁹
Chile	Criminal Code	Article 373. Those who in any way offend modesty or decency by committing scandalous or serious acts not expressly included in other articles of this Code shall be subjected to minimum to medium term imprisonment. ⁷⁰

Compiled by the author

In most countries of the region there is no legislation explicitly recognising or mentioning transgender identity, thus leaving transgender women legally invisible and dependent on how general clauses relating to their human rights protection are interpreted.

With the exception of Argentina, no country of the region allows a person's name and gender to be changed in identification documents without them having to undergo sex reassignment surgery, and without deeming their identity to be a pathological condition. Although a similar law is in force in the

This dissociation between the gender, the social name and the identification document with which transgender people live, dehumanizes transgender women and denies them legal and civic status. For example, in Lima, Peru, around 36 per cent of transgender women do not have the corresponding identity document because many of them prefer to avoid going to registry offices because of the discrimination they suffer there.⁷² In El Salvador, in order to be issued with a *Documento Único de Identidad*, single identity document, "transgender women are obliged to present themselves as men in the document photo, thereby concealing their

female appearance. For this purpose, they are obliged to wash their faces to remove any trace of makeup, pin their hair back and wear a jacket”.⁷³ Meanwhile, in Guatemala, in a case that went to the *Procuraduría de Derechos Humanos*, Office of the Human Rights Ombudsman, as a result of the *Registro Nacional de las Personas*, National Registry of Persons, refusing to issue a personal identification document to a transgender woman, because of her name and appearance, the Ombudsman ruled that her human rights had not been violated because there was no specific law granting her protection.⁷⁴ In that country, although the police acknowledge the need for transgender women to carry a suitable identification document, they do not believe that legislation to this effect needs to be introduced.

One very great difficulty in investigating crimes against [transgender women] is that they never

*carry identity documents. I think it's because they don't like the fact that the document gives their male name and they do not physically resemble the photograph that appears on it. [...] A Gender Identity Law? No, I don't think that would be right because in this country only man and woman are defined and there can't be anything else. I am not familiar with the law governing RENAP [Registro Nacional de las Personas, National Register of Persons], but I imagine that that is how it is regulated because that is the correct thing to do. [A Guatemalan organization of LGBTI people] should handle the registration of transvestite men [meaning transgender women]. They are the ones who have an obligation to do so, they should do it. (Representative of the *Policía Nacional Civil de Guatemala*, Guatemalan National Civil Police)⁷⁵*

5. Transphobia as a factor that facilitates impunity

The widespread transphobia found among State authorities and actors is illustrated by the way in which they refer to transgender women. All of the authorities from the security and justice systems of Honduras and Guatemala interviewed in the context of this research described transgender women as transvestite or homosexual men. For example, a prosecutor from the *Ministerio Público*, Prosecution Service, in Honduras, referring to the cases in her charge, said that “we don't deal with [t]rans women here, only transvestite men”.⁷⁶ At the *Procuraduría de los Derechos Humanos*, Office of the Human Rights Ombudsman, in Guatemala, which should be dealing with cases of human rights violations affecting LGBTI people because they are a group that is subject to specific rights, they were unable to distinguish between lesbian and transgender women.⁷⁷ The *Policía Nacional Civil de Guatemala*, Guatemalan National Civil Police, explained their reasoning for using certain masculine names for transgender women:

I don't want to be offensive but I have studied criminology and we do not call them transgender women but transvestite men because it is a form of deviant behaviour typical of criminals. It is seen especially in the cases of transvestites and prostitution, which are the same thing. But we don't discriminate against them. (Representative of the Guatemalan National Civil Police)⁷⁸

...we do not call them transgender women but transvestite men because it is a form of deviant behaviour typical of criminals.
(Representative of the Guatemalan National Civil Police)

III. “A right that is not defended is a right that is lost”: The vulnerability of transgender human rights defenders in Latin America

Sometimes the police stop me and suggest I help them extort money from the client. If I say no, they put me in the patrol car and take me to the [police] station, leave me there for 24 hours and then release me on the outskirts of the city. But sometimes I'm able to defend myself, I say that I'm a human rights defender, that they don't have the right to arrest me and that I'm going to report them. If I'm able to get their identity, they usually stop watching me and leave me in peace because they know we know more than they do. For that reason all the training I've received has been very useful for me. A right that is not defended is a right that is lost. (Transgender woman in charge of the HIV prevention programmes in San Pedro Sula, Honduras, July 2012)

According to the *Second Report on the Situation of Human Rights Defenders in the Americas*, published by the Inter-American Commission on Human Rights,⁷⁹ organizations that promote and defend the human rights of LGBTI people play a crucial role in terms of social oversight of the observance of States' obligations with regard to the rights to

a private life, equality and non-discrimination. The report also recognizes that those organizations and their activists face obstacles including the risk of murder, threats, the criminalization of their activities, the failure to take a different approach to the investigation of violations committed against them, and discourse calculated to discredit them.⁸⁰

Similarly, the Special Representative of the United Nations Secretary General on the situation of human rights defenders has appealed to States to address the stigmatization and attacks faced by those working for the rights of lesbian, gay, bisexual and transgender people and find a solution to these problems⁸¹.

In stark contrast, the work of transgender activists in the countries of Latin America is hindered not only by the violence perpetrated against them in reprisal for or to impede their human rights work, but also because of the extreme vulnerability they share with other transgender women and their exclusion from policies on violence against women.

1. The extreme vulnerability of transgender women

The lives of transgender women in the region are marked by a dynamic of exclusion that is the consequence of family, social and institutional transphobia. This begins when they are thrown out of their homes at a young age and essentially excluded from the educational and health care systems, meaning that transgender women in Latin America have a poor start to adult life. This lack of education and access to job opportunities

pushes the vast majority of transgender women in Latin America into sex work, even as teenagers.⁸² This in turn means that they run the early and ongoing risk of contracting HIV and other sexually-transmitted diseases. It is worth noting that, while the prevalence of HIV in the population as a whole in Latin American countries does not exceed 1.5 per cent⁸³, among transgender women it can be as high as 35 per cent.⁸⁴

Transgender women are also exposed to a series of vulnerabilities, including widespread discrimination from their families and the ethnic communities to which they belong, violence from *maras* and organized crime and the tendency to be the target of hate crimes.⁸⁵

Transgender women in Latin America start suffering abuse from their families from a very young age. This can range from physical, verbal and sexual attacks to murder. For example, interviews in Honduras reported assaults on LGBTI people with knives and machetes are reportedly common in the context of family violence. Because of this, the percentage of transgender women and girls who leave or are thrown out of their homes is between 44 and 70 per cent.⁸⁶ Despite this, the States of Latin America do not host transgender girls and teenagers who have to leave their homes because of violence in institutions that provide protection to girls.

As well as being the victims of family violence, transgender women suffer attacks from various groups within society; in countries such as Guatemala, Honduras and El Salvador, the violence inflicted on them by *maras* and gangs is particularly serious.

In El Salvador, various human rights reports have concluded that gangs often require new recruits to attack members of the LGBTI community as part of their initiation process; such attacks are facilitated and fuelled by the prevailing impunity for crimes committed against these groups,⁸⁷ by a psychosexual aversion to or fear of gays and transgender women or simply by the desire to obtain some kind of material advantage.⁸⁸

In Guatemala, it is presumed that the killings of two transgender women, one in 2009 and the other in June 2012, were carried out by *mara* members but the fear is such that those who could be brought as witnesses or provide evidence to that effect have remained totally silent. Also in Guatemala, a transgender woman recounted an episode of violence believed to be *mara*-related:

I had a small business for a year and everything was going well until 13 January 2012 when four men turned up. I didn't realize when they arrived because I was busy but they took me by the arms and when I looked up, they attacked me in the face with a knife. I think they wanted to make a cross on my face to leave me marked. Given the nature of the attack, the forensic doctor told me

that they had probably been watching me for a year. She believes that they may have been gang members, maybe some gang member who is in prison likes me and this was a way of marking me so that no other gang member goes after me. I don't know whether it's part of some satanic ritual or what but I do know that it marked my life. I was really afraid and didn't go out for a long time and I lost my financial income. I filed a complaint with the Ministerio Público, Prosecution Service, but was unable to follow it up further for fear that they would kill me. The maras have eyes everywhere and if they're watching me, they can kill me. (Transgender activist working for human rights and HIV prevention in Guatemala City, Guatemala, July 2012)

Transgender women are also subjected to violence by non-official armed groups. The latter include the *Juntas Locales de Seguridad*, Local Security Committees,⁸⁹ and patrol groups in Guatemala, whose legality is questionable but who take on community policing and neighbourhood security duties. One of these groups is believed to have killed three transgender women in a social cleansing operation:

In July 2011, the bodies of three transgender women were found on wasteground in Ciudad Quetzal, San Juan Sacatepéquez. All three showed signs of torture and of having been finished off with a gunshot and one of them had been strangled. It is said that a patrol group from the area may have been responsible for these crimes and that members of the group had even threatened the investigators from the Ministerio Público, Prosecution Service. (Transgender defender in Guatemala City, Guatemala, July 2012)

An additional consideration to bear in mind is that the situation of many transgender women in Latin America is further exacerbated by, among other things, poverty, age, ethnic origin, nationality and immigration status, disability and HIV status.⁹⁰ For example, according to the *Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas*, Presidential Commission against Discrimination and Racism against Indigenous Peoples, in Guatemala, physical punishments have been inflicted on LGBTI people in indigenous Maya communities because of their sexual orientation or gender identity.⁹¹ The following is the case of an indigenous transgender woman in Guatemala:

I know of the case of a transgender colleague who is Maya and who witnessed another colleague being murdered while she was doing sex work. She gave up sex work because she was afraid and went to work in a maquila but, in order to work there, she had to cut her hair. When she was working there, people made fun of her because she couldn't speak Spanish very well. And so she began to conceal her Maya origins. She gradually lost her whole identity,

her gender and her ethnic affiliation. (Indigenous transgender leader in Guatemala City, Guatemala, August 2012)

2. Vulnerability caused by combining activism and sex work

The absence of a State response to their situation drives many transgender women to get involved as activists and citizens in promoting and defending their human rights.

I feel that, by earning the right to be what I am, a transgender woman, I have lost other rights, such as education, work, health, freedom, my integrity. But that is why I'm a human rights defender, that's why I'm an activist, because I wouldn't like other generations coming after me to suffer what I have suffered: to be shot, stabbed, imprisoned and have my hair forcibly cut, so many things. (Transgender activist in Guatemala City, Guatemala, July 2012)

Transgender women, especially those who do sex work, usually feel particularly concerned about HIV and that is how they first come into contact with transgender organizations, attracted by the HIV prevention work that these organizations do. In most countries of the region, transgender women only have access to HIV programmes provided by transgender organizations or through peer to peer methodologies. Members of transgender organizations often start off as volunteers on HIV prevention programmes and end up combining that work with work to defend and promote their human rights.

I became an HIV activist when my mother died of AIDS. I was 19. HIV activism helped me to forge my identity as a woman and to develop as a defender of the rights of the LGBT population. For me, HIV activism and human rights activism are the same thing. It's impossible to be an HIV

activist without being a human rights activist. (Transgender activist, San Pedro Sula, Honduras, July 2012)

Sex work and activism against HIV and in favour of human rights are therefore intrinsically linked in the case of transgender women in Latin America. The organization for transgender women in Brazil, Grupo Esperanza, was set up because of concern generated by violence and the HIV epidemic.

Together we are stronger. I always talk about the strengthening and empowerment of transgender people but also the strengthening of a country, it depends on the organization of its people. In 1994, we were going through a very difficult time politically in which enormous violence was being employed against us by the police. And so we got ourselves together to denounce that situation. We also started to do work on AIDS and HIV because lots of us were dying. (Transgender defender in Curitiba, Brazil, September 2012)

In the case of the *Colectivo Unidad Color Rosa* in Honduras, nearly all of its active members, including its board of directors, combine sex work with promoting and defending human rights and working on HIV prevention. One of them said:

I don't do sex work now but up until a year ago the police knew me because of my activism. As soon as they saw me in the street, they arrested me for no reason, took me to the [police] station, forced me to clean the toilets or the patrol cars, moved me from one cell to another, put

me in with men knowing the harassment that transgender women suffer in those cells, and threw cold water over me. Sometimes I had to give a false name to stop them recognizing me. One day I had to hide under some cars because the police were looking for me. (Transgender human rights leader, San Pedro Sula, Honduras, July 2012)

Members of the Colombian organization of transgender women, the *Santamaría Fundación*, have also been facing abuses because of combining their activism with sex work. During 2008 and 2009, pamphlets making threats against LGBTI people as well as indigenous people, prostitutes and people living in extreme poverty appeared.⁹² One of the organization's leaders said the following, talking about the police:

[T]hey constantly ask us for identification when we're working on the street, despite the fact that they know about our defence work or participate in cross-agency meetings with us. For them it's as if we stop being defenders when we are on the streets. (Transgender human rights defender in Cali, Colombia, July 2012)

Combining both activities therefore clearly puts transgender human rights defenders in a more vulnerable position because, although the violence against them happens at any hour of the day and anywhere, the fact that they engage in sex work at night on the street gives the police greater opportunities to take action against them with impunity.⁹³

I don't do sex work now but up until a year ago the police knew me because of my activism. As soon as they saw me in the street, they arrested me for no reason, took me to the [police] station, forced me to clean the toilets or the patrol cars, moved me from one cell to another, put me in with men knowing the harassment that transgender women suffer in those cells, and threw cold water over me.
(Transgender human rights leader, San Pedro Sula, Honduras, July 2012)

The nature of some of the attacks carried out against transgender activists and the methods used indicate that they may be a direct and explicit result of a crackdown on their human rights work. For example, the case of the raids and robberies carried out on the offices of *Santamaría Fundación* in Cali, Colombia:

Our organization has been attacked several times. The first time was in 2006, at the first office we had, they took all the information we had in a filing cabinet. That time they left the television, and only took the folders [files], the complaints, and our documentation. To date, we've had no response from the police with regard to that robbery. At the next office, shots were fired at the door and windows, and again the police did nothing. In the past six months, we have been robbed twice. They stole the computer from our office, where the information on our activities is kept, but they didn't take anything else; and they also entered the house of the person who coordinates the citizen's observatory. There they stole her computer and it looked as though she had been being watched because it was only 8 days since she had moved house. How did they know she lived alone? Why didn't they take her purse, or her camera or mobile phone? We don't know where these attacks came from but given that they didn't take anything else of value, just the information on our activities, we have no doubt that it was an attack on our human rights work, especially because we are a community-based organization. (Transgender activist in Cali, Colombia, July 2012)

From the specific targeting and recurrent nature of the violence directed at transgender women defenders, it can be inferred that it is largely connected with their activism. For example, in Cali, Colombia, in 2010, armed men tried to forcibly enter a vehicle belonging to a transgender woman leader who had often filed complaints against the police for acts of violence committed against her and her colleagues.⁹⁴ In Honduras, of the seven women who in 2001 founded the *Colectivo Unidad Color Rosa*, six have been murdered. An employee and eight members of the board have also been killed over the past three years, including the chair and vice-chair, both in 2010. Three women belonging to the same Honduran organization have been murdered so far in 2012. Of the 27 transgender women murdered

in Honduras between 2009 and 2012, 15 were activists from the *Colectivo Unidad Color Rosa*. These graphics illustrate the situation:

Figure 1. Transgender women from the Colectivo Unidad Color Rosa (CUCR) murdered between 2009 and 2012

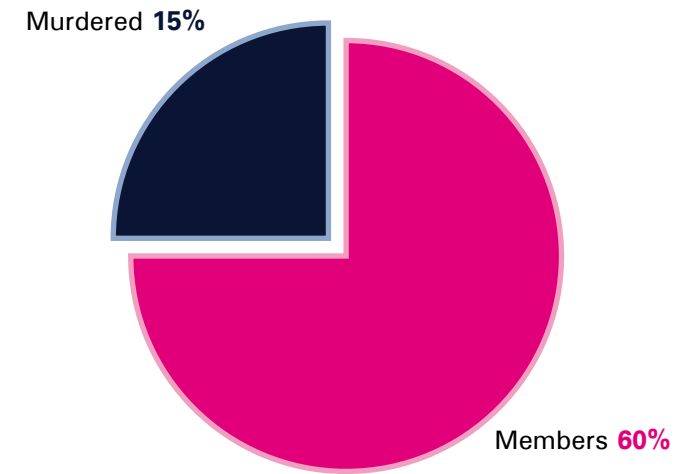
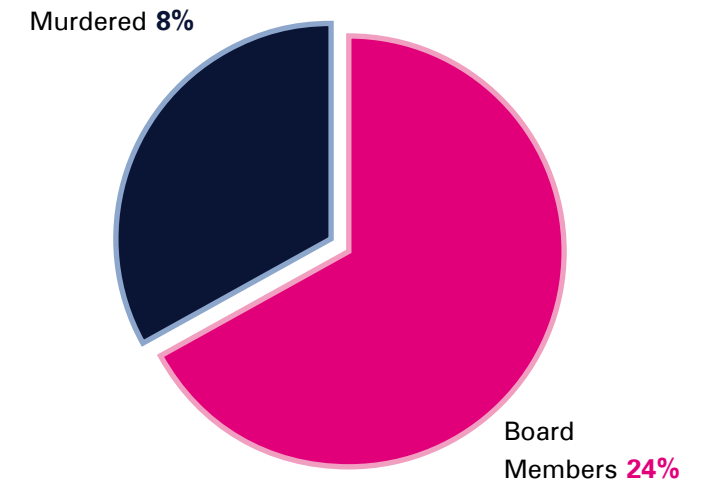


Figure 2. Members of the board of the CUCR murdered between 2009 and 2012



Compiled by the author

A common ploy when cracking down on human rights activism is to attack the relatives and partners of defenders. In Guatemala, the *Organización Trans Reinas de la Noche* reported an incident that may fit this kind of pattern:

One case that has left me distressed is the disappearance, since 2010, of a transgender woman. We have no information about her whereabouts or of how the authorities' investigation to find her is going. She was a person for whom I had very special affection as we got to know each other and had a relationship, like two women experimenting with their sexuality. It's a source of anguish to me to think that my activism put her at risk. I can say this because, before she disappeared, at the end of October and the beginning of November 2009, three colleagues died. I publicly denounced three murders on three consecutive

them, I was hounded and intimidated, and some men driving a red car tried to kill me. Given that I tell the media and complain to the authorities about the violence and the lack of attention paid to us, I fear that it might be related to what happened to her. (Transgender activist in Guatemala City, Guatemala, July 2012)

3. The exclusion of transgender women from the women's rights agenda

Transgender women and, among them, those who are human rights defenders can also be victims of violence in their personal relationships.

However, the authorities often see this type of violence as a dispute between two men, a street brawl, and fail to deal with such cases appropriately as incidents of violence against women.⁹⁵ For example, in Guatemala there is a *Ley contra el Femicidio y Otras Formas de Violencia contra la Mujer*, Law against Femicide and Other Forms of Violence against Women, but one of the assistant prosecutors from the *Ministerio Público*, Prosecution Service, believes that this legislation should not apply to cases of transgender women.⁹⁶ She said on the subject that “[t]he Femicide Law does not apply because in that law is not established for transgender people. The law is precise and specific and talks about the gender of woman, not and/or transgender, bisexual or anything like that. Perhaps

it could be framed in that way, but legally they are not identified by [their female name] but by their male name, and so they cannot be said to be women”.⁹⁷ Furthermore, the institutions responsible for developing policies on violence against women do not include transgender women within their mandates, even though they are the victims of such violence.

Similarly, there is no express recognition of the inclusion of transgender women in the protection provided by the Convention of Belém do Pará.⁹⁸ However, it is worth pointing out that preparations are under way for this issue to be discussed at the Assembly of Delegates of the Inter-American Commission of Women,⁹⁹ to be held in October 2012, with a view to ensuring that a diversity-based approach is incorporated into the monitoring of the treaty's implementation.¹⁰⁰

IV. “We are not asking for different opportunities, just equal ones”: Progress and challenges in the protection and promotion of the rights of transgender women

We are not asking for different opportunities, just equal ones. A Gender Identity Law is not going to sort our lives out. It will not mean that tomorrow I will be a university student or that I'm going to have a top job, but it will help to combat the stigma caused by the fact that my identification document says one thing and my appearance and gender identity says another. (Transgender activist in Guatemala City, Guatemala, July 2012)

In the midst of the climate of violence and impunity that transgender defenders in the region face, there has been some progress with regard to the legal questions that surround the rights of this population.

The most significant advance in this respect has been the promulgation of a Gender Identity Law in Argentina in May 2012. This law seeks to reduce discrimination based on gender identity by guaranteeing the rights and dignity of transgender people. It includes mechanisms for allowing people to change the gender and name given in their identification documents.¹⁰¹

The Gender Identity Law [promulgated in Argentina] is a step forward but there is still a long way to go. In order to generate changes in society and the culture, advocacy work needs to carry on. A person without identity does not exist. With the passing of the law, we succeeded in getting our existence recognized. It was a first step. The second step is social, labour market and educational inclusion. [The population of transgender women] [w]as a population excluded

from all rights; I think that what we achieved was the right to citizenship. Now we have to fight to ensure that public policies are also appropriate. (Marcela Romero, Regional Coordinator of REDLACTRANS)¹⁰²

In Mexico, Costa Rica, Uruguay, Chile, Ecuador and Venezuela, laws to protect against discrimination on grounds of sexual orientation have also been successfully introduced,¹⁰³ and in some cases gender identity has also featured in laws from the region. Although Ecuador is still the only country of Latin America whose Constitution explicitly refers to gender identity, anti-discrimination laws have been passed in Chile and Bolivia, while in El Salvador, gender identity has been addressed in an executive decree entitled *“Disposiciones para evitar toda forma de discriminación en la Administración Pública por razones de identidad de género y/o de orientación sexual”*, “Provisions to avoid any form of discrimination in Public Administration on grounds of gender identity and/or sexual orientation”.¹⁰⁴

Despite the fact that Central America is the region of Latin America in which hostility towards transgender women is greatest, there has been some isolated progress in those countries. For example, on 30 November 2009 in Nicaragua, the first *procuradora especial para la Diversidad Sexual*, Special Prosecutor for Sexual Diversity, was appointed with the task of monitoring implementation of the rights of LGBTI people and promoting those rights.¹⁰⁵ In Honduras, the second *Plan de Igualdad y Equidad de Género (2008-2015)*, Equality and Gender Equity Plan (2008-2015), was

passed.¹⁰⁶ In San Salvador, El Salvador, a municipal proclamation concerning article 2 of the Universal Declaration of Human Rights, recognizing the right of citizenship for LGBTI people, was issued¹⁰⁷ and in 2010 a *Dirección de Diversidad Sexual*, Sexual Diversity Office, was set up.

In Colombia too there has been progress on LGBTI issues, especially with regard to endorsing the rights of de facto couples of the same sex by allowing partners to become beneficiaries of the social security system and allocating them a pension in the event of widowhood. In March 2012, a transgender woman was appointed director of the *Gestión Corporativa de Integración Social*, Corporative Management of Social Integration.¹⁰⁸

In Mexico, a transgender woman stood for the Senate for the first time.¹⁰⁹ In 2011, the *Consejo Nacional para Prevenir la Discriminación*, National Council for the Prevention of Discrimination, drew up a *“Guía de acción contra la discriminación comprometida con la inclusión”*, “Anti-discrimination Action Guide committed to Inclusion”, which includes sexual preference but not gender identity.¹¹⁰ An amendment was also made to article 138 of the Criminal Code for the Federal District deeming hate crime to constitute an aggravating circumstance and in this case the definition does include both sexual orientation and gender identity.¹¹¹

In Chile in 2011, the Ministry of Health adopted a national protocol, entitled *“Vía clínica para la adecuación corporal en personas con incongruencia entre sexo físico e identidad de género”*, “The clinical path to body transformation in people whose physical sex and gender identity is not the same”¹¹², which regulates body transformation procedures. It also issued circular No. 34, which obliges the country’s health care facilities to address transgender people by their social name.¹¹³ A third Health Ministry plan expects the *Fondo Nacional de Salud*, National Health Fund, to assume the medical costs of body transformation, and it is hoped that this will come into force in 2013.¹¹⁴ On 12 July 2012 an anti-discrimination law that explicitly includes gender identity was passed.

In November 2011, at regional level, the Inter-American Commission on Human Rights established a Unit on the Rights of LGBTI Persons, which became operational in February 2012, with the aim of strengthening its capacity to protect those

rights. As its strategic areas of work the Unit has identified the provision of advice to bodies within the Organization of American States, the compilation of a report on the situation of that population in the Americas and priority processing of individual cases.¹¹⁵

Unfortunately, the priority processing of individual petitions¹¹⁶ and precautionary measures¹¹⁷ established by the Unit is not a measure that will immediately and effectively help implement the rights of transgender defenders because the nature of their problems and the reality of their organizations are not consistent with the dynamics of the Inter-American human rights protection system. For example, there could be difficulties when determining whether the alleged victims are entitled to resort to the system, given the lack of contact between transgender defenders and their families. The fact that the procedure is computer-based may also lead to transgender women being excluded because of the discrimination they suffer in the education system. Questions also arise about the appropriateness of ordering precautionary measures to be taken by police in the case of transgender human rights defenders who also do sex work and who are the victims of police abuses.

Only to the extent that States take responsibility for complying with their obligations in respect of transgender human rights defenders, can the situation of the latter improve within the broader social context. At the moment, the failure to comply with existing legislation on the issue means that transgender defenders face a lack of protection and that such laws have no impact on impunity

“All with us, nothing without us”: Conclusions and recommendations

Defending the human rights of transgender women is important not only for the filing of complaints but also for those making the complaints, namely us, the community of transgender women itself. All with us, nothing without us. (Marcela Romero, Regional Coordinator of REDLACTRANS)¹¹⁸

Conclusions

The days when transgender defenders were murdered in the streets of Latin American cities with no one but their friends noticing are gone. Today transgender organizations in the region are empowering thousands of transgender women, both sex workers and those working in other professions, with regard to the effective prevention of HIV and other sexually-transmitted diseases and so that they are able to avail themselves of their human rights.

Unfortunately, as this report shows, the progress made and results obtained as a result of empowering the transgender population are limited. It is precisely the reporting of human rights abuses that is increasing their exposure to threats and reprisals in the context of sex work.

Transgender women have demonstrated that they can defend and promote their rights and serve their societies in many ways. In order for them to be successful, it is essential that national authorities, the international community and civil society organizations join efforts to tackle violence, discrimination and impunity.

Transgender human rights defenders have the right to express their identity, to have their physical integrity protected, to have educational and employment opportunities and to access justice. Transgender women have the capacity to lead in the HIV/AIDS response and the prevention, treatment, care and support efforts that can only be successful if they do it themselves.

A. Recommendations addressed to the States of Latin America

ACTION BY POLICE AND THE JUDICIARY AND IMPUNITY

- All cases of alleged human rights violations, hate crimes and discrimination perpetrated against transgender women should be investigated, prosecuted and punished. No killings of transgender women should go unpunished.
- Police investigators and prosecutors should open lines of investigation that take account of whether crimes are committed on grounds of the gender expression, gender identity or sexual orientation of the victims, or their work to promote and defend human rights.
- Latin American States should provide free and independent legal aid in all cases in which transgender women file complaints for violence or discrimination.
- States are urged to run training courses on human rights and gender theory, including gender identities, for officials working at all levels of the security and justice systems.
- The police authorities should issue internal norms to promote human rights in the course of police work, establish specific sanctions in the event such rights are violated by public officials and introduce internal monitoring systems that are endowed with the necessary resources.
- Disciplinary regimes for prosecutors and judges should include discrimination against transgender women as a serious offence, subject to sanctions.
- The police should cut down on the rotation of officers from one geographical area to another in order to facilitate identification of police officers who have allegedly violated the rights of transgender women and the filing of complaints against them.

All officers and their vehicles should be easily recognizable and the police should sanction any officers who conceal their identity.

- The Latin American States should regularly monitor and sanction all XXX committed by their officials against the transgender community including police forces, justice authorities and health providers.

RECOGNITION OF GENDER IDENTITY AND LAW REFORM

- There is an urgent need for a Gender Identity Law to be promulgated in the countries that do not have one so that the right to identity of transgender people is legitimized and they are allowed to change their name and gender in their personal identification documents without being required to submit themselves to surgical or psychological interventions, sterilization or any other kind of invasive procedure.
- States should recognize gender identity as a category on which demographic, epidemiological, social and political reports should be compiled. Similarly, the police, prosecution service, courts and prison system should recognize transgender as a category to be included in the compilation of statistics on violence. Otherwise, it will be virtually impossible for the system to identify patterns of hate crimes committed because of transphobia or human rights violations against transgender defenders, and to take whatever steps may be necessary.
- States should remove any legislation that is transphobic by disposing of any provision that could be interpreted as criminalizing the sex work carried out by transgender people or as justifying arbitrary detention.

POLICIES ON INCLUSION AND PARTICIPATION IN DECISION-MAKING FORA

- States and international donors should push for transgender people to be able to remain in or return to the education system with their female image by pursuing policies that ensure respect for identity and expression. They should also facilitate the creation of job and business opportunities so that transgender human rights defenders are not exposed to rights violations as a result of doing sex work. The State should also fund and run public campaigns within institutions in order to combat social discrimination against transgender women, ensuring that the latter are fully involved in their design and planning.
- States are urged to boost the participation of transgender people in political fora, both in decision-making and in political representation and the holding of public office. States should implement programs to reinsert transgender adolescents to their homes that include training on gender and human rights for their families.

THE RIGHT TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH

- Comprehensive health care for the transgender community should be strengthened and access to antiretrovirals for transgender women living with HIV improved. The hours of service for transgender women living with HIV should be adapted to the needs of that community.

• Governments are urged to set up training programmes for health professionals on health care, gender identities and human rights in the treatment of transgender women. Transgender women should also be given access to mechanisms for constructing their gender identity and transforming their bodies with professional support and in a healthy manner. In addition, therapies and other medical or psychological activities that seek to change people's sexual orientation or gender identity should be banned.

• Prison, care provision (hospices for people living with HIV, shelters for women, people living on the streets, etc...) and health care systems are urged to accommodate transgender women in facilities intended for women and to protect them from abuse and degrading treatment, including rape.

• Transgender women who take drugs should have access to harm reduction programmes and, on a voluntary basis, rehabilitation centres.

• HIV prevention projects for the transgender community, run by both States and the Global Fund to Fight AIDS, Tuberculosis and Malaria and other donors, should be designed and implemented with the full participation of transgender organizations since only they have the capacity to carry out effective peer education work.

• States should include transgender women in their policies and programmes to eradicate violence against women. Similarly, governments should include young and adult transgender women in all forms of support that are provided for children and adolescents who have survived family violence or been expelled from their homes.

B. Recommendations addressed to the Organization of American States, the United Nations, specialist agencies such as PAHO, third countries and international donors

PROTECTING TRANSGENDER HUMAN RIGHTS DEFENDERS AND OTHER TRANSGENDER WOMEN FROM VIOLENCE AND IMPUNITY

- The international community is responsible for monitoring States' compliance with the international human rights obligations incumbent upon them. In this connection, the Inter-American Commission on Human Rights, the United Nations Human Rights Council, treaty-monitoring bodies, special procedures, specialist agencies and third countries are urged to specifically monitor the human rights of transgender women in Latin America and, within the framework of their respective mandates, publicly state their concerns and recommendations.
- Also, in all their onsite visits to the countries of Latin America, they are urged to consider transgender communities, giving priority attention to testimonies and analyses produced by those communities. In these cases, the issues affecting transgender women should be addressed by adopting an intersectional approach that encompasses not only questions of identity and gender expression but also those relating to age, ethnic and/or national origin, immigration status and HIV status, as well as the rights of the child and the elimination of all forms of violence against women.
- Third countries are urged to accept the systematic violence inflicted on transgender women and the impunity that surrounds such cases as valid grounds for granting them asylum.

PROMOTION OF THE RIGHT TO GENDER IDENTITY AND SEXUAL ORIENTATION

- It is recommended that gender identity and expression be included as an explicit category in all human rights treaties.
- In addition, a specific treaty on the rights of lesbian, gay, bisexual, transgender and intersex

(LGBTI) people should be adopted, allowing, among other things, the establishment of a monitoring system, including indicators, specific objectives and sanctions in the event of non-compliance by the States Parties.

- The Organization of American States and the United Nations should make their respect for the gender identity of transgender women explicit in the work of their agencies and bodies. To this end, it is suggested that the Inter-American Commission of Women as well as the recently established UN Women explicitly include transgender women in their mandates in their work to promote human rights and, in the case of UN Women, in its role as co-sponsor of UNAIDS, by helping to prevent HIV and other sexually-transmitted diseases among transgender women.

INTERNATIONAL FUNDING

- International donors are urged to continue supporting both the States of Latin America and organizations of transgender women to promote the human rights of that group and to combat HIV by monitoring States' compliance with the binding human rights instruments applicable to transgender groups. For this to be done, the support must be comprehensive and sustained, with particular emphasis on ensuring the physical protection of transgender human rights defenders, combating discrimination and the impunity surrounding the human rights violations to which the community is subjected, securing access to justice for transgender women and developing viable educational and work opportunities for transgender women.
- The international community is urged to promote, fund and carry out research that sheds light on the causes of transphobia and gender-based violence in all spheres, especially health care, education, housing and work.

C. Recommendations addressed to other civil society organizations

- It is recommended that civil society organizations, especially those working to promote human rights, collaborate with transgender women's organizations to monitor this issue and disseminate information on it, by sharing their experiences of advocacy and devising institutional strategies and forming partnerships for defending and protecting the human rights of transgender women.
- Civil society organizations are also urged to train the media in the right to gender identity and related issues in order to stop the degrading treatment of transgender women by the media.
- It is also suggested that the issues of sexual orientation and gender identity be included in the shadow reports submitted to the different United Nations bodies as well as in reports submitted to the specific rapporteurships of the Inter-American Commission on Human Rights.
- Women's organizations are particularly urged to include transgender women's organizations as strategic partners in their work to combat violence and discrimination

Notes

¹Including the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171 [from now on, ICCPR], the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 [from now on, ICESCR], the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S.13 [from now on, CEDAW], the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85 [from now on, CAT], the Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3 [from now on, CRC], the American Convention on Human Rights [from now on, American Convention], 22 November 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 143, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights [from now on, Protocol of San Salvador], 17 November 1988, O.A.S.T.S. No. 69, the Inter-American Convention to Prevent and Punish Torture, [from now on, Inter-American Convention to Prevent and Punish Torture], 12 September 1985, O.A.S.T.S. No. 67, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, [from now on, Convention of Belém do Pará], 9 June 1994, 33 I.L.M. 1534.

²To find out the current status of signatures and ratifications of inter-American treaties by States, go to: http://www.oas.org/dil/treaties_signatories_ratifications_member_states.htm; and for human rights treaties within the universal system, see: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

³For example, the Human Rights Committee said that the reference to "equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" in article 26 of the ICCPR includes discrimination on grounds of sexual orientation (Human Rights Committee: Views of 31 March 1994, Case of Nicholas Toonen v. Australia, Communication N° 488/1992, paras. 8.2-8.7. See also Views of 6 August 2003, Case of Edward Young v. Australia, Communication N° 941/2000, para. 10.4 and Views of 30 March 2007, Case of X v. Colombia, Communication N° 1361/2005, para. 7.2.). Similarly, the Committee on Economic, Social and Cultural Rights stated that "[b]y virtue of article 2.2 and article 3 [of the ICESCR], the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of [...] health status (including HIV/AIDS), sexual orientation [...], which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health." (Committee on Economic, Social and Cultural Rights, General Comment N° 14: The right to the highest attainable standard of health (article 12), para. 18. See also: Committee on Economic, Social and Cultural Rights, General Comment N° 15: The right to water, para. 13.). For its part, the Committee against Torture considered sexual orientation to be one of the prohibited grounds included in the principle of non-discrimination (Committee against Torture, General Comment N° 2: Implementation of Article 2 by States Parties, paras. 21 y 22). The Committee on the Rights of the Child listed sexual orientation among prohibited grounds for discrimination in its general comments relating to adolescent health and development, HIV/AIDS and the rights of the child (Committee on the Rights of the Child, General Comment N° 4: Adolescent health and development, para. 6, and General Comment N° 3, HIV/AIDS and the rights of the child, para. 8).

⁴AG/RES. 2653 (XLI-O/11) "Human rights, sexual orientation and gender identity", which ratifies and improves on resolutions passed in previous years: AG / RES. 2600 (XLO/10), AG /RES 2504 (XXXIX-O/09) and AG/RES.2435 (XXXVIII-O/08).

⁵While recognizing it can be diverse, the gender identity to which this report refers is characterized by certain common features. In all cases, it refers to people who see themselves as having a different gender (female) from the one assigned to them at birth (male). This recognition is accompanied by the adoption of a proper noun and usually, but not always, feminine pronouns. It also includes several forms of expression usually associated with different styles of femininity, including clothing, hairstyle, cosmetics and footwear, and possible body modifications such as those resulting from the taking of hormones or the insertion of silicone implants, or even sex reassignment surgery. The situation of female to male transsexuals, transgender men and others is not addressed in this report, although, given its specific nature, it should be addressed urgently as a separate issue.

⁶There is no precise definition of a human rights defender. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to “individuals, groups and associations [who contribute] to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (paragraph 4 of the preamble). According to this general definition, any person or group of persons who is seeking to promote human rights can be defenders without it being essential that, in order to be called a human rights defender, the person in question is known as a “human rights activist” or works for an organization whose name includes the words “human rights”.

⁷See, for example, Comisión Nacional de los Derechos Humanos México (2010), Special Report by the National Human Rights Commission (CNDH) on Homophobia-related Human Rights Violations and Crimes, Mexico D.F., Mexico, para. 169, which states that, while gays and lesbians may suffer harassment only when they show affection in public, the visibility of transgender people, especially women, means that such harassment is constant.

⁸Organización Trans Reinas de la Noche (OTRANS) (2011), Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011, Guatemala, Guatemala, p. 27.

⁹Throughout the report, reports on the issue recently produced in countries of the region are cited. See also Organización OASIS (2006), Guatemala, El Rostro de la Homofobia: Informe Especial. Los crímenes de odio por identidad sexual (1996-200), Guatemala, Guatemala; MOVHIL (2008), Prejuicios y metocimientos sobre orientación sexual e identidad de género en establecimientos educacionales municipalizados de la Región Metropolitana, Santiago, Chile; and Grupo de Acción Gay Lésbico Transgénero (2003), Informe sobre la Situación de los Derechos Humanos de Gays, Lesbianas, y Transgénero 2003, Asunción, Paraguay.

¹⁰A derogatory term used broadly for gay men and often applied also to transgender women in Guatemala and Honduras.

¹¹Colombia Diversa (2011), Todos los deberes, pocos los derechos. Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008 – 2009, Bogotá, p. 22. The statistics presented give the transgender population as a separate category while also including “homosexual” and “gay” as categories.

¹²Centro por la Justicia y el Derecho internacional (CEJIL); Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC); Hivos (2010), Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Costa Rica, p.49. All the statistics provided group gay men and transvestites together, without specifically mentioning transgender women. This study reports the murders of 23 gay men and transvestites between 2000 and 2009.

¹³The Geneva Declaration, p.6, available at <http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011-Ex-summary-ENG.pdf>.

¹⁴OTRANS Op. cit. Pag. 31.

¹⁵Interview with an official from the Dirección de Prosecución de la Procuraduría de los Derechos Humanos de Guatemala, Prosecutions Directorate of the Guatemalan Human Rights Ombudsman’s Office, August 2012.

¹⁶Colombia Diversa, Op. cit. Pag. 40.

¹⁷Instituto Runa de Desarrollo y Estudios de Género; Hivos (2010), Informe de Derechos Humanos sobre la Comunidad Trans en la ciudad de Lima, Lima, p.13.

¹⁸Article 3 of the Universal Declaration of Human Rights; article 6 of the ICCPR; article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 6 of the CRC, article 10 of the Convention on the Rights of Persons with Disabilities; principle 1 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; article 7 of the United Nations Declaration on the Rights of Indigenous Peoples; article 5 of the Declaration on the human rights of individuals who are not nationals of the country in which they live; article I of the American Declaration of the Rights and Duties of Man; and article 4 of the American Convention on Human Rights.

¹⁹Inter-American Court of Human Rights, Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, Judgment of 19 November 1999, Series C No. 63, para. 144.

²⁰Interview with a leader from the Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), Tegucigalpa, July 2012.

²¹This refers to the coup d’Etat occurred in 2009

²²ICCPR (article 7); CAT; CRC (article 37.a); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 10); Convention on the Rights of Persons with Disabilities (article 15.1); American Convention on Human Rights (article 5); Inter-American Convention to Prevent and Punish Torture; and Convention of Belém do Pará (article 4.c).

²³United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 6); Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Code of Conduct for Law Enforcement Officials (article 5); Guidelines on the Role of Prosecutors (guideline 16); Declaration on the human rights of individuals who are not nationals of the country in which they live (article 6); Guiding Principles on Internal Displacement (principle 11); and Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (principle 1).

²⁴Report by the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/56/156, 3 July 2001, para. 18. Similarly, the Committee against Torture expressed concern about people being tortured because of their sexual orientation and recommended that States take effective steps to address complaints of threats and attacks targeted at sexual minorities and defenders (Concluding observations of the Committee against Torture: Italy, CAT/C/ITA/CO/4 (2007), para. 23; Concluding observations of the Committee against Torture: Argentina, CAT/C/CR/33/1 (2004), para. 6.g; and Concluding observations of the Committee against Torture: Venezuela, CAT/C/CR/29/2 (2002), para. 10.d.)

²⁵Universal Declaration of Human Rights (articles 3 and 9), ICCPR (article 9), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 16), CRC (article 37), International Convention for the Protection of All Persons from Enforced Disappearance (article 17), Declaration on the human rights of individuals who are not nationals of the country in which they live (article 5.1), American Declaration on the Rights and Duties of Man (articles I and XXV), American Convention on Human Rights (article 7).

²⁶In its General Comment N° 8, Right to liberty and security of persons (article 9), the Human Rights Committee emphasizes that “paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” (para. 1).

²⁷Telephone interview with Hege Wagan, UNAIDS Regional Adviser, September 2012.

²⁸Interview with the director of the Superintendencia de Justicia, Seguridad y Transporte, Office of the Superintendent for Justice, Security and Transport, for the municipality of San Pedro Sula, Honduras, July 2012.

²⁹Red Legal y su Observatorio de Derechos Humanos, VIH y PEMAR (2012), Segundo informe nacional sobre la situación de los derechos humanos de las personas con VIH y poblaciones en más alto riesgo, Guatemala, p. 32.

³⁰Decision of the Tercera Sala de la Corte de Apelaciones de Santiago, Third Chamber of the Santiago Court of Appeal, presided by Justice Mauricio Silva Cancino and made up of Fiscal judicial (prosecuting attorney) Juan Escandón Jara and Abogada integrante (associate judge) Teresa Alvarez Bulacio, 19 July 2012.

³¹Ibid.

³²Human Rights Watch (2009), “Not Worth a Penny”: Human Rights Abuses against Transgender People in Honduras, New York, p. 23.

³³Asociación Panameña de Personas Trans (APPT - Panamanian Association of Trans People) and the International Gay and Lesbian Human Rights Commission (IGLHRC) (2009), Situation of lesbian, bisexual, transsexual, and transgender women in Panama in relation to discrimination. Shadow report to the Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), 45th session, 18 January to 5 February 2010. Panama, p. 8.

³⁴Telephone interview with transgender activist in Curitiba, Brazil, September 2012.

³⁵ICESCR, article 12.1; International Convention on the Elimination of All Forms of Racial Discrimination, article 5.e.iv; CEDAW, article 11.1.f and 12; CRC, article 24; Convention on the Rights of Persons with Disabilities, article 25; Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador).

³⁶World Health Organization, Pan American Health Organization (2010), Health and Human Rights: Concept Paper, CD50/12, 31 August 2010, para. 10.

³⁷Human Rights Watch (2009), Together, Apart: Organizing around Sexual Orientation and Gender Identity Worldwide, New York, p. 40.

³⁸Pan American Health Organization (2011), El derecho a la salud de los jóvenes y las identidades de género: hallazgos, tendencias y medidas estratégicas para la acción en salud pública, Washington, D. C.

³⁹OTRANS, Op. cit. Pag. 45.

⁴⁰Ulises Borgogno, Op. cit. Pag. 46.

⁴¹Interview with an activist working for the human rights of transgender women in San Pedro Sula, Honduras, July 2012.

⁴²United Nations General Assembly Special Session on HIV/AIDS.

⁴³Ministerio de Salud de Guatemala (2010), Reporte UNGASS Guatemala 2010: Seguimiento de la Declaración de Compromiso sobre VIH y Sida, Guatemala.

⁴⁴Comisión Nicaragüense del SIDA (2010), Informe Nacional sobre los Progresos Realizados en la Aplicación del UNGASS, Managua.

⁴⁵Ministerio de Salud de Honduras (2010), Informe Nacional sobre los Progresos Realizados en la Aplicación del UNGASS, Tegucigalpa.

⁴⁶Colectivo Unidad Color Rosa is the transgender organisation in San Pedro de Sula – Honduras affiliated to Redlactrans

⁴⁷Amnesty International (2001), Crímenes de odio, conspiración de silencio. Tortura y malos tratos basados en la identidad sexual, AI Index: ACT 40/019/2001/s, p. 7.

⁴⁸See, for example, Organización Trans Reinas de la Noche (OTRANS), Red Latinoamericana y del Caribe de Personas Trans (REDLACTRANS), International Gay and Lesbian Human Rights Commission (IGLHRC), The Heartland Alliance for Human Needs & Human Rights, International Human Rights Law Clinic of the Faculty of Law of George Washington University (2012), Violaciones a los Derechos Humanos de las personas Lesbianas, Gays, Bisexuales y Transgénero (LGBT) en Guatemala: Informe Sombra. Guatemala, p.17.

⁴⁹Interviews with officials from the Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate, Tegucigalpa, Honduras, July 2012; an official from the Policía Preventiva, Preventive Police, in San Pedro Sula, Honduras, July 2012; a prosecutor from the Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service), Tegucigalpa, Honduras, July 2012; the fiscal de Derechos Humanos, Ministerio Público (Human Rights Prosecutor, Prosecution Service), Tegucigalpa, Honduras, July 2012; and an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala, August 2012.

⁵⁰Amnesty International, Op. cit. Pag. 16.

⁵¹Interview with an official from the Departamento de Delitos Sexuales, Trata de Personas, Niñez y Adolescencia y Delitos Conexos de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Sexual Offences, Human Trafficking, Children and Adolescents and Related Offences Department of the Specialist Investigation Division of the National Civil Police of Guatemala), Guatemala, August 2012.

⁵²Shadow report on Guatemala, Op. cit. Pag. 17.

⁵³Red Lésbica Cattrachas, Situación de las muertes violentas de la comunidad LGTTBI en Honduras, summary as of 16 July 2012.

⁵⁴Telephone interview with a transgender leader in Cali, Colombia, July 2012.

⁵⁵See end note 11.

⁵⁶See, for example, a report by Erica Sandoval Rebollo entitled *La transgeneridad y la transexualidad en México: en búsqueda del reconocimiento de la identidad de y género y la lucha contra la discriminación*, Dirección General Adjunta de Estudios, Legislación y Políticas Públicas, Documento de Trabajo N° E-12-2008.

⁵⁷Inter-American Commission on Human Rights (2007), *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II, Doc. 68, 20 January 2007, para. 155.

⁵⁸Inter-American Commission on Human Rights (2012), *IACHR Condemns Murder of Trans Honduran Woman in Guatemala*, 11 July 2012

⁵⁹Interview with officials from the Dirección Nacional de Investigación Criminal, National Criminal Investigations Directorate, Tegucigalpa, Honduras, July 2012.

⁶⁰Interview with an official from the Policía Preventiva, Preventive Police, San Pedro Sula, Honduras, July 2012.

⁶¹Inter-American Commission on Human Rights (2012), *IACHR Condemns Murder of Trans Adolescent in Mexico*, 25 June 2012.

⁶²Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala City, Guatemala, August 2012.

⁶³Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.

⁶⁴In this connection, see Ulises Borgogno, *Op. cit.* Pag. 11.

⁶⁵Interview with prosecutor from Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service) Tegucigalpa, Honduras, July 2012.

⁶⁶*Ibid.*

⁶⁷Human Rights Committee, “General Comment No 18: Non-discrimination”, 37th session, 1989.

⁶⁸Federación Argentina LGBT, *Informe sobre códigos contravencionales y de faltas de las provincias de la República Argentina y la Ciudad Autónoma de Buenos Aires en relación con la discriminación y represión a gays, lesbianas, bisexuales y trans*, available at: http://www.lgbt.org.ar/archivos/codigos_contravencionalesyfaltas.pdf. This document contains a list of all the laws of that kind in the country.

⁶⁹Ordenanza para la Convivencia Ciudadana del Municipio de San Salvador, consulted at: http://www.sansalvador.gob.sv/pages/sgc/sindicatura/ORD_CONVIVENCIA_CIUDADANA.pdf

⁷⁰Código Penal de Chile, consulted at: <http://www.iberred.org/sites/default/files/codigo-penal-de-chile.pdf>

⁷¹Global Rights (2010), *The violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico: A Shadow Report*, Mexico D.F., Mexico.

⁷²Instituto Runa de Desarrollo y Estudios de Género; *Hivos* (2010), *Op. cit.* Pag. 23.

⁷³Asociación Salvadoreña de Derechos Humanos “Entre Amigos”, International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic, Human Rights Program, Harvard Law School and Red Latinoamericana y del Caribe de Personas Trans, *op. cit.*, p. 40. [Shadow Report submitted to the United Nations Human Rights Committee, October 2010]

⁷⁴Interview with an official from the Unidad de Derechos Específicos de la Dirección de Prosecución de la Procuraduría de los Derechos Humanos (Specific Rights Unit of the Prosecutions Directorate of the Office of the Human Rights Ombudsman), Guatemala, August 2012.

⁷⁵Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala

⁷⁶Interview with a prosecutor from the Sección de Diversidad Sexual, Unidad de Delitos contra la Vida, Fiscalía de Delitos Comunes, Ministerio Público (Sexual Diversity Section, Offences against Life Unit, Office of the Prosecutor for Common Law Offences, Prosecution Service) Tegucigalpa, Honduras, July 2012.

⁷⁷Interview with an official from the Unidad de Derechos Específicos de la Dirección de Prosecución de la Procuraduría de los Derechos Humanos (Specific Rights Unit of the Prosecutions Directorate of the Office of the Human Rights Ombudsman), Guatemala, August 2012.

⁷⁸Interview with an official from the Departamento de Delitos contra la Vida de la División Especializada de Investigación Criminal de la Policía Nacional Civil de Guatemala (Offences against Life Department of the Specialist Criminal Investigation Division of the Guatemalan National Civil Police), Guatemala.

⁷⁹OEA/Ser.L/V/II., Doc. 66, 31 December 2011, available at: <http://www.oas.org/en/iachr/default.asp>

⁸⁰*Ibid.*

⁸¹Report of the Special Representative of the Secretary General on the situation of human rights defenders, 27 March 2007, A/HRC/4/37/Add.1, paras. 255-258.

⁸²For example, between 94 and 95 per cent of transgender women in Peru and Chile are engaged in sex work (see Instituto Runa de Desarrollo y Estudios de Género; *Hivos* (2010), *Informe de Derechos Humanos sobre la Comunidad Trans en la ciudad de Lima*, Lima, Peru, p. 5; and Ulises Borgogno, Ignacio Gabriel (2009), *La Transfobia en América Latina y el Caribe: Un estudio en el marco de REDLACTRANS*, Buenos Aires, Argentina, p. 44).

⁸³UNAIDS (2010); *Global Report: UNAIDS report on the global AIDS epidemic 2010*; p.202. http://www.unaids.org/globalreport/Global_report.htm

⁸⁴Argentinean HIV/AIDS Bulletin, No.25, December 2007. Department of STIs and HIV/AIDS, Ministry of Health – Argentina, pp.68-69; Monica Pun Chinarro, ‘Situation of the HIV/AIDS epidemic in Peru’, presentation given by the Department of HIV/AIDS and STIs of the Ministry of Health at the National Sex Work Consultation, Lima, December 2007. HIV and STI and Behavioural Multi-Centric Study among MSM in El Salvador, 2003

⁸⁵There is no universal definition of a hate crime. In this report, it is taken to mean killings or physical attacks on people carried out solely because of their sexual orientation or gender identity.

⁸⁶Ulises Borgogno, *Op. cit.* Pag. 40.

⁸⁷Harvard University Law Faculty (2010), *The Violation of the Rights of Lesbian, Gay, Bisexual, and Transgender Persons in El Salvador*, p. 8.

⁸⁸Asociación Salvadoreña de Derechos Humanos “Entre Amigos”, International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic, Human Rights Program, Harvard Law School and Red Latinoamericana y del Caribe de Personas Trans (2010), *The Violation of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in El Salvador*, Shadow Report submitted to the United Nations Human Rights Committee, p. 8.

⁸⁹These were originally set up with the idea of giving a community basis to crime prevention and in some cases they carry out tasks that are the responsibility of the State, including maintaining territorial control and using force, with the acquiescence or direct participation of local authorities.

⁹⁰Cabral, Mauro and Hoffman, Johanna, “Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...”: *Trans Latinoamericanas en Situación de Pobreza Extrema*, Latin America and Caribbean Programme, International Gay and Lesbian Human Rights Commission.

⁹¹Interview with a commissioner from the Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas in Guatemala, August 2012.

⁹²Colombia Diversa (2011), *Op. cit.* Pag. 30.

⁹³Interview with an official from the Ministry of Justice and Human Rights, Tegucigalpa, Honduras, July 2012.

⁹⁴Telephone interview with a transgender activist in Cali, Colombia, July 2012.

⁹⁵Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.

⁹⁶For an evaluation of this law, see Leonardo, Mónica (2009), *Análisis del tipo penal de femicidio*, Guatemala, Fundación Myrna Mack, in which the author states that, although the law criminalizing femicide seeks to combat gender-based violence, the violent deaths of gays, lesbians and transgender and intersex persons are excluded from it. In this connection, it is clear that such deaths have to be tried as common law offences, despite constituting an obvious form of gender-based violence.

⁹⁷Interview with a prosecutor from the Unidad de Litigio de la Fiscalía de Delitos contra la Vida perteneciente al Ministerio Público (Litigation Unit of the Prosecutor’s Office for Crimes against Life, of the Guatemalan Prosecution Service, August 2012.

⁹⁸Interview with Javier Vásquez, Human Rights Adviser at the PanAmerican Health Organization, July 2012. The views expressed in this section by the Human Rights Adviser at the PAHO/WHO are personal and do not necessarily reflect the official position of the PanAmerican Health Organization and/or the World Health Organization.

⁹⁹The Inter-American Commission of Women (CIM) was established to ensure recognition of the civil, political, economic, social and cultural rights of women. It is made up of one Principal Delegate for each OAS member State, as designated by their respective governments. The delegates meet every two years during the Assembly of Delegates, CIM’s highest authority, and are responsible for approving the Commission’s plans and programs of work. CIM also provides technical and advisory support to the Conference of States Parties and to the Committee of Experts of the Follow-up Mechanism for Implementation of the Convention of Belém do Pará.

¹⁰⁰Interview with Hilary Anderson, a specialist from the Inter-American Commission of Women, July 2012.

¹⁰¹Law 26,743, available at <http://www1.hcdn.gov.ar/BO/boletin12/2012-05/BO24-05-2012leg.pdf>

¹⁰²Interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.

¹⁰³Mexico: Article 1 of the Constitution, consulted at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>, and the Ley Federal para Prevenir y Eliminar la Discriminación, Federal Law to Prevent and Eliminate Discrimination, article 3, consulted at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>.

Ecuador: articles 11.2, 66.9 and 83.14 of the Constitution, consulted at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf and the Criminal Code, articles 30.6, 450.10 and addendum 555 of 24 March 2009.

Costa Rica: Criminal Code, article 123bis, available at: <http://www.iberred.org/sites/default/files/codigo-penal-costa-rica.pdf>.

Colombia: Criminal Code, article 58.3, available at: <http://www.iberred.org/sites/default/files/codigo-penal-de-colombia.pdf>.

Chile: Ley Antidiscriminación, Anti-discrimination Law, article 2, available at: http://www.bcn.cl/carpeta_temas_profundidad/ley-antidiscriminacion-fue-aprobada-por-el-congreso-nacional.

Uruguay: Law No. 17,817, article 2, available at: <http://sip.parlamento.gub.uy/leyes/ AccesoTextoLey.asp? Ley = 17817 &Anchor, and the Criminal Code, articles 149bis and 194 ter, available at: http://www.iberred.org/sites/default/files/codigo-penal-uruguay.pdf>.

Venezuela: Ley Orgánica contra la Discriminación Racial, Organic Law against Racial Discrimination, article 11, available at: http://www.observatorioafro.com/Documentacion/LEY_ORGANICA_CONTRA_LA_DISCRIMINACION_RACIAL.pdf.

¹⁰⁴Ecuador: article 11.2 of the Constitution, available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf.

El Salvador: Executive Decree No. 56, available at: <http://es.scribd.com/doc/33472123/Decreto-Ejecutivo-56-Republica-de-El-Salvador>.

Bolivia: Ley 045 Contra el Racismo y toda forma de Discriminación, Law 045 Against Racism and All Forms of Discrimination, article 5.a, available at: <http://bolivia.infoleyes.com/shownorm.php?id = 2395>.

Chile: Law No. 20,609, article 2, available at: <http://www.leychile.cl/Navegar?idLey = 20609&idVersion = 2012-07-24>.

¹⁰⁵Fundación CATRACHAS, Fundación Triángulo (2012), “Trans” Centro América: Impacto político/social en mujeres trans en la región más violenta de Latinoamérica y el Caribe. Honduras, p. 13.

¹⁰⁶Ibid. p. 18.

¹⁰⁷Proclama Municipal, available at: <http://es.scribd.com/doc/8506901/Declaracion-Derechos-Humanos-y-Divers-Id-Ad-Sexual-San-Salvador>.

¹⁰⁸Runa, ¡Mujer transgénero asume cargo público!, Dirección Gestión Corporativa de Integración Social, Alcaldía de Bogotá, available at: <http://www.runa.org.pe/hot-news-1/%C2%A1mujertransgeneroasumecargopublicodirgestioncorporativadeintegracionsocialalcaldiadebogota>.

¹⁰⁹Runa, Mujer Transexual postula al senado mexicano, available at: <http://www.runa.org.pe/hot-news-1/mujertransexualpostulaalsenadomexicano>.

¹¹⁰Guía de Acción contra la Discriminación, available at: <http://ici.conapred.org.mx/oldsite/>.

¹¹¹Letra S, Sida, Cultura y Vida Cotidiana A.C. (2009), Informe de crímenes de odio por homofobia, México 1995-2008, Mexico D.F., Mexico.

¹¹²Ord. B22 (2011), available at: <http://www.movilh.cl/documentacion/trans/Ord%2057%202988%20Env%C3%ADa%20v%C3%ADa%20cl%C3%ADnica%20para%20la%20adecuaci%C3%B3n%20corporal%20en%20personas%20con%20incongruencia-1.pdf>

¹¹³Circular 54, available at: <http://www.movilh.cl/documentacion/trans/circular%2034%20instruye%20sobre%20la%20atenci%C3%B3n%20de%20personas%20trans%20y%20fortalecimiento%20de%20la%20estrategia.pdf>

¹¹⁴MOVILH (2012), X. Informe anual de derechos humanos de la diversidad sexual en Chile. Hechos 2011, Santiago de Chile, p. 193.

¹¹⁵Inter-American Human Rights Commission (2011), IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons, 3 November 2011, available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/115.asp, and interview with Fanny Gómez, a human rights specialist at the Inter-American Human Rights Commission, August 2012.

¹¹⁶The individual petition system is one of the main functions of the IACHR in compliance with its mandate “to promote the observance and protection of human rights”, established in article 106 of the Charter of the Organization of American States, and comprises the procedures set up through the inter-American instruments that authorize the IACHR to take cognizance of complaints of human rights violations.

¹¹⁷The aim of the precautionary measures system is to ensure a rapid response by the IACHR to grave and urgent situations in which there is imminent risk of irreparable harm being done to persons, or groups of persons, in Member States of the OAS (article 106 of the OAS Charter, article 41.b of the ACHR, article 18.b of the IACHR Statute and the Inter-American Convention on the Forced Disappearance of Persons).

¹¹⁸Telephone interview with Marcela Romero, Regional Coordinator of the Red Latinoamericana y del Caribe de Personas Trans, August 2012.



Red Latinoamericana y del Caribe de Personas Trans (REDLACTRANS) is the Latin American and the Caribbean network of transgender people aimed to defend and promote the human rights of transgender people. Through advocacy, increased visibility, participation in decision making and the organizational development of transgender organizations, REDLACTRANS implement activities on health, education and justice.



International HIV/AIDS Alliance (la Alianza) supports communities to play a full and effective role in the global response to HIV and AIDS. It is a partnership of Linking Organisations (national, independent, locally governed and managed NGOs) around the world. In the context of a concentrated epidemic, the work in Latin America and the Caribbean is focused mainly on key populations, including transgender people.



'What's Preventing Prevention?' is a global campaign of the International HIV/AIDS Alliance. The campaign calls for an HIV response based on the human rights of most at risk communities, including the transgender community.

For more information on the campaign, visit www.whatspreventingprevention.org, and about the work of the Alliance in Latin America: <http://www.aidsalliance.org/Pagedetails.aspx?Id=500>